

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 03, 2018

Hearing Room 1568

10:00 AM

2:10-12711 Diana Avanesova

Chapter 7

Adv#: 2:10-01846 CITIBANK, N.A. v. Avanesova

#1.00 Hearing re [22] Appearance and Examination of Judgment Debtor Diana Avanesova aka Diana Avanesian

Docket 0

***** VACATED *** REASON: WITHDRAWAL OF APPLICATION
FILED ON 12-29-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Diana Avanesova

Represented By

Nazareth V Jansezian - DISBARRED -

Defendant(s):

Diana Avanesova

Pro Se

Plaintiff(s):

CITIBANK, N.A.

Represented By

Jennifer Witherell Crastz

Jennifer Witherell Crastz

Raffi Khatchadourian

Trustee(s):

John J Menchaca (TR)

Pro Se

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2:17-23853 Homes America Inc

Chapter 7

#2.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Sarah) Additional attachment(s) added on 11/9/2017 (Cowan, Sarah). Additional attachment(s) added on 11/9/2017 (Cowan, Sarah).

Docket 1

Tentative Ruling:

1/2/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

The involuntary petition is DISMISSED based on the Petitioning Creditors' failure to file a proof of service of the summons and petition with the court. The Court will enter an appropriate order.

Party Information

Debtor(s):

Homes America Inc

Pro Se

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2:17-23863 Jerry Smith

Chapter 7

#3.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against an Individual. Vera)

Docket 1

Tentative Ruling:

1/2/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

The involuntary petition is DISMISSED based on the Petitioning Creditors' failure to file a proof of service of the summons and petition with the court. The Court will enter an appropriate order.

Party Information

Debtor(s):

Jerry Smith

Pro Se

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10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#4.00 Status Hearing
RE: [131] post confirmation status conference

fr. 5-2-17; 8-30-17; 12-27-17

Docket 131

Tentative Ruling:

1/2/2018

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **April 4, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. The continued status conference will be vacated if a final decree is entered before the date of the continued status conference.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#5.00 Hearing
RE: [1039] Motion for (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action and (II) Settlement Authority (Bisconti, Anthony)

Docket 1039

***** VACATED *** REASON: PER ORDER ENTERED 12-29-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

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2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#6.00 HearingRE: [166] Motion and Notice to Disallow Claims late filed claim of Michael Kohrman [claim no. 8]

Docket 166

Tentative Ruling:

For the reasons set forth below, the Court GRANTS the Motion. Claim #8 is disallowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion for Order to Disallow Late Filed Claim of Michael Kohrman [Claim #8] (the "Motion") [Doc. No. 166]
 - a) Declaration of Matthew Alderson
 - b) Declaration of Judy McNitt-Mell
 - c) Declaration of Elaine V. Nguyen
- 2) Opposition to the Motion (the "Opposition") [Doc. No. 173]
 - a) Declaration of Michael Kohrman
 - b) Evidentiary Objections in Support of the Opposition ("Kohrman Evidentiary Objections") [Doc. No. 173-1]
- 3) Reply in Support of the Motion (the "Reply") [Doc. No. 174]
 - a) Supplemental Declaration of Matthew Alderson
 - b) Supplemental Declaration of Judy McNitt-Mell
 - c) Supplemental Declaration of Elaine V. Nguyen
 - d) Supplemental Declaration of Daniel J. Weintraub
- 4) Radiology Support Devices, Inc.'s Responses to the Kohrman Evidentiary Objections ("Response to the Kohrman Evidentiary Objections") [Doc. No. 175]
- 5) Radiology Support Devices, Inc.'s Evidentiary Objections to the Declaration of

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Michael Kohrman ("Radiology Evidentiary Objections") [Doc. 176]

- 6) Motion to Set Last Day to File Proofs of Claim [Doc. No. 15]
 - a) Order Setting Bar Date for Filing Proofs of Claim [Doc. No. 17]
 - b) Notice of Bar Date for Filing Proofs of Claim in A Chapter 11 Case" ("Notice of Claim Bar Date") [Doc. No. 36]
- 7) Claim #8 filed by Michael Kohrman, Amount claimed: \$1,510,500.00

I. Introduction

This matter is before the Court on the Debtor's "Motion for Order to Disallow Late Filed Claim of Michael Kohrman [Claim #8]" (the "Motion") [Doc. No. 166], filed on December 1, 2017. The Court has read and considered the moving, opposition, and reply documents submitted in connection with the Motion. The matter is scheduled to come for hearing on January 3, 2018 at 10:00 a.m. For the reasons set forth below, the Court GRANTS the Motion in its entirety. Claim #8 is disallowed in its entirety.

II. Procedural Background

On February 21, 2017, Radiology Support Devices, Inc. (the "Debtor" or "RSD"), filed a voluntary Chapter 11 petition (the "Petition") [Doc. No. 1]. On February 23, 2017, the Debtor filed the "Motion to Set Last Day to File Proofs of Claim" [Doc. No. 15], and on February 24, 2017 the Court entered the "Order Setting Bar Date for Filing Proofs of Claim" (the "Bar Date Order") [Doc. No. 17]. The deadline for creditors to file proofs of claim was May 15, 2017 (the "Claims Bar Date"). Doc. No. 17. The Debtor filed the "Notice of Bar Date for Filing Proofs of Claim in A Chapter 11 Case" ("Bar Date Notice") [Doc. No. 36] on March 9, 2017. On August 7, 2017, Dr. Michael Kohrman ("Kohrman") filed Claim #8 in the amount of \$1,510,000.00 (the "Kohrman Claim"). The stated basis for the Kohrman Claim is "use of invention without paying royalty." Kohrman Claim.

The Debtor filed the Motion on December 1, 2017. The following declarations were filed in support of the Motion: (i) "Declaration of Matthew Alderson" (the "Alderson Decl."); (ii) "Declaration of Judy McNitt-Mell" (the "McNitt-Mell Decl."); and (iii) "Declaration of Elaine V. Nguyen" (the "Nguyen Decl."). On December 20, 2017 Kohrman filed the "Opposition to the Motion" (the "Opposition") [Doc. No.

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173], as well as Kohrman's "Evidentiary Objections in Support of the Opposition" ("Kohrman Evidentiary Objections") [Doc. No. 173-1]. The "Declaration of Michael Kohrman" (the "Kohrman Decl.") was filed in support of the Opposition. On December 27, 2017 the Debtor filed the Reply to the Opposition (the "Reply") [Doc. No. 174]. The following declarations were filed in support of the Reply: (i) "Supplemental Declaration of Matthew Alderson" (the "Supplemental Alderson Decl."); (ii) "Supplemental Declaration of Judy McNitt-Mell" (the "McNitt-Mell Decl."); (iii) "Supplemental Declaration of Elaine V. Nguyen" (the "Supplemental Nguyen Decl."); and (iv) "Supplemental Declaration of Daniel J. Weintraub" (the "Supplemental Weintraub Decl."). The Debtor concurrently filed the Debtor's "Responses to the Kohrman Evidentiary Objections ("Responses to the Kohrman Evidentiary Objections") [Doc. No. 175], and the Debtor's "Evidentiary Objections to the Declaration of Michael Kohrman" ("RSD Evidentiary Objections") [Doc. 176].

III. Evidentiary Objections

A. *Kohrman Evidentiary Objections to the Alderson Declaration*

- (1) **Alderson Decl. at ¶ 6:** "Prior to RSD, my grandfather was a well-known inventor best known for his development of the "crash-test dummy," the first dummies designed specifically for the auto industry. It is estimated that at least 3,330,000 lives have been saved by automotive safety devices developed with crash-test dummies, a device that during the last half of the twentieth century was widely used by automobile manufacturers to test the reliability of automobile seat belts and other safety protocols. Samuel Alderson was inducted into the Inventors Hall of Fame in May 2013."

Kohrman's Objection: Irrelevant, Fed. R. Evid. 401.

Ruling: OVERRULED. Samuel Alderson's background and work experience, specifically the notoriety he gained as a result of his development of the crash-test dummy, is relevant to the to the Debtor's narrative of the agreement between Samuel Alderson and Kohrman.

- (2) **Alderson Decl. at ¶ 7:** "In 1952, my grandfather began his own company, Alderson Research Laboratories, and quickly won a contract to create an anthropometric dummy for testing aircraft ejection seats. At about the same

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time, automobile manufacturers were being challenged to produce safer vehicles, and to do so without relying on live volunteers or human cadavers."

Kohrman's Objection: Irrelevant, Fed. R. Evid. 401

Ruling: SUSTAINED. Samuel Alderson's background and work experience, in this regard, is not relevant to the agreement with Kohrman or to the subsequent development of the KIP.¹ [Note 1]. However, the Court notes that Samuel Alderson's motivation for starting his company is minimally relevant for the reasons stated with regards to Objection (1) to the Alderson Declaration.

- 3) **Alderson Decl. at ¶ 8:** "In 1996, the National Traffic and Motor Vehicle Safety Act was passed, which together with Ralph Nader's book, 'Unsafe at Any Speed,' put the search for an anatomically faithful test dummy into high gear. With this as a goal, Alderson produced the V.I.P., a dummy designed to mimic an average male's acceleration and weight properties, and to reproduce the effects of impact like a real person. His work went on to see the creation of the Hybrid family of test dummies, which as of the beginning of the 21st century are the de facto standards for testing."

Kohrman's Objection: Irrelevant, Fed. R. Evid. 401

Ruling: OVERRULED. Samuel Alderson's background and work experience, specifically the notoriety he gained as a result of his development of the crash-test dummy, is relevant to the to the Debtor's narrative of the agreement between Samuel Alderson and Kohrman.

- (4) **Alderson Decl. at ¶ 9:** "My grandfather also worked for the United States military. During World War II, he helped develop an optical coating to improve the vision of submarine periscopes, and worked on depth charge and missile guidance technology. He was also a former student of J. Robert Oppenheimer, and worked on the Manhattan Project."

Kohrman's Objection: Irrelevant, Fed. R. Evid. 401.

Ruling: SUSTAINED. Samuel Alderson's background and work experience,

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in this regard, is not relevant to the agreement with Kohrman or to the subsequent development of the KIP.

- (5) **Alderson Decl. at ¶ 17:** "However, Kohrman is not entitled to a royalty of any amount because the agreement Kohrman made with RSD was as follows:
- a. Kohrman would work with Samuel Alderson, the founder of RSD, on the development of KIP phantom;
 - b. In exchange for Kohrman's consulting services, Kohrman requested and received:
 - i. a free KIP unit; and
 - ii. the positive publicity in the industry of having the product named after him and his personage associated with the KIP product through RSD's marketing materials."

Kohrman's Objection: Lacks foundation, Fed. R. Evid. 602.

Ruling: OVERRULED. The Alderson Declaration sufficiently establishes that, based on his role at Radiology's, Matthew Alderson has personal knowledge of Radiology's agreements with third parties. *See* Alderson Decl. at ¶¶ 1–2; *see, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position). Furthermore, the "Supplemental Declaration of Matthew Alderson" (the "Supplemental Alderson Decl.") [Doc. No. 174] provides additional foundation. *See* Fed. R. Evid. 602 ("Evidence to prove personal knowledge may consist of the witness's own testimony."). The Supplemental Alderson Declaration explains the following:

2. I have worked at RSD since 1994, and I took over the company on February 11, 2005 when my grandfather, owner and founder of RSD Samuel Alderson passed away.
3. I was working at RSD as the Purchasing Manager in 2004 when

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Kohrman and my grandfather, Samuel Alderson decided to develop the [KIP].

4. I learned of the agreement with Kohrman from Samuel Alderson, who at the time was grooming me to eventually take over the company. In my capacity as the Purchasing manager and as caretaker and close confidant to my grandfather, I was made aware of all aspects of RSD's business, including all of its agreements with third parties. When I became President of RSD after my grandfather's death, it was my job to know about all agreements with third parties and to administer them.

Supplemental Alderson Decl. at ¶¶ 2–4.

- (6) **Alderson Decl. at ¶ 18:** "Kohrman sought to improve his profile in the field of radiology training by associating himself with Samuel Alderson and RSD in an effort to help him obtain paid teaching positions in the use of KIP."

Kohrman's Objection: Lacks foundation, Fed. R. Evid. 602.

Ruling: SUSTAINED. Alderson's statement does not demonstrate sufficient personal knowledge of the subjective motivations of Kohrman.

- (7) **Alderson Decl. at ¶ 19:** "Numerous written communications between Kohrman (or his representatives) and RSD dating back to 2004 demonstrate that Kohrman knew about and assisted RSD with its KIP marketing."

Kohrman's Objection: Fed. R. Evid. 802

Ruling: OVERRULED. The statement is not being offered for its truth; rather it is offered to show Alderson's perception of such communications, and the conclusions or inferences he drew therefrom.

- (8) **Alderson Decl. at ¶ 22:** "Supertech has . . . even reached out to Kohrman to develop its website's FAQ section."

Kohrman's Objection: Lacks foundation, Fed. R. Evid. 602

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Ruling: SUSTAINED. Alderson's statement does not demonstrate sufficient personal knowledge of Kohrman's interactions with Supertech.

B. Kohrman Evidentiary Objections to the McNitt-Mell Declaration

- (1) **McNitt-Mell Decl. at ¶ 3:** "My recollection of the agreement between Michael Kohrman and RSD is as follows: Kohrman wanted to collaborate with RSD in making KIP because Kohrman felt it would be a good platform for himself. In exchange for consultation on the project Kohrman would get a free phantom, a one-time financial stipend, the honor of having the product named after himself, and his picture used with marketing materials. I learned about this arrangement over lunch with my father and Sam Alderson."

Kohrman's Objection: Lacks foundation, Fed. R. Evid. 602, and Hearsay, Fed. R. Evid. 802.

Ruling: SUSTAINED for lack of foundation under Fed. R. Evid. 602. In this instance, Ms. McNitt-Mell's statement does not sufficiently show that she has personal knowledge of the agreement between Samuel Alderson and Kohrman, except for what she was told at the lunch with her father and Samuel Alderson.

- (2) **McNitt-Mell Decl. at ¶ 6:** "I understood from the call that Kohrman went to Sam Alderson and RSD because he knew they had experience with making phantoms that simulate the human body for radiology purposes and that all they had to do was modify a design they already had and test it in order to bring KIP to market. I further understood that Kohrman wanted a KIP for himself so that he could teach and practice techniques for procedures and keep his own skills sharp. He also saw opportunity to teach weekend seminars to help other doctors sharpen their skills. By being included in the KIP marketing materials, he felt he would be seen as an esteemed 'expert' in techniques for interventional radiology and pain management."

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Kohrman's Objection: Irrelevant, Fed. R. Evid. 401, and Lacks foundation, Fed. R. Evid. 602.

Ruling: OVERRULED on both grounds. With regards to relevance, Ms. McNitt-Mell's understanding of the agreement is relevant to confirming Radiology's description of the agreement with Kohrman. Regarding foundation, Ms. McNitt-Mell was a party to the phone conversation with Kohrman and, thus, she has sufficient personal knowledge of the conversation to state her understanding thereof. *See United States v. Whittmore*, 776 F.3d 1074, 1082 (9th Cir. 2015) ("personal knowledge includes opinions and inferences grounded in observations and experience"); *see also United States v. Parkhurst*, 865 F.3d 509, 515 (7th Cir. 2017) (witness's testimony about his perception of a conversation was admissible where the witness was testifying about his understanding of the conversation at the time he was participating in it).

C. RSD Evidentiary Objections to the Kohrman Declaration

- (1) **Kohrman Decl. at ¶ 5:** "It is fun to make things. I grew up in a family that had a professional pottery and advertisement agency, worked in both and I had experience doing body work on cars. I have a lot of anatomical models, know how to sculpt, make cases, molds and cast objects."

Debtor's Objection: Irrelevant, Fed. R. Evid. 401.

Ruling: SUSTAINED. Kohrman's family background, and his experience unrelated to the KIP are not relevant to any fact of consequence because Kohrman's role in developing the KIP is not disputed.

- (2) **Kohrman Decl. at ¶ 6:** "I made medical acupuncture charts for myself as a study guide when I went through the UCLA Acupuncture course. I thought to make my own injection dummy in my garage, teach my sons of their heritage and then I could practice nontraditional methods—prolotherapy—and traditional methods in my own office while studying for the Pain Medicine Boards."

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Debtor's Objection: Irrelevant, Fed. R. Evid. 401.

Ruling: SUSTAINED. Kohrman's statement has no relevance to any fact of consequence because Kohrman's role in developing the KIP is not disputed.

- (3) **Kohrman Decl. at ¶ 12:** "A physician attendee told me that he had called RSD in an attempt to reach me, only to be told that I was dead."

Debtor's Objection: Lacks foundation, Fed. R. Evid. 602, and Hearsay, Fed. R. Evid. 802, 805.

Ruling: SUSTAINED for Lack of foundation under Fed. R. Evid. 602. The statement is vague and does not sufficiently show that Kohrman's personal knowledge in that it fails to identify the source of his knowledge. The Hearsay objection is SUSTAINED. The statement is an out of court statement offered to prove the truth of the matter asserted, *i.e.* that the unidentified physician called RSD in an attempt to reach Kohrman, and that an unidentified RSD representative told the unidentified physician that Kohrman was dead.

Kohrman Decl. at ¶ 12: "That prompted me to call RSD myself, wherein I was informed that Alderson had died, and that RSD had decided to abandon the KIP product."

Debtor's Objection: Lacks foundation, Fed. R. Evid. 602, and Hearsay, Fed. R. Evid. 802.

Ruling: SUSTAINED for lack of foundation under Fed. R. Evid. 602. Kohrman's statement does not sufficiently show that he has personal knowledge in that it fails to identify the source of his knowledge. SUSTAINED as Hearsay under Fed. R. Evid. 802. The statement of the unidentified person is an out of court statement offered to prove the truth of the matter asserted, *i.e.* that "Alderson had died" and that "RSD had decided to abandon the KIP product."

- (4) **Kohrman Decl. at ¶ 18, and Exhibits C and D in their entirety:** "Attached hereto as Exhibits C and D are true and correct copies of web pages for

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companies other than Supertech, Inc. which purport to sell KIP."

Debtor's Objection: Lacks foundation, Fed. R. Evid. 602, and Hearsay, Fed. R. Evid. 802.

Ruling: SUSTAINED for lack of foundation under Fed. R. Evid. 602. Kahrman's statement does not sufficiently show that he has personal knowledge of this statement or Exhibits C and D. SUSTAINED as Hearsay under Fed. R. Evid. 802. In addition to lacking foundation, both Exhibit C and Exhibit D are hearsay because they are being offered to prove the truth of the matter asserted, *i.e.* that companies other than Supertech, Inc. in fact sell the KIP.

IV. Findings of Fact [Note 2]

A. The Parties

RSD was founded and incorporated in 1988 by Samuel Alderson. Alderson Decl. at ¶ 2. Matthew Alderson, Samuel Alderson's grandson, has worked at RSD since 1994, and assumed his current position as President of RSD on February 11, 2005 after Samuel Alderson's death. *Id.* at ¶¶ 1–2. RSD is in the business of designing, manufacturing, and selling specialized anthropomorphic mannequins (known as "phantoms"), which are designed and used for medical testing, teaching, training, and similar activities. *Id.* at ¶ 3. Both Samuel Alderson and RSD have been recognized for their innovation in the field of "medical phantoms," and RSD sells and distributes its phantom products to universities, hospitals, medical schools, and similar organizations around the world. *See id.* at ¶¶ 3–5. Before he founded RSD, Samuel Alderson was well-known for his development of the "crash test dummy"—the mannequins used in auto industry crash safety tests. *Id.* at ¶ 6. Samuel Alderson's crash-test dummies have been widely used by automobile manufacturers in their safety tests since they were invented by Samuel Alderson. *Id.* Samuel Alderson's experience creating anthropomorphic dummies, such as the crash-test dummy or the medical phantom, can be traced to 1952 when he first created a dummy for use in testing aircraft ejection seats. *Id.* at ¶ 7.

Kahrman is an American Board Certified Physiatriest, commonly known as Physical Medicine and Rehabilitation Doctor. Kahrman Decl. at ¶ 2. Kahrman

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currently practices medicine in Daphne, Alabama and is affiliated with Thomas Hospital in Fairhope, Alabama. *Id.* Kohrman has been in practice for almost 30 years. *Id.* Kohrman is the inventor of the "Kohrman Injection Phantom" ("KIP"), a teaching device which allows medical professionals to practice injection techniques on a "dummy." *Id.* at ¶ 3; *see also id.* Exhibits A & B. Kohrman invented the KIP because there was a demand for such a device, given the relative difficulties associated with the use of cadavers for medical training. *See id.* at ¶ 4. Kohrman knew how he wanted to design the KIP, but he lacked the facilities to produce the KIP on a commercial scale. *Id.* at ¶ 7. Thus, Kohrman contacted Samuel Alderson to discuss commercial production of the KIP.

B. Samuel Alderson and Kohrman Orally Agree to Collaborate on the Design, Marketing, and Sale of the Kip

Kohrman and Samuel Alderson engaged in a series of discussions regarding Kohrman's desire to produce the KIP for commercial sale. *Id.* Kohrman envisioned the initial production of the KIP as beginning with the production of one model of the KIP and, if the initial production was successful, production would expand to include section models and other injection and teaching models. *Id.* Samuel Alderson had the production capabilities and eventually proposed that he and Kohrman work together to produce, market, and sell the KIP. *Id.* at ¶ 8. Samuel Alderson and Kohrman understood that Kohrman had the background and technical knowledge of what was required of the KIP design for marketing and sale to the medical community, and that Samuel Alderson had the means of production to commercially produce the KIP. *Id.* Thus, sometime in 2004, Samuel Alderson and Kohrman reached an agreement regarding their respective roles and contributions to the design, marketing, and sale of the KIP. *See* Kohrman Decl. at ¶ 10; Alderson Decl. at ¶ 17. The essential terms the agreement, however, were never reduced to writing. *See* Kohrman Decl. at ¶ 10; Alderson Decl. at ¶ 17. Samuel Alderson and Kohrman agreed that Kohrman would design and provide technical information for the KIP models, and that RSD would have the exclusive right to produce, market, and sell the KIP models. Kohrman Decl. at ¶ 10. Additionally, Kohrman consented to RSD's commercial use of his name and likeness in the KIP marketing materials. *See id.* at ¶ 13 ("I was aware of, and consented to RSD's commercial use of my name and likeness to market KIP."); Alderson Decl. at ¶ 17(b)(ii).

In exchange for his consulting services related to the KIP, it is undisputed that

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Kohrman agreed to accept a free KIP unit. Alderson Decl. at ¶ 17(b)(i); McNitt-Mell Decl. at ¶ 4; *see* Kohrman Decl. at ¶ 14. It is also undisputed that Kohrman additionally sought and valued, at least to some extent, the positive publicity he would receive as a result of his name and likeness being used in the KIP marketing materials. *See* Alderson Decl. at ¶ 17(b)(ii); McNitt-Mell Decl. at ¶ 4. *But cf.* Kohrman Decl. at ¶ 14 [Note 3]. Specifically, that he would be seen as an expert in techniques for interventional radiology and pain management. McNitt-Mell Decl. at ¶ 4. Matthew Alderson states the agreement between Samuel Alderson and Kohrman with regards to what Kohrman would receive in exchange for his consulting services was limited to (i) a free KIP unit, and (ii) the positive publicity he would receive from the KIP product being named after him and the use of his name and likeness in the KIP marketing materials. Alderson Decl. at ¶ 17(b). To the same effect, Ms. McNitt-Nell states that based on her phone conversation with Kohrman—and what Kohrman discussed therein—Samuel Alderson's and Kohrman's agreement was limited to the aforementioned terms. *See* McNitt-Mell Decl. at ¶ 4. Kohrman, however, states that his agreement with Samuel Alderson was that the parties would split the profits from the sale of the KIP "50/50." Kohrman Decl. at ¶¶ 10, 14.

The Court finds that Kohrman's declaration testimony on this point is contradicted by the prior statements and representations of Kohrman and Kohrman's counsel, and therefore the credibility of Kohrman's declaration testimony in this regards is significantly diminished. The first instance which contradicts Kohrman's declaration testimony regarding a profit sharing or partnership term in the agreement is in the July 17, 2017 demand letter sent by Kohrman's counsel to RSD, which was submitted with Kohrman's proof of claim (the "Demand Letter"). *See* Claim #8 at 4. The Demand Letter stated that RSD's use of Kohrman's name and likeness in the absence of an agreement between RSD and Kohrman was unlawful, and that neither Kohrman nor his counsel were aware of any such agreement. *Id.* Additionally, the "Explanation of Claim" submitted with Claim #8 makes no mention of any agreement with Samuel Alderson to split profits; rather, it explains that the claim is based upon "a reasonable royalty" rate of 10% for RSD's use of Kohrman's name and likeness in the KIP marketing materials. *Id.* at 3. Kohrman's declaration testimony is further contradicted by the statements and representations of his counsel in a series of communications with the Debtor's counsel regarding the Demand Letter. Elaine Nguyen, an attorney with Weintraub & Selth, APC, RSD's bankruptcy counsel, states in her Supplemental Declaration that, prior to filing his opposition, Kohrman never claimed any oral agreement between him and Samuel Alderson, and that Kohrman's counsel stated that

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there was no agreement on multiple occasions. Supplemental Nguyen Decl. [Doc. No. 174] at ¶ 7. In addition to the above-described statements in the Demand Letter, in a letter to RSD's counsel dated August 18, 2017, Kohrman's counsel again stated that Kohrman never consented to RSD's sale of KIP, or to the use of his name and likeness in the KIP marketing materials. *Id.* Exhibit 2. Kohrman's counsel further explained that Kohrman and Samuel Alderson "discussed a *potential* partnership regarding KIP." *Id.* (emphasis added). In light of these contradictions, Kohrman's testimony in his declaration regarding a profit sharing or partnership term in the agreement between Samuel Alderson and Kohrman are not supported by evidence sufficient to create a genuine dispute. Therefore, the Court finds that, to the extent any agreement existed between Samuel Alderson and Kohrman regarding what Kohrman would receive in exchange for his consulting on the KIP, such agreement was limited to (i) a free KIP unit, and (ii) the positive publicity he would receive from the KIP product being named after him and the use of his name and likeness in the KIP marketing materials.

C. The Designing, Marketing, and Sale of the KIP

Kohrman initially provided RSD with an overview of the KIP and the technical information needed for its production. Kohrman Decl. at ¶ 11. Samuel Alderson and Kohrman agreed that it would take three to six months to produce the first prototype of the KIP. *Id.* By this time, however, Samuel Alderson's health was in decline, and there were some issues with the production of the first prototype. *Id.* After some revisions, a second prototype was produced and Samuel Alderson and Kohrman agreed to move forward with production. *Id.* During the period from the commencement of the KIP production in 2004 through 2005, Kohrman participated in the development, production, and marketing of the KIP. *See id.* at ¶ 13. During the period from April 7, 2004 through August 28, 2004, Kohrman and his representatives communicated with RSD regarding the design and presentation of the KIP marketing materials. *See* Alderson Decl. Exhibits 3–6. These communications included the following: (1) on April 7, 2004, Steve Boyko (an employee of Kohrman) sent an email to RSD to which he attached 50 photographs of the KIP, *see* Alderson Decl. Exhibit 3; (2) in a letter to Samuel Alderson (the founder of the Debtor) dated April 21, 2004, Sue Kohrman, Kohrman's wife, enclosed pictures of the KIP to (apparently) be used by the people who were "creating the brochure" for the KIP, *see* Alderson Decl. Exhibit 4; (3) on April 28, 2004, Kohrman sent a fax on his letterhead to "Sam," fax number 310-518-0806, regarding "typo errors," "suggestions that may apply," and

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"copies of which pictures I'd [Kohrman] put into the brochure," *see* Alderson Decl. Exhibit 5; and (4) on August 4, 2004, Kohrman sent a fax on his letterhead to "Helen/Sam Alderson" at "RSD," fax number 310-518-0806, regarding details of the KIP, *see* Alderson Decl. at Exhibit 6.

RSD has marketed the KIP publicly on its website since 2004 or 2005. Alderson Decl. at ¶ 20. Approximately four times per year from 2004 through 2012, RSD displayed prototypes of the KIP at various tradeshows and distributed brochures with information about the KIP to tradeshow attendees. *Id.* The KIP was also marketed on the public website of Supertech, Inc. ("Supertech"), the exclusive distributor of the KIP. Alderson Decl. at ¶ 20; Supplemental McNitt-Mell Decl. at ¶ 5. At some point in 2004 or 2005, Ms. McNitt-Mell, who was at that time working on Supertech's FAQ section for the KIP product on Supertech's website, called and spoke to Kohrman for approximately 45 minutes regarding the FAQ section for the KIP. McNitt-Mell Decl. at ¶ 4. It was clear to Ms. McNitt-Mell from her conversation with Kohrman that he knew the KIP was going to market. *Id.*

RSD first began selling the KIP in 2004 before Samuel Alderson's death, and has been selling the KIP continuously since. Supplemental Alderson Decl. at ¶ 7. From the inception of the KIP through the date of the filing of the Kohrman Claim, RSD sold thirty (30) KIP units to Supertech for a total gross sale of \$237,604.93. Alderson Decl. at ¶ 22; McNitt-Mell Decl. at ¶ 8 & Exhibit 7. During the period from August 9, 2015 through August 9, 2017, Supertech sold four (4) KIP units for gross sales of \$33,876.00. During the period following Kohrman's last communication with RSD regarding the KIP marketing materials in August 2004, Kohrman has not contacted Matthew Alderson, or management at RSD regarding the KIP, the sales of the KIP, or any other matter. Supplemental Alderson Decl. at ¶ 10.

V. Positions of the Parties

A. The Debtor

The Debtor seeks disallowance of the Kohrman Claim, in whole or in part, for the following reasons: (1) the Kohrman Claim was filed after the Claim Bar Date; (2) the Kohrman Claim has no valid basis in intellectual property law because Kohrman consented to the use of his name and likeness; (3) assuming *arguendo* that Kohrman has a claim for use of his name and likeness, the Kohrman Claim is barred by the

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applicable two year statute of limitations and the doctrine of laches; (4) assuming arguendo that Kohrman has a claim for use of his name and likeness and could overcome statute of limitations barriers, Kohrman's recovery would be limited to two years and gross sales upon which royalty would be due are substantially lower than what Kohrman alleges; (5) assuming arguendo that Kohrman is entitled to a royalty, the royalty rate is substantially less than ten percent (10%) of gross sales; (6) Kohrman's claims for breach of oral contract and breach of fiduciary duty are barred by the applicable statute of limitations; and (7) Kohrman's claim for breach of oral contract is barred by the statute of frauds.

B. Kohrman

Kohrman contends that the Debtor's arguments for disallowance of the Kohrman Claim fail for the following reasons [Note 4]: (1) the Kohrman Claim is timely because Kohrman did not receive notice of the Claims Bar Date; (2) Kohrman's consent to the use of his name and likeness in connection with the marketing and sale of the KIP was tied to his agreement with Samuel Alderson to split profits, and his consent was rescinded when he was told that production of the KIP would not be proceeding; (3) Kohrman's claims for violation of his right to publicity, breach of oral contract, and breach of fiduciary duty are not barred by the applicable statutes of limitation because the doctrine of delayed discovery; (4) the equitable defense of laches does not apply to actions at law; and (5) whether the amount of the Kohrman claim is overstated does not provide grounds for disallowance of the claim altogether.

VI. Legal Standard

A. Standing

A claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). The term "party in interest" is not defined in the Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)). A Chapter 11 debtor-in-possession has standing to object to a proof of claim because a trustee is considered a party-in-interest with standing to object. See 11 U.S.C. § 1107(a) (rights, powers, and duties of a debtor in possession); *In re G.I.*

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Indus., Inc., 204 F.3d 1276, 1280 (9th Cir. 2000) (trustee has standing to object to a proof of claim under § 502(a) because a trustee is a "party in interest"); *In re Dominelli*, 820 F.3d 313, 317 (9th Cir. 1987).

B. The Claim Objection

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr.P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.*

Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. Section 502(b)(1) mandates disallowance of a claim where "such claim is unenforceable against the debtor . . . under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." The "'basic federal rule' in bankruptcy is that state law governs the substance of claims." *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner v. United States*, 440 U.S. 48, 57 (1979)). Section 502(b)(1) is "most naturally understood to provide that, with limited exceptions, any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy." *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450 (2007). The second relevant ground for disallowance is section 502(b)(9) which provides for the disallowance of claims that are not timely filed.

VII. Conclusions of Law

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A. The Debtor has standing to object to the Kohrman Claim.

The Debtor is a debtor-in-possession and, therefore, has standing to object to the Kohrman claim because a trustee is considered a party-in-interest with standing to object. *See* 11 U.S.C. § 1107(a) (rights, powers, and duties of a debtor in possession); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. 2000) (trustee has standing to object to a proof of claim under § 502(a) because a trustee is a "party in interest"); *In re Dominelli*, 820 F.3d 313, 317 (9th Cir. 1987).

B. The Kohrman Claim was timely filed.

Under Fed. R. Bankr. Proc. 3003(c), the deadline for filing proofs of claim in a Chapter 11 case is the deadline fixed by the court by which proofs of claim may be filed. Bankruptcy Rule 9006(b)(1) governs late filings of proofs of claim in Chapter 11 cases. *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380, 389 (1993). Bankruptcy Rule 9006(b)(1) provides:

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

Fed. R. Bankr. Proc. 9006(b)(1). "Excusable neglect" can include "negligence or situations where a late filing was caused 'by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party's control.'" *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627, 631 (B.A.P. 9th Cir. 1995) (quoting *Pioneer Inv. Services Co.*, 507 U.S. at 388). In determining whether the neglect was "excusable" the court considers "all the relevant circumstances surrounding the party's omission." *Pioneer Inv. Services Co.*, 507 U.S. at 394. These circumstances include: "(1) the danger of prejudice to the debtor [or to the nonmoving party]; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether

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the movant acted in good faith." *Id.* Disallowance of a late-filed proof of claim forecloses trial on merits of claim; therefore, "excusable neglect" should be liberally construed in determining whether to grant extension of time for filing proofs of claim. *In re Dix*, 95 B.R. 134, 138 (B.A.P. 9th Cir. 1988). The party requesting relief has the "burden of showing circumstances which would constitute excusable neglect." *In re Cahn*, 188 B.R. at 631.

First, the Court notes that, while the Notice of Motion [Doc. No. 166] does state that the Motion seeks disallowance of the Kohrman Claim on the ground, among others, that "the Claim was filed after the claim bar date set in this case[.]" the Debtor does not devote any substantive discussion to § 502(b)(9) as a ground for disallowance in the Motion. Notwithstanding the absence of a substantive argument for disallowance on this ground in the Motion, Kohrman does attempt to address this argument for disallowance in the Opposition, stating that the Kohrman Claim is timely because Kohrman did not receive notice of the Claims Bar Date. Opposition at 4. Kohrman's argument to this effect, however, mistakes the applicable law for late-filed claims in Chapter 11 cases. The Opposition's argument that the Kohrman Claim should be treated as timely relies upon the exception in § 502(b)(9) for claims that are tardily filed pursuant to § 726(a)(2)(C); however, that exception only applies in Chapter 7 liquidation cases. *See* § 103(b) (providing that "[s]ubchapters I and II of chapter 7 of this title apply only in a case under such chapter"); *see also Pioneer Inv. Services Co.*, 507 U.S. at 389 & n.4 (the time requirement governing the filing of proofs of claim in Chapter 7 cases is excepted from the operation of the "excusable neglect" standard of Bankruptcy Rule 9006(b)(1)). The Opposition's misplaced reliance on the exception to § 502(b)(9) which is inapplicable in a Chapter 11 case such as this exposes another issue regarding whether the Kohrman Claim was timely filed, and which neither party has attempted to address.

Bankruptcy Rule 9006(b)(1) provides in relevant part that the court may extend time "(2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect." Thus, in circumstances where the specified period to act has expired, the plain text of the rule requires the request for an extension to be made by a noticed motion showing the facts constituting excusable neglect. Here, pursuant to the Court's Bar Date Order entered on February 24, 2017 [Doc. No. 17], the Claims Bar Date in this case was May 15, 2017. The Debtor filed the Bar Date Notice [Doc. No. 36] on March 9, 2017. The Kohrman Claim was filed on August 7, 2017. However, Kohrman never filed a

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motion to request an extension of time to file his proof of claim based on his ignorance of his claim until expiration of the Claims Bar Date, and he did not have notice of the Debtor's bankruptcy until August 1, 2017 when he received a letter from the Debtor's counsel informing Kehrman that the Debtor was in bankruptcy. Kehrman Decl. at ¶ 17; Claim #8 at 3. Thus, Kehrman's failure to file the requisite motion means that the evidence before the Court tending to prove excusable neglect is substantially less than that which would typically be submitted with a motion under Bankruptcy Rule 9006(b)(1). Furthermore, given his misplaced reliance on the exception for claims filed pursuant to § 726(a)(2)(C), Kehrman has not even attempted to set forth the facts constituting excusable neglect. In other circumstances the Kehrman Claim would therefore be disallowable as a late-filed claim under § 502(b)(9). However, taking into consideration all the circumstances surrounding Kehrman's failure to timely file his proof of claim as set forth below, disallowance of the Kehrman Claim under § 502(b)(9) would likely violate Kehrman's right to due process under the Fourteenth Amendment. Specifically, because Kehrman had neither actual nor constructive notice, and no other method of providing notice was used in this case, *cf. Jones v. Chemetron Corp.*, 212 F.3d 199, 205 (3d Cir. 2000) (affirming the bankruptcy court's denial of a motion to extend time to file proofs of claim based on excusable neglect where the debtor provided notice of the bar date by publication, and the court's finding that "ignorance of one's own claim does not constitute excusable neglect"), disallowance of the Kehrman Claim under § 502(b)(9) would implicate Kehrman's due process rights. Therefore, pursuant to § 105(a) the Court has the authority to, *sua sponte*, determine the timeliness of the Kehrman Claim.

Section 105(a) provides in pertinent part that "[n]o provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." Here, the Court finds that had Kehrman filed a motion to extend the deadline to file proofs of claim pursuant to Bankruptcy Rule 9006(b)(1), sufficient evidence exists that Kehrman's failure to timely file his proof of claim was due to excusable neglect. It is undisputed that Kehrman was not served with the Bar Date Notice. *See* Motion at 3 (Kehrman was not served with the Bar Date Notice because Kehrman had never asserted a "claim" against the Debtor before sending the Demand Letter on July 17, 2017). Furthermore, the Court finds that Kehrman did not have constructive notice of the Debtor's bankruptcy case or of the Claims Bar Date because, according to Kehrman's Declaration which is consistent with the Demand

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Letter and the Explanation of Claim, Kohrman was not aware of the Debtor's bankruptcy until August 1, 2017, when Kohrman's counsel received a letter from the Debtor's counsel on August 1, 2017 informing Kohrman that the Debtor was in bankruptcy. Kohrman Decl. at ¶ 17; Claim #8 at 3. These facts, together with the fact that Kohrman filed his proof of claim a mere six days after learning of the Debtor's bankruptcy, support the finding that Kohrman's failure to file his claim by the Claims Bar Date was due to excusable neglect.

Therefore, pursuant to § 105(a), for the purposes of ruling on the Motion the Court determines that the Kohrman Claim was timely filed. The Debtor's Objection to the Kohrman Claim under § 502(b)(9) is **OVERRULED**.

C. The terms of the oral agreement between Samuel Alderson and Kohrman

Kohrman alleges that the parties agreed to jointly develop the KIP and share profits, giving rise to a partnership or joint venture agreement, "the abrogation of which was both a breach of contract and fiduciary duty." Thus, the allowability of the Kohrman Claim turns upon findings regarding the existence and terms of either or both an enforceable oral contract or joint venture agreement between Samuel Alderson and Kohrman regarding the development, production, and marketing of the KIP. Furthermore, the determination of the terms of such agreement directly affects the allowability of the Kohrman Claim to the extent Kohrman alleges that his Claim is based upon his claims for violation of his right to publicity, breach of oral contract, and breach of fiduciary duty.

"Under California law, a contract will be enforced if it is sufficiently definite (and this is a question of law) for the court to ascertain the parties' obligations and to determine whether those obligations have been performed or breached." *Ersa Grae Corp. v. Fluor Corp.*, 1 Cal.App.4th 613, 623 (1991). "[W]hether a certain or undisputed state of facts establishes a contract is one of law for the court" *Vita Planning & Landscape Architecture, Inc. v. HKS Architects, Inc.*, 240 Cal. App. 4th 763, 771 (2015). Mutual consent is a central requirement of contract formation. "If there is no evidence establishing a manifestation of assent to the 'same thing' by both parties, then there is no mutual consent to contract and no contract formation." *Bustamante v. Intuit, Inc.*, 141 Cal.App.4th 199, 208 (2006) (quoting *Weddington*

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Productions, Inc. v. Flick, 60 Cal.App.4th 793, 811 (1998)). To determine the existence of mutual consent, the court applies an objective standard "to the outward manifestations or expressions of the parties, i.e., the reasonable meaning of their words and acts, and not their unexpressed intentions or understandings." *Id.* (quoting *Alexander v. Codemasters Group Limited*, 104 Cal.App.4th 129, 141 (2002)). To be enforceable, "a promise must be definite enough that a court can determine the scope of the duty[,] and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Id.* at 209 (quoting *Ladas v. California State Auto. Assn.*, 19 Cal.App.4th 761, 770 (1993)). "Where a contract is so uncertain and indefinite that the intention of the parties in material particulars cannot be ascertained, the contract is void and unenforceable." *Id.* (quoting *Cal. Lettuce Growers v. Union Sugar Co.*, 45 Cal.2d 474, 481 (1955)).

In *Bustamante*, the California appellate court addressed whether an oral agreement between the parties to form and launch a company in Mexico to handle localized marketing and sales of Intuit's products. 141 Cal.App.4th at 207. The trial court granted summary judgment in favor of Intuit, holding that there was no meeting of the minds on the material terms of the alleged agreement and, therefore, no enforceable contract existed. *Id.* at 207–08. The California appellate court affirmed the trial court's ruling. In so holding, the court rejected Bustamante's argument that the alleged agreement "was simple and had certain terms" providing that the parties agreed "to form and launch Intuit Mexico" by working "exclusively with each other and to continue working until the company was launched." *Id.* at 210. Importantly, however, it was undisputed that the parties never resolved specific terms such as "the amount of Bustamante's salary or Intuit's royalty, the nature of the liquidity path, and the identity of the majority owner and source of control," which Bustamante argued were not essential to the agreement. *Id.* The court explained that the absence of such terms was fatal to the agreement. Among the terms that the court held were unsettled were terms such as: "the form and amount of Bustamante's compensation; the extent, duration, and nature of his management role, if any; the amount of Intuit's royalty; the equity percentage held by him, 'the management team,' Intuit, and outside investors; and the liquidity path for both Bustamante and investors." *Id.* at 211.

Here, the Court finds that the terms of any agreement between Samuel Alderson and Kohrman were not sufficiently certain to create an enforceable contract. While the parties may have reached a preliminary agreement pertaining to the initial production of the KIP, and Kohrman's contribution to the KIP marketing materials, there is

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insufficient evidence that the parties agreed to any terms pertaining to profit sharing, the monetary compensation or royalty due to Kohrman, or the extent, duration, or nature of Kohrman's involvement in the production and sale of KIP. Rather, similar to *Bustamante*, the undisputed evidence merely shows that Samuel Alderson and Kohrman understood that each could mutually benefit from collaborating on the marketing and production of the KIP. The testimony of the parties is consistent with respect to the existence of an understanding that Kohrman would design and provide technical information for the KIP models, that RSD would have the exclusive right to produce, market, and sell the KIP models, and that Kohrman consented to the use of his name and likeness to market the KIP. *See* Kohrman Decl. at ¶¶ 2–10; Alderson Decl. at ¶ 17. The testimony does not establish, however, any details of the agreement beyond these general terms; thus, the terms of the agreement are not "definite enough that a court can determine the scope of the duty[.]" or "the limits of performance . . . to provide a rational basis for the assessment of damages." *Bustamante v. Intuit, Inc.*, 141 Cal.App.4th at 209. Furthermore, as stated in the Court's findings of fact, there are a number of statements and representations by Kohrman and his counsel which not only contradict Kohrman's claim that the parties agreed to share in the KIP profits, but also undermine the existence of any final agreement. Specifically, on multiple occasions, Kohrman and his counsel denied the existence of any agreement between Samuel Alderson and Kohrman. In fact, in a letter to RSD's counsel dated August 18, 2017, Kohrman's counsel explained that Kohrman and Samuel Alderson "discussed a *potential* partnership regarding KIP." Supplemental Nguyen Decl. [Doc. No. 174] at Exhibit 2 (emphasis added). Additionally, Kohrman's counsel further stated that Kohrman never consented to RSD's sale of KIP, or to the use of his name and likeness in the KIP marketing materials, *id.*, which directly contradicts Kohrman's declaration testimony that "[he] was aware of, and consented to RSD's commercial use of [his] name and likeness to market KIP." Kohrman Decl. at ¶ 13. Taken together, these statements clearly undermine any notion of finality or a meeting of the minds. Rather, these statements support the finding that the parties never reached a final agreement on terms that would be sufficient to constitute an enforceable contract under California law.

Kohrman's claim that the parties entered into a partnership or joint venture fails for the same reasons. The standard for the formation of a partnership or joint venture is less demanding than the standard for contract formation, but the evidence is not sufficient to meet even this lower bar. Under the California Uniform Partnership Act, a partnership is "the association of two or more persons to carry own as coowners a

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business for profit." West's Ann.Cal.Corp.Code § 16202(a) (2017). Similarly, "a joint venture . . . is an undertaking by two or more persons jointly to carry out a single business enterprise for profit." *April Enterprises, Inc. v. KTTV*, 147 Cal.App.3d 805, 819 (1983). In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received for any of the following reasons:

(A) In payment of a debt by installments or otherwise.

(B) In payment for services as an independent contractor or of wages or other compensation to an employee.

(C) In payment of rent.

(D) In payment of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(E) In payment of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(F) In payment for the sale of the goodwill of a business or other property by installments or otherwise.

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West's Ann.Cal.Corp.Code § 16202(c) (2017).

None of the elements of a valid partnership or joint venture are present in this case. Aside from Kohrman's statement that the parties agreed to share profits, which the Court has determined lacks credibility based on the previously-discussed contradictions, there is no other single piece of evidence that would support a finding that the parties formed a partnership. Kohrman's argument on this point is further undermined by his counsel's statement that Kohrman and Samuel Alderson "discussed a potential partnership regarding KIP."

Based on the foregoing, the Court finds that there is insufficient evidence to support a finding that either an enforceable contract or a partnership was entered into between Samuel Alderson and Kohrman.

D. Kohrman's claims for violation of his right of publicity, for breach of oral contract, and for breach of fiduciary duty are barred by the applicable statutes of limitation.

Kohrman asserts three claims: violation of his right to publicity, breach of oral contract, and breach of fiduciary duty. The Debtor argues that Kohrman's claims are barred by the applicable statutes of limitation. Kohrman argues that his claims are not time-barred because the doctrine of "delayed discovery" tolled the respective limitations period applicable to the respective claims. The general rule is that a cause of action accrues at "the time when the cause of action is complete with all of its elements." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal.4th 797, 806 (2005). The "discovery rule" is an exception to the general rule, and "postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Id.* at 807. "A plaintiff has reason to discover a cause of action when he or she 'has reason to at least suspect a factual basis for its elements.'" *Id.* (quoting *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 397 (1999)). Importantly, the court in *Norgart* explained that the "elements" referred to in the rule are generically referred to by terms such as "'wrongdoing' or 'wrongful conduct,' 'cause' or 'causation,' and 'harm' or 'injury.'" *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 397 (1999). Under the discovery rule, "plaintiffs are charged with presumptive knowledge of an injury if they have 'information of circumstances to put [them] *on inquiry* ' or if they have '*the*

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opportunity to obtain knowledge from sources open to [their] investigation." *Fox*, 35 Cal.4th at 808 (quoting *Gutierrez v. Mofid*, 39 Cal.3d 892, 896–97 (1985)) (emphasis in original). For the discovery rule to apply, "[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." *Id.* "[I]n assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to show 'diligence[.]'" *Nguyen v. Western Digital Corporation*, 229 Cal.App.4th 1522, 1553 (2014).

The Right of Publicity Claim

Kohrman claims that the Debtor's use of his name and likeness in the KIP marketing materials violated his right of publicity. The right of publicity in California is both a statutory and common law right. *Comedy III Productions, Inc. v. Gary Saderpup, Inc.*, 25 Cal.4th 387, 391 (2001). The statutory right is codified as Cal. Civ. Code § 3344. Section 3344 authorizes "recovery of damages by any living person whose name, photograph, or likeness has been used for commercial purposes without his or her consent." *Comedy III Productions*, 25 Cal.4th at 391. A right of publicity claim is subject to the two-year statute of limitations under Cal. Code Civ. Proc. § 339. *Christoff v. Nestle USA, Inc.*, 47 Cal.4th 468, 474 (2009). "Under the single publication rule, with respect to the statute of limitations, publication generally is said to occur on the 'first general distribution of the publication to the public.' . . . Under this rule, the cause of action accrues and the period of limitations commences, *regardless* of when the plaintiff secured a copy or became aware of the publication." *Long v. Walt Disney Co.*, 116 Cal.App.4th 868, 872 (2004) (quoting *Shively v. Bozanich*, 31 Cal.4th 1230, 1245–46 (2003)). "In the internet context, the statute of limitations begins to run when the allegedly infringing material is first posted on the internet." *Alberghetti v. Corbis Corp.*, 713 F. Supp. 2d 971, 977 (C.D. Cal. 2010), *aff'd in part, rev'd in part and remanded*, 476 F. App'x 154 (9th Cir. 2012).

Here, the delayed discovery rule would not apply to toll the two-year statute of limitations. As previously stated, to receive the benefit of the delayed discovery rule, Kohrman had the burden to show "(1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence." *Fox*, 35 Cal.4th at 808. Kohrman fails to present any facts that would so much as give rise to an

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inference that he exercised reasonable diligence to discover his alleged claims. The only fact that would touch on the issue of reasonable diligence is Kohrman's phone call to RSD in 2005. However, there is no admissible evidence on the content of the conversation. Other than the phone call to RSD, Kohrman proffers other, less direct reasons for why he did not discover the alleged misappropriation, but these facts are similarly insufficient to support a finding of reasonable diligence. Among these reasons, Kohrman states that he does not use a smart phone, that he is not academically active, has been out of practice, and that he stopped doing interventional procedures in 2011. Kohrman Decl. at ¶ 15. These facts are insufficient to show "the inability to have made earlier discovery despite reasonable diligence." *Fox*, 35 Cal.4th at 808. The RSD and Supertech websites are both public websites and, therefore, could have been easily accessed by Kohrman or one of his associates. Additionally, over the period of approximately 13 years during which Kohrman alleges RSD was misappropriating his name and likeness, Kohrman has never contacted Matthew Alderson or management at RSD regarding the KIP or any other matter. Alderson Decl. at ¶ 10. Kohrman had the means to discover his claim, yet it seems from the evidence that he simply chose not to utilize those means or reasonably exercise diligence to discover his claims. Furthermore, "courts uniformly have rejected the application of the discovery rule to libels published in books, magazines, and newspapers, pointing out that application of the discovery rule would undermine the protection provided by the single-publication rule." *Christoff v. Nestle USA, Inc.*, 47 Cal.4th 468, 482–83 (2009).

The evidence is also not sufficient to support a finding that there was a "republication" of the KIP marketing materials so as to toll the limitations period. Kohrman relies on the case of *Christoff v. Nestle USA, Inc.*, 47 Cal.4th 468 (2009) to support his argument that RSD republished the KIP marketing materials. Kohrman contends that a sufficient possibility exists that RSD published the KIP marketing materials at different times and, therefore, the Court should, similar to the California court in *Christoff*, "decline to resolve this important issue without the benefit of a sufficient factual record . . ." *Id.* at 481–82. Such republication if found, would in effect restart the running of the limitations period, generally from the date of each republication. *Christoff* is distinguishable from this case in two important respects. First, the court in *Christoff* declined to resolve the issue of republication because the parties had not had an opportunity to present *any* evidence on the issue of "the manner in which the labels were produced and distributed." *Id.* Indeed, the trial court in that case had erroneously ruled that "the single-publication rule did not apply to claims for

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misappropriation of likeness." *Id.* Here, in contrast, the parties did have an opportunity to submit evidence on this issue. And the evidence before the Court is not sufficient to establish that, assuming RSD did in fact distribute the brochures at different times that these did not constitute a "single integrated publication." *Id.* This segways into the second distinction between this case and *Christoff*. The *Christoff* court's decision to refrain from deciding the publication issue was also influenced by the fact that evidence showed that the plaintiff's image was used in different forms of advertising. *Id.* at 482. Such forms of advertising included "transit ads, coupons in newspapers, magazine advertisements, and Internet advertisements." *Id.* Thus, it was possible that Nestle could show that these publications were a single integrated publication, but there was not a sufficient evidentiary record at that time. Here, the KIP marketing materials were not anywhere near as diverse as those at issue in *Christoff*. Rather, the KIP marketing materials were limited to informational brochures, which primarily appeared on the internet, but which were also distributed on a limited basis a few times a year at tradeshows. Thus, the evidence in this case tends to suggest that the KIP marketing materials, whether they were distributed at different times, constituted a single integrated publication.

The Breach of Contract and Breach of Fiduciary Claims

Even if the Court were to find that either or both a valid contract or a partnership existed between Samuel Alderson and Kohrman, Kohrman's claims for breach of contract and breach of fiduciary duty would be barred by the applicable statute of limitations. Both claims are subject to a two-year statute of limitations. Civ. Proc. Code § 339(1) ("An action upon a contract, obligation or liability not founded upon an instrument of writing" must be commenced within two-years of accrual"). A cause of action for a breach of an oral contract accrues at the time of the breach, i.e., when the party charged with the duty to perform under the contract fails to perform. *Cochran v. Cochran*, 56 Cal.App.4th 1115, 1124 (1997); *Parker v. Walker*, 5 Cal.App.4th 1173, 1190 (1992) (statute of limitations begins to run when oral contract is repudiated).

Here, the delayed discovery rule would not apply to toll the two-year statute of limitations. As previously stated, to receive the benefit of the delayed discovery rule,

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Kohrman had the burden to show “(1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.” *Fox*, 35 Cal.4th at 808. First, Kohrman fails to present any facts that would so much as give rise to an inference that he exercised reasonable diligence to discover his alleged claims. The only fact that would touch on the issue of reasonable diligence is Kohrman’s phone call to RSD in 2005. However, there is no admissible evidence on the content of the conversation. Secondly, even assuming *arguendo* that Kohrman entered into a valid oral contract and/or partnership with Samuel Alderson to produce the KIP and to share in the profits of the KIP sales, the breach of such agreement would have occurred at the time when Samuel Alderson (or RSD) failed to perform his obligations under such agreement, i.e., pay Kohrman his share of the profits from the KIP sales. Thus, because sales of the KIP first began in 2004 *prior to* Samuel Alderson’s death in February 2005, and because Kohrman offers no evidence to show that he received any payments for his share of the profits at any point, it logically follows that any claim for breach of contract or breach of fiduciary duty would have accrued at the time Samuel Alderson failed to pay Kohrman his share of the profits as early as 2004.

Therefore, the Court finds that even if Kohrman had claims for breach of contract or breach of fiduciary duty, those claims would be barred by the applicable statute of limitations

E. Kohrman’s right of publicity claim also fails because Kohrman consented to the use of his name and likeness.

Lack of consent is an essential element of a right of publicity claim. *See White v. Samsung Electronics Am., Inc.*, 971 F.2d 1395, 1397 (9th Cir. 1992) (quoting *Eastwood v. Superior Court*, 149 Cal.App.3d 409, 417, 198 Cal.Rptr. 342 (1983)). “[C]onsent is terminated when the user knows or has reason to know that the other is no longer willing to permit the particular use.” Restatement (Third) of Unfair Competition § 46, cmt. f.

Here, it is undisputed that Kohrman consented to the use of his name and likeness in the KIP marketing materials. *See* Kohrman Decl. at ¶ 13 (“I was aware of, and consented to RSD’s commercial use of my name and likeness to market KIP.”). Kohrman argues, however, that such consent was tied to the parties’ agreement to split the profits from KIP. Opposition at 5. He additionally argues that the absence of monetary consideration “is perhaps the best evidence that RSD did not have

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Kohrman's consent to use his name and likeness." *Id.* at 6. These arguments fail for multiple reasons. First, the Court has determined that there was no such agreement to split profits; thus, Kohrman's argument in that regard is moot. Second, Kohrman does not cite any authority, and the Court's research has discovered none, to support his argument that the absence of monetary consideration somehow evidences Kohrman's lack of consent. Lastly, the Court finds that there is no evidence that would tend to suggest that Kohrman's consent was terminated because RSD knew or had reason to know that Kohrman was no longer willing to permit the use of his name and likeness.

In the absence of such evidence, the Court finds that Kohrman's right of publicity claim fails because Kohrman consented to the use of his name and likeness.

Kohrman Would Not Be Entitled to Royalty or Damages

The Court finds that, even if Kohrman had a claim for violation of his right of publicity—which, for the reasons stated above as well as those discussed in section VII.D., *supra*, Kohrman does not have such a claim—Kohrman would not be entitled to royalty or damages under California law. Kohrman seeks compensation for RSD's use of his likeness in the KIP advertising materials. Cal. Civ. Code § 3344 provides that any person that violates another's right to publicity "shall be liable for any damages sustained by the person . . . in an amount greater than \$750 or the actual damages suffered by him . . . and any profits from the unauthorized use *that are attributable to such use . . .*" (emphasis added); *see also Christoff v. Nestle USA, Inc.*, 152 Cal. App. 4th 1439, 62 Cal. Rptr. 3d 122, 143, *as modified on denial of reh'g* (July 24, 2007), *review granted and opinion superseded*, 169 P.3d 888 (Cal. 2007), *and aff'd in part, rev'd in part*, 47 Cal. 4th 468, 213 P.3d 132 (2009) (requiring the plaintiff, in order to recover profits under § 3344, to show that the profits were attributable to the use of his likeness). The critical question to determining the profits "attributable" to the plaintiff is the plaintiff's "ability . . . to attract the attention and evoke a desired response in a particular consumer audience. That response is a kind of good will or recognition value generated by that person." *Lugosi v. Universal Pictures*, 35 Cal.3d 813, 835 (1979).

Here, Kohrman has not offered any evidence of profits from the KIP sales "attributable" to Kohrman's "ability . . . to attract the attention and evoke a desired response in a particular consumer audience." Therefore, the Court finds that even if Kohrman had a right of publicity claim, Kohrman would not be entitled to royalty or

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damages under California law.

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VIII. Conclusion

For the reasons stated herein, the Court GRANTS the Debtor's Motion to disallow the Kohrman Claim. The Kohrman Claim is disallowed in its entirety.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As set forth in more detail in section IV, *infra*, "KIP" stands for the "Kohrman Injection Phantom."

Note 2: The Court determines that this matter is appropriate for determination on the pleadings. Bankruptcy Rule 9014 governs contested matters. "Where . . . core facts are not disputed, the bankruptcy court is authorized to determine contested matters . . . on the pleadings and arguments of the parties, drawing necessary inferences from the record." *Tyner v. Nicholson (In re Nicholson)*, 435 B.R. 622, 636 (B.A.P. 9th Cir. 2010). Rule 9014 provides that, unless the court otherwise directs, Bankruptcy Rule 7056 applies in contested matters. Bankruptcy Rule 7056 provides that Rule 56 of the Federal Rules of Civil Procedure applies. Rule 56 provides for the entry of summary judgment when the documents filed in the cause show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. The taking of testimony is not required. Having considered the Motion, the Opposition, the Reply, and the evidence submitted therewith, the Court finds that Kohrman has failed to raise a genuine dispute as to any material fact so as to require

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an evidentiary hearing. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (a factual dispute is genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party").

To the extent any findings of fact are more properly designated conclusions of law, they shall be deemed as such. To the extent any conclusions of law are more properly designated as findings of fact, they shall be deemed as such.

Note 3: Kohrman states that his *primary* motivation for consenting to RSD's commercial use of his name and likeness was his understanding that he would share in half of the profits generated from the sale of KIP. Kohrman Decl. at ¶ 14. However, Kohrman does not address whether he was motivated, at least to some degree, by the publicity he would receive as a result of the KIP marketing materials. *See id.*

Note 4: To the extent these arguments rely on evidence that has since been excluded, or upon facts which the Court has declined to find, the Court addresses such issues in the Court's Conclusions of Law, Section VII, *infra*.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

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#7.00 Hearing re [77] *Disclosure Statement Describing Chapter 11 Plan Of Reorganization Dated June 21, 2017 Of Radiology Support Devices*

fr. 8-8-17; 9-12-17; 11-15-17; 12-13-17

Docket 0

Tentative Ruling:

1/2/2018

On December 28, 2017, the Debtor filed the "Stipulation for Chapter 11 Plan Treatment of Claim of the Internal Revenue Service" (the "Stipulation") [Doc. No. 177]. The Stipulation, provides for plan treatment to provide for the IRS' claim. The Debtor's current Chapter 11 Plan of Reorganization, filed on June 21, 2017 [Doc. No. 79] does not provide for any part of the IRS' claim. Therefore, pursuant to the Stipulation the Debtor will file a First Amended Disclosure Statement and Plan to provide for the IRS' claim and set forth the stipulated treatment of such claim.

Based on the foregoing, The Court CONTINUES the hearing on the Debtor's disclosure statement to **March 6, 2018 at 10:00 a.m.**

This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

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2:17-22975 Red Booth, Inc.

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#8.00 HearingRE: [32] Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lampl, Inc.; Declaration of Sanford L. Frey (Frey, Sandford)

Docket 32

Tentative Ruling:

1/2/2018

For the reasons set forth below, the Court GRANTS the Employment Application in its entirety.

Pleadings Filed and Reviewed:

- 1) Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lamp, Inc. (the "Employment Application") [Doc. No. 32]
 - a) Declaration of Sanford L. Frey
- 2) Opposition of the United States Trustee to the Employment Application (the "Opposition") [Doc. No. 34]
- 3) Supplemental Declaration of Sanford L. Frey Filed in Reply to Opposition (the "Reply") [Doc. No. 50]

I. Facts and Summary of Pleadings

Red Booth, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on October 23, 2017 (the Petition) [Doc. No. 1]. On November 29, 2017, Red Booth, Inc. (the "Debtor") filed the "Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lamp, Inc." (the "Employment Application") [Doc. No. 32]. On December 4, 2017, the United States Trustee ("UST") filed the Opposition to the Employment Application (the "Opposition") [Doc. No. 34].

The Employment Application

The Debtor expects various legal issues to arise in the administration of the

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Debtor's bankruptcy that will require the services of experienced counsel. Thus, the Employment Application requests authorization for the Debtor to employ Leech Tishman Fuscaldo & Lamp, Inc. ("LTFL") as its Chapter 11 counsel at the expense of the Estate. The Debtor seeks to have LTFL's employment deemed effective as of the Petition Date. The Debtor believes that LTFL, including Sanford L. Frey ("Mr. Frey"), are well-qualified to represent the Debtor. The Debtor expects LTFL to perform the following professional services:

- (1) Advise the Debtor on all requirements of Bankruptcy, including the requirements of the United States Trustee, as they pertain to the Debtor;
- (2) Advise the Debtor with regard to its rights and remedies in bankruptcy;
- (3) Assist the Debtor with transactions disposing of Property of the Estate;
- (4) Represent the Debtor in any bankruptcy proceedings;
- (5) Perform professional services and represent the Debtor in connection with any adversary proceeding except to the extent that such adversary proceeding is beyond LTFL's expertise;
- (6) Prepare and assist the Debtor in the preparation of reports, applications, and pleadings;
- (7) Prepare and assist the Debtor in the negotiation, formulation, preparation, and confirmation of a plan of reorganization (the "Plan"), and the preparation and approval of a disclosure statement in connection with the Plan;
- (8) Advise the Debtor with respect to its powers and duties as a debtor-in-possession; and
- (9) Perform any other services which may be necessary and appropriate in the representation of the Debtor.

Employment Application at 4; "Declaration of Sanford L. Frey" ("Frey Declaration") [Doc. No. 32] at ¶ 4. The Debtor expects Mr. Frey to be the primary attorney

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rendering legal services on behalf of the Debtor in this case.

LTFL received a pre-petition payment from the Debtor in the amount of \$1,717.00, which LTFL deposited into its client trust account, and which LTFL used to reimburse the filing fee on the Petition Date. Employment Application at 5–6. LTFL has agreed to accept as compensation for its services hourly compensation at its customary hourly rates as may be allowed by the Court in accordance with § 330.

The Frey Declaration states that neither Mr. Frey nor LTFL hold or represent any interest adverse to the Debtor or the Estate, and LTFL is a disinterested person as that term is defined in § 101(4), except that:

- (1) LTFL also represents Rideshare Port Management, LLC ("Rideshare") in the Chapter 11 case also pending before the Court, Case No. 2:17-bk-22974-ER; and
- (2) Prior to the Petition Date, LTFL made appearances on behalf of Rideshare in (i) the state court litigation entitled *Mahmoudi et al. v. Prime Time Shuttle, Inc. [et al.]*, Case No. BC640240 (the "Mahmoudi Action"), and (ii) in status conferences in the state court arbitration entitled *Khalatian v. Prime Time [et al.]*, JAMS # 1220054946 (BC485917). Prime Time Shuttle, Inc. ("Prime Time") is a 5% interest holder in Rideshare.

Frey Declaration at ¶ 10.

The Opposition

The UST objects to the Employment Application on the grounds that LTFL is not disinterested, and there is an actual conflict of interest based upon its dual representation of the Debtor, Rideshare, and Prime Time. Opposition at 1. The Opposition argues that LTFL was not disinterested when it agreed to represent the Debtor, because of LTFL's existing and ongoing relationship with Rideshare and its Chapter 11 case. *Id.* at 1–2. Furthermore, LTFL created additional conflicts of interest when it agreed to represent Prime Time in the state court litigation. Based on this, an actual conflict arose because each of Rideshare and Prime Time may be found individually or jointly liable in the state court action. *Id.* at 2. Thus, the Opposition argues, under § 327 LTFL is not disinterested, and each entity must be represented by

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an independent fiduciary. *Id.* Lastly, the Opposition argues that the actual conflict cannot be solved by a conflict waiver. *Id.* at 3–4 (citing *In re Wheatfield Business Park LLC*, 286 B.R. 412, 420–21 (Bankr. C.D. Cal. 2002) ("Section 327(a) prohibits an attorney (or other professional) from representing a debtor in a chapter 11 case if the attorney has or represents an actual conflicting interest. This prohibition is absolute, and not subject to waiver or consent.")).

The Reply

On December 26, 2017 the Debtor filed the Supplemental Declaration of Sandford L. Frey Filed in Reply to Opposition (the "Reply") [Doc. No. 50]. Mr. Frey reaffirms his belief that LTFL is "disinterested" within the meaning of § 327(a). Reply at 2, ¶ 4. Additionally, the Reply states that neither LTFL nor Mr. Frey was ever engaged by Prime Time, or represented Prime Time in any capacity. *Id.* Mr. Frey states that he expressly informed Prime Time that LTFL could not represent it, and suggested that Prime Time should retain separate counsel. *Id.* at ¶ 5. Furthermore, with respect to the Mahmoudi Action, Mr. Frey states that his appearance on behalf of Rideshare was on an emergency basis to avoid default by Rideshare, and that he had no knowledge of the nature of the matter and received absolutely no confidential information about Prime Time. *Id.* at 3, ¶¶ 6–7. LTFL never formally substituted into the Mahmoudi Action, and no pleadings or documents were ever filed by LTFL. *Id.* When he appeared, Mr. Frey discovered that the complaint in the Mahmoudi Action named Prime Time as a dba of the Rideshare defendant; however, prior to his appearance Mr. Frey was not aware that there were named parties in addition to Rideshare. *Id.* at 3, ¶ 7. Upon learning that Prime Time was named as a separate defendant and that Prime Time held an equity interest in Rideshare, Mr. Frey informed the state court that he could not represent Prime Time, and Prime Time subsequently retained separate counsel. *Id.* With respect to the Khalatian Arbitration, the only action taken by LTFL was to file a notice of appearance for the Debtor and Rideshare. *Id.* at 3, ¶ 8.

II. Findings of Fact and Conclusions of Law

Section 327(a) sets for the qualification standards for professionals who are employed in a bankruptcy case. Section 327(a) provides:

[T]he trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional

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persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

In enacting § 327(a), Congress intended "to hold professionals performing duties for the estate to strict fiduciary standards," *In re Wheatfield Business Park LLC*, 286 B.R. 412, 417 (Bankr. C.D. Cal. 2002) (quoting *In re Envirodyne Indus., Inc.*, 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993)), in order to ensure that "a professional employed in the case will devote undivided loyalty to the client," *id.* at 417–18. Because the Chapter 11 debtor-in-possession has "the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee . . .," 11 U.S.C. § 1107(a), § 327 applies to professionals employed by a Chapter 11 debtor-in-possession. *See In re Wheatfield Business Park LLC*, 286 B.R. at 418. Under § 327(a), a debtor-in-possession may employ the services of an attorney "so long as the chosen attorney (1) neither holds nor represents an interest adverse to the bankruptcy estate, and (2) qualifies as a disinterested person." *In re Howell*, 148 B.R. 269, 270 (Bankr. S.D. Tex. 1992). "These two criteria significantly overlap because 'disinterested person,' as defined in 11 U.S.C. § 101(14)(E), includes a person who does not have an interest materially adverse to the estate." *Id.* In the event the attorney, at any time during his or her employment under § 327(a), ceases to be a "disinterested person," pursuant to § 328 (c) the bankruptcy court has the discretion to impose a penalty against the attorney by denying his or her application for compensation, in whole or in part. *See In re Howell*, 148 B.R. at 270.

In addition to § 327(a), Federal Rule of Bankruptcy Procedure 2014, which sets forth the application procedure for the employment of professionals, requires an application to disclose, "to the best of the applicant's knowledge, all of the person's connections with the debtor, creditor, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. P. 2014. Rule 2014 further requires the application to be supplemented by a verified statement of the professional that makes these disclosures. *Id.* An actual conflict of interest creates a violation of § 327(a), whereas a potential conflict of interest may require disqualification of a professional if, "in the judgment of the court, the conflict is sufficiently important and there is a sufficient likelihood that it will ripen into an actual conflict." *In re Wheatfield Business Park LLC*, 286 B.R. at 421.

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CONT... Red Booth, Inc.

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Generally, conflicts of interest law distinguishes between actual conflicts and potential conflicts; however, there is no clear formulation of this distinction. Under the ABA Model Rules of Professional Conduct ("ABA Model Rules"), for example, an actual conflict is one that is "directly adverse" to another client or that materially limits the representation of another client. *See* ABA Model Rules R. 1.7. Potential conflicts vary and, depending on the circumstances, may or may not ripen into actual conflicts. While there is general agreement that an actual conflict requires denial of a professional application, *see In re Howell*, 148 B.R. at 270, there is less agreement with regards to potential conflicts, *id.* On the issue of dual representation, the Fifth Circuit, for example, has held that the question is whether the dual representation creates "a legally disabling" conflict of interest. *See In re Consolidated Bancshares*, 785 F.2d 1249, 1256 (5th Cir. 1986). Similarly, the Third Circuit has emphasized the flexibility and discretion that rests in the bankruptcy court, and adopted a "totality of the circumstances" approach to §§ 327 and 328, rather than a broad rule disqualifying attorneys from undertaking dual representation of related bankruptcy estates. *See In re BH & P, Inc.*, 949 F.2d 1300, 1315–17 (3d Cir. 1991). Such a case-by-case approach has proven particularly important where dual representation of Chapter 11 debtors is the only reasonable approach due to the "economic realities of the situation," and the "unity of interest" between the debtors. *See In re Howell*, 148 B.R. at 272 (citing *In re Roberts*, 75 B.R. 402, 406–409 (D. Utah 1987)); *see also In re Huddleston*, 120 B.R. 399, 403 (Bankr. E.D. Tex. 1990) (holding that an attorney could undertake the dual representation where there was a close relationship between the two debtors and no actual conflict existed).

Here, the Court finds that there is no actual conflict that would disqualify LTFL from being employed by the Debtor, and that any potential conflicts—which it is questionable if there are any given the unity of interests of the parties—at this point in the case, are not sufficient so as to disqualify LTFL from representing the Debtor. The application contains the requisite disclosures regarding LTFL's connections with the Debtor. Based on these disclosures, and as pointed out in the Opposition of the UST, any actual or potential conflicts arise, or would arise from LTFL's (1) concurrent representation of both the Debtor and Rideshare in the respective bankruptcy cases, and (2) LTFL's pre-petition representation of the Debtor, Rideshare, and Prime Time in the various state court proceedings. These representations are not, in themselves, disqualifying. Furthermore, as set forth in the Reply, any appearances made by LTFL or Mr. Frey in the state court proceedings were on behalf of Rideshare,

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CONT... **Red Booth, Inc.**

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and were very limited in scope. *See* Reply at 3, ¶¶ 6–8. This is not a case where there is a creditor relationship between the parties. *Cf. In re Woodcraft Studios, Inc.*, 464 B.R. 1, 15 (Bankr. N.D. Cal. 2011) (employed professional was not "disinterested" where the professional was a pre-petition creditor); *In re Wheatfield Business Park LLC*, 286 B.R. at 422 (the "main potential conflict" arose from a single secured creditor's first position for each debtor, with each loan cross-collateralized by a second mortgage on property belonging to each of the other debtors). Rather, this case presents a situation more analogous to *In re Howell*, 148 B.R. at 272, or *In re Huddleston*, 120 B.R. at 403, where the interests of the Debtor, Rideshare, and Prime Time are sufficiently aligned such that there is a "unity of interest" between the parties. Additionally, as in *In re Howell*, given the "economic realities of the situation," absent an actual conflict, it would be unreasonable to require the Debtor and Rideshare to employ independent counsel. Such a requirement, at this point in the case, could jeopardize both the Debtor's and Rideshare's ability to reorganize. It is equally important to note, however, that in the event LTFL ceases to be disinterested, pursuant to § 328(c) the Court has the discretion to impose a penalty against LTFL by denying LTFL's application for compensation, in whole or in part. *See In re Howell*, 148 B.R. at 270.

Based on the foregoing, the Court GRANTS the Motion. The UST's Opposition is overruled. The Court finds that LTFL meets the standards for professional employment under § 327, and the Debtor is authorized to employ LTFL as the Debtor's general bankruptcy counsel. LTFL's compensation and reimbursement of costs shall be pursuant to § 330.

The Debtor shall lodge a confirming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Red Booth, Inc.

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Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey

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2:17-22974 Rideshare Port Management, LLC

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#9.00 HearingRE: [26] Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lampl, Inc.; Declaration of Sanford L. Frey (Frey, Sandford)

Docket 26

Tentative Ruling:

1/2/2018

For the reasons set forth below, the Court GRANTS the Employment Application in its entirety.

Pleadings Filed and Reviewed:

- 1) Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lamp, Inc. (the "Employment Application") [Doc. No. 26]
 - a) Declaration of Sanford L. Frey
- 2) Opposition of the United States Trustee to the Employment Application (the "Opposition") [Doc. No. 28]
- 3) Reply to Opposition (the "Reply") [Doc. No. 35]
 - a) Supplemental Declaration of Sanford L. Frey Filed in Reply to Opposition (the "Supplemental Frey Declaration") [Doc. No. 34]

I. Facts and Summary of Pleadings

Rideshare Port Management, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on October 23, 2017 (the "Petition") [Doc. No. 1]. On November 28, 2017, the Debtor filed the "Application to Employ Sanford L. Frey as Chapter 11 Counsel and Leech Tishman Fuscaldo & Lamp, Inc." (the "Employment Application") [Doc. No. 26]. On December 4, 2017, the United States Trustee ("UST") filed the Opposition to the Employment Application (the "Opposition") [Doc. No. 28].

The Employment Application

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The Debtor expects various legal issues to arise in the administration of the Debtor's bankruptcy that will require the services of experienced counsel. Thus, the Employment Application requests authorization for the Debtor to employ Leech, Tishman, Fuscaldo & Lamp, Inc. ("LTFL") as its Chapter 11 counsel at the expense of the Estate. The Debtor seeks to have LTFL's employment deemed effective as of the Petition Date. The Debtor believes that LTFL, including Sanford L. Frey ("Mr. Frey"), are well-qualified to represent the Debtor. The Debtor expects LTFL to perform the following professional services:

- (1) Advise the Debtor on all requirements of Bankruptcy, including the requirements of the United States Trustee, as they pertain to the Debtor;
- (2) Advise the Debtor with regard to its rights and remedies in bankruptcy;
- (3) Assist the Debtor with transactions disposing of Property of the Estate;
- (4) Represent the Debtor in any bankruptcy proceedings;
- (5) Perform professional services and represent the Debtor in connection with any adversary proceeding except to the extent that such adversary proceeding is beyond LTFL's expertise;
- (6) Prepare and assist the Debtor in the preparation of reports, applications, and pleadings;
- (7) Prepare and assist the Debtor in the negotiation, formulation, preparation, and confirmation of a plan of reorganization (the "Plan"), and the preparation and approval of a disclosure statement in connection with the Plan;
- (8) Advise the Debtor with respect to its powers and duties as a debtor-in-possession; and
- (9) Perform any other services which may be necessary and appropriate in the representation of the Debtor.

Employment Application at 4; "Declaration of Sanford L. Frey" ("Frey Declaration")

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[Doc. No. 32] at ¶ 4. The Debtor expects Mr. Frey to be the primary attorney rendering legal services on behalf of the Debtor in this case.

LTFL received a pre-petition retainer from the Debtor in the amount of \$38,283.00, which LTFL deposited into its client trust account. Employment Application at 6. LTFL provided pre-petition legal services to the Debtor in the amount of \$44,965.35. LTFL drew down the amount of \$36,566.00 from the pre-petition retainer, and additionally used the amount of \$1,717.00 for the filing fees in this case. The balance of \$8,399.35 has been written-off as of the Petition Date. *Id.* LTFL has agreed to accept as compensation for its services hourly compensation at its customary hourly rates as may be allowed by the Court in accordance with § 330.

The Frey Declaration states that neither Mr. Frey nor LTFL hold or represent any interest adverse to the Debtor or the Estate, and LTFL is a disinterested person as that term is defined in § 101(4), except that:

- (1) LTFL also represents Red Booth, Inc. ("Red Booth") in the Chapter 11 case also pending before the Court, Case No. 2:17-bk-22975-ER; and
- (2) Prior to the Petition Date, LTFL made appearances on behalf of the Debtor in (i) the state court litigation entitled *Mahmoudi et al. v. Prime Time Shuttle, Inc. [et al.]*, Case No. BC640240, and (ii) in status conferences in the state court arbitration entitled *Khalatian v. Prime Time [et al.]*, JAMS # 1220054946 (BC485917). Prime Time Shuttle, Inc. ("Prime Time") is a 5% interest holder in the Debtor.

Frey Declaration at ¶ 10.

The Opposition

The UST objects to the Employment Application on the grounds that LTFL is not disinterested, and there is an actual conflict of interest based upon its dual representation of the Debtor, Red Booth, and Prime Time. Opposition at 1. The Opposition argues that LTFL was not disinterested when it agreed to represent the Debtor, because of LTFL's existing and ongoing relationship with Red Booth and its Chapter 11 case. *Id.* at 1–2. Furthermore, LTFL created additional conflicts of interest when it agreed to represent Prime Time in the state court litigation. Based on

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this, an actual conflict arose because each of Red Booth and Prime Time may be found individually or jointly liable in the state court action. *Id.* at 2. Thus, the Opposition argues, under § 327 LTFL is not disinterested, and each entity must be represented by an independent fiduciary. *Id.* Lastly, the Opposition argues that the actual conflict cannot be solved by a conflict waiver. *Id.* at 3–4 (citing *In re Wheatfield Business Park LLC*, 286 B.R. 412, 420–21 (Bankr. C.D. Cal. 2002) ("Section 327(a) prohibits an attorney (or other professional) from representing a debtor in a chapter 11 case if the attorney has or represents an actual conflicting interest. This prohibition is absolute, and not subject to waiver or consent.")).

The Reply

On December 26, 2017 the Debtor filed the Reply to Opposition (the "Reply") [Doc. No. 35], with the Supplemental Declaration of Sandford L. Frey filed in support (the "Supplemental Frey Declaration") [Doc. No. 34]. Mr. Frey reaffirms his belief that LTFL is "disinterested" within the meaning of § 327(a). Supplemental Frey Declaration at ¶ 4. Additionally, the Reply states that neither LTFL nor Mr. Frey was ever engaged by Prime Time, or represented Prime Time in any capacity. Reply at 3–5; Supplemental Frey Declaration at ¶ 4. Mr. Frey states that he expressly informed Prime Time that LTFL could not represent it, and suggested that Prime Time should retain separate counsel. Supplemental Frey Declaration at ¶ 5. Furthermore, with respect to the Mahmoudi Action, Mr. Frey states that his appearance on behalf of Rideshare was on an emergency basis to avoid default by Rideshare, and that he had no knowledge of the nature of the matter and received absolutely no confidential information about Prime Time. *Id.* at ¶¶ 6–7. LTFL never formally substituted into the Mahmoudi Action, and no pleadings or documents were ever filed by LTFL. *Id.* When he appeared, Mr. Frey discovered that the complaint in the Mahmoudi Action named Prime Time as a dba of the Rideshare defendant; however, prior to his appearance Mr. Frey was not aware that there were named parties in addition to Rideshare. *Id.* at ¶ 7. Upon learning that Prime Time was named as a separate defendant and that Prime Time held an equity interest in Rideshare, Mr. Frey informed the state court that he could not represent Prime Time, and Prime Time subsequently retained separate counsel. *Id.* With respect to the Khalatian Arbitration, the only action taken by LTFL was to file a notice of appearance for the Debtor and Rideshare. *Id.* at 3, ¶ 8.

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II. Findings of Fact and Conclusions of Law

Section 327(a) sets for the qualification standards for professionals who are employed in a bankruptcy case. Section 327(a) provides:

[T]he trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

In enacting § 327(a), Congress intended "to hold professionals performing duties for the estate to strict fiduciary standards," *In re Wheatfield Business Park LLC*, 286 B.R. 412, 417 (Bankr. C.D. Cal. 2002) (quoting *In re Envirodyne Indus., Inc.*, 150 B.R. 1008, 1016 (Bankr. N.D. Ill. 1993)), in order to ensure that "a professional employed in the case will devote undivided loyalty to the client," *id.* at 417–18. Because the Chapter 11 debtor-in-possession has "the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee . . .," 11 U.S.C. § 1107(a), § 327 applies to professionals employed by a Chapter 11 debtor-in-possession. *See In re Wheatfield Business Park LLC*, 286 B.R. at 418. Under § 327(a), a debtor-in-possession may employ the services of an attorney "so long as the chosen attorney (1) neither holds nor represents an interest adverse to the bankruptcy estate, and (2) qualifies as a disinterested person." *In re Howell*, 148 B.R. 269, 270 (Bankr. S.D. Tex. 1992). "These two criteria significantly overlap because 'disinterested person,' as defined in 11 U.S.C. § 101(14)(E), includes a person who does not have an interest materially adverse to the estate." *Id.* In the event the attorney, at any time during his or her employment under § 327(a), ceases to be a "disinterested person," pursuant to § 328 (c) the bankruptcy court has the discretion to impose a penalty against the attorney by denying his or her application for compensation, in whole or in part. *See In re Howell*, 148 B.R. at 270.

In addition to § 327(a), Federal Rule of Bankruptcy Procedure 2014, which sets forth the application procedure for the employment of professionals, requires an application to disclose, "to the best of the applicant's knowledge, all of the person's connections with the debtor, creditor, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the

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office of the United States trustee." Fed. R. Bankr. P. 2014. Rule 2014 further requires the application to be supplemented by a verified statement of the professional that makes these disclosures. *Id.* An actual conflict of interest creates a violation of § 327(a), whereas a potential conflict of interest may require disqualification of a professional if, "in the judgment of the court, the conflict is sufficiently important and there is a sufficient likelihood that it will ripen into an actual conflict." *In re Wheatfield Business Park LLC*, 286 B.R. at 421.

Generally, conflicts of interest law distinguishes between actual conflicts and potential conflicts; however, there is no clear formulation of this distinction. Under the ABA Model Rules of Professional Conduct ("ABA Model Rules"), for example, an actual conflict is one that is "directly adverse" to another client or that materially limits the representation of another client. *See* ABA Model Rules R. 1.7. Potential conflicts vary and, depending on the circumstances, may or may not ripen into actual conflicts. While there is general agreement that an actual conflict requires denial of a professional application, *see In re Howell*, 148 B.R. at 270, there is less agreement with regards to potential conflicts, *id.* On the issue of dual representation, the Fifth Circuit, for example, has held that the question is whether the dual representation creates "a legally disabling" conflict of interest. *See In re Consolidated Bancshares*, 785 F.2d 1249, 1256 (5th Cir. 1986). Similarly, the Third Circuit has emphasized the flexibility and discretion that rests in the bankruptcy court, and adopted a "totality of the circumstances" approach to §§ 327 and 328, rather than a broad rule disqualifying attorneys from undertaking dual representation of related bankruptcy estates. *See In re BH & P, Inc.*, 949 F.2d 1300, 1315–17 (3d Cir. 1991). Such a case-by-case approach has proven particularly important where dual representation of Chapter 11 debtors is the only reasonable approach due to the "economic realities of the situation," and the "unity of interest" between the debtors. *See In re Howell*, 148 B.R. at 272 (citing *In re Roberts*, 75 B.R. 402, 406–409 (D. Utah 1987)); *see also In re Huddleston*, 120 B.R. 399, 403 (Bankr. E.D. Tex. 1990) (holding that an attorney could undertake the dual representation where there was a close relationship between the two debtors and no actual conflict existed).

Here, the Court finds that there is no actual conflict that would disqualify LTFL from being employed by the Debtor, and that any potential conflicts—which it is questionable if there are any given the unity of interests of the parties—at this point in the case, are not sufficient so as to disqualify LTFL from representing the Debtor. The application contains the requisite disclosures regarding LTFL's connections with

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the Debtor. Based on these disclosures, and as pointed out in the Opposition of the UST, any actual or potential conflicts arise, or would arise from LTFL's (1) concurrent representation of both the Debtor and Red Booth in the respective bankruptcy cases, and (2) LTFL's pre-petition representation of the Debtor, Red Booth, and Prime Time in the various state court proceedings. These representations are not, in themselves, disqualifying. Furthermore, as set forth in the Reply, any appearances made by LTFL or Mr. Frey in the state court proceedings were on behalf of Rideshare, and were very limited in scope. See Supplemental Frey Declaration at 3, ¶¶ 6–8. This is not a case where there is a creditor relationship between the parties. Cf. *In re Woodcraft Studios, Inc.*, 464 B.R. 1, 15 (Bankr. N.D. Cal. 2011) (employed professional was not "disinterested" where the professional was a pre-petition creditor); *In re Wheatfield Business Park LLC*, 286 B.R. at 422 (the "main potential conflict" arose from a single secured creditor's first position for each debtor, with each loan cross-collateralized by a second mortgage on property belonging to each of the other debtors). Rather, this case presents a situation more analogous to *In re Howell*, 148 B.R. at 272, or *In re Huddleston*, 120 B.R. at 403, where the interests of the Debtor, Red Booth, and Prime Time are sufficiently aligned such that there is a "unity of interest" between the parties. Additionally, as in *In re Howell*, given the "economic realities of the situation," absent an actual conflict, it would be unreasonable to require the Debtor and Red Booth to employ independent counsel. Such a requirement, at this point in the case, could jeopardize both the Debtor's and Red Booth's ability to reorganize. It is equally important to note, however, that in the event LTFL ceases to be disinterested, pursuant to § 328(c) the Court has the discretion to impose a penalty against LTFL by denying LTFL's application for compensation, in whole or in part. See *In re Howell*, 148 B.R. at 270.

Based on the foregoing, the Court GRANTS the Motion. The UST's Opposition is overruled. The Court finds that LTFL meets the standards for professional employment under § 327, and the Debtor is authorized to employ LTFL as the Debtor's general bankruptcy counsel. LTFL's compensation and reimbursement of costs shall be pursuant to § 330.

The Debtor shall lodge a confirming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

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2:14-31183 Alfonso C Martinez

Chapter 7

#1.00 OTHER PROFESSIONAL FEES: Rommel Agee

Hearing re [160] and [161] Applications for chapter 7 fees and administrative expenses

Docket 161

Tentative Ruling:

1/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,890.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Alfonso C Martinez

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Wesley H Avery (TR)

Represented By
Toan B Chung
John P Pringle

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Chapter 7

#2.00 APPLICANT: Menchaca & Company, LLP, Accountant for Trustee

Hearing re [160] and [161] Applications for chapter 7 fees and administrative expenses

Docket 161

Tentative Ruling:

1/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$10,731.00

Expenses: \$53.60

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Alfonso C Martinez

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Wesley H Avery (TR)

Represented By
Toan B Chung
John P Pringle

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Chapter 7

#3.00 APPLICANT: Roquemore, Pringle, & Moore, Inc, Attorney for Trustee

Hearing re [160] and [161] Applications for chapter 7 fees and administrative expenses

Docket 161

Tentative Ruling:

1/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$30,030.00

Expenses: \$910.24

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Alfonso C Martinez

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Wesley H Avery (TR)

Represented By
Toan B Chung
John P Pringle

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Chapter 7

#4.00 BOND PAYMENTS: INTERNATIONAL SURETIES

Hearing re [160] and [161] Applications for chapter 7 fees and administrative expenses

Docket 161

Tentative Ruling:

1/3/2018

See Cal. No. 5 below, incorporated herein by reference.

Party Information

Debtor(s):

Alfonso C Martinez

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Wesley H Avery (TR)

Represented By
Toan B Chung
John P Pringle

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Chapter 7

#5.00 APPLICANT: WESLEY AVERY, Trustee

Hearing re [160] and [161] Applications for chapter 7 fees and administrative expenses

Docket 161

Tentative Ruling:

1/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$39,583.57

Total Expenses: \$308.71

Bond Payments – International Sureties: \$198.34 (which has been previously paid, and for which such payment is now final)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Alfonso C Martinez

Represented By
Andrew Edward Smyth
Stephen S Smyth

Trustee(s):

Wesley H Avery (TR)

Represented By

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-21102 Cynthia Monique Williams

Chapter 7

#1.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 KIA OPTIMA, VIN KNAGM4A74F5662579 . (Wang, Jennifer)

fr. 1-2-18

Docket 13

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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Los Angeles
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10:00 AM

CONT... Cynthia Monique Williams

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cynthia Monique Williams	Pro Se
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Trustee(s):

Richard K Diamond (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-22747 Garineh Mahmoudian

Chapter 7

#2.00 Hearing
RE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 Mitsubishi Outlander .

fr. 1-2-18

Docket 17

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

**United States Bankruptcy Court
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Los Angeles
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10:00 AM

CONT...

Garineh Mahmoudian

Chapter 7

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

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Garineh Mahmoudian

Represented By
Aris Artounians

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-22976 Chaka Jamila Dodson

Chapter 7

#3.00 Hearing

RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2012 BMW 3 Series Sedan 4D 328i . (Allen, Bret)

FR. 1-2-18

Docket 13

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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Central District of California
Los Angeles
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10:00 AM

CONT...

Chaka Jamila Dodson

Chapter 7

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

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Chaka Jamila Dodson

Represented By
Roland D Tweed

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-24457 8590 Sunset A-FS, LLC dba Cafe Primo

Chapter 11

#4.00 HearingRE: [4] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8590 W. SUNSET BLVD., #8.1, 8.1S, 10.1S,15.1B, WEST HOLLYWOOD, CA 90069 . (Durringer, Stephen) NOTICE TO FILER: Matter not on calendar for 1-2-18 at 10:00 A.M.; Attorney to renote for 1-8-18 at 10:00 A.M.; Modified on 11/29/2017 (Evangelista, Maria).

Docket 4

Tentative Ruling:

1/4/2018

Tentative Ruling:

For the reasons set forth below, this hearing is CONTINUED to **February 12, 2018 at 10:00 a.m.** No appearances are required. 8590 Sunset A-FS, LLC dba Cafe Primo (the "Debtor") filed a voluntary Chapter 11 petition on November 22, 2017 (the "Petition") [Doc. No. 1]. On December 1, 2017 KR SUNSET WEHO, LLC (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does Not Apply under 11 U.S.C. § 362(l) (UNLAWFUL DETAINER)" (the "Motion") [Doc. No. 11]. The Motion states that an unlawful detainer proceeding was commenced on November 8, 2017, and that the Debtor's right to possession should be terminated because lease payments have not been made after the filing of the Petition. The Debtor filed the Opposition to the Motion on December 18, 2017 (the "Opposition") [Doc. No. 23]. The Opposition states that the Debtor intends to convert the case to Chapter 7. Therefore, the Debtor requests that the Court continue the hearing on the Motion thirty (30) days to allow for the Court to appoint a Chapter 7 trustee and allow for the trustee to review the Motion and take a position thereon.

On December 19, 2017 the United States Trustee filed the "Stipulation by United States Trustee and Debtor to Convert Case to Chapter 7" (the "Stipulation") [Doc. No. 24]. On December 20, 2017 the Court entered the Order Approving the Stipulation [Doc. No. 26], and on December 28, 2017 Rosendo Gonzalez (the "Trustee") filed the "Notice of Appointment and Acceptance of Trustee" [Doc. No. 28]. The Trustee needs an opportunity to

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CONT... **8590 Sunset A-FS, LLC dba Cafe Primo** **Chapter 11**

determine whether this is a below market lease that would be an asset of the Estate. Pursuant to § 365(d)(4)(A) the Trustee must assume or reject an unexpired lease of nonresidential property by "the date that is 120 days after the date of the order for relief[.]"

Based on the foregoing, the Court CONTINUES the hearing on the Motion to **February 12, 2018 at 10:00 a.m.**, so as to provide the Chapter 7 Trustee with an opportunity to take a position on the Motion. By no later than January 10, 2018, the Movant shall provide notice of the continued hearing to the Trustee, and shall file a proof of service so indicating. The deadline to file an opposition is 14 days prior to the continued hearing pursuant to LBR 9013-1.

Party Information

Debtor(s):

8590 Sunset A-FS, LLC dba Cafe

Represented By
Michael Jay Berger

**United States Bankruptcy Court
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#5.00 HearingRE: [138] Amended Motion (related document(s): 136 Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Lost or Misplaced Product . filed by Creditor Red Chamber Co) (Amended to reflect correct hearing date) (Prince, Miles)

Docket 138

Tentative Ruling:

1/4/2018

Tentative Ruling:

The Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against Debtor or estate property. All other relief is denied.

Pleadings Filed and Reviewed:

- 1) Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 138]
- 2) Opposition to the Motion (the "Opposition") [Doc. No. 144]
- 3) Reply to the Opposition (the "Reply") [Doc. No. 145]
- 4) Objections by Movant Red Chamber Co. to Declaration and Exhibits Submitted in Support of the Opposition (the "Movant's Objections") [Doc. No. 146]

I. Facts and Summary of Pleadings

32 Cold LLC (the "Debtor") filed a voluntary Chapter 11 petition on November 9, 2016 (the "Petition") [Doc. No. 1]. On December 12, 2017, Red Chamber Co. (the "Movant") filed the "Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy

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CONT... 32 Cold, LLC

Chapter 11

Forum)" (the "Motion") [Doc. No. 138].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum in an action against the Debtor in the Superior Court of California, County of Los Angeles, captioned *Red Chamber Co. v. 32 Cold LLC*, Case No. BC614485 (the "State Court Action"). The State Court Action asserts claims for: conversion; trespass to chattels; warehouseman liability; breach of implied bailment contract; intentional interference with prospective economic relations; and negligent interference with prospective economic relations.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- (2) The claims in the State Court Action arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum.

The Opposition

The Debtor filed the Opposition to the Motion (the "Opposition") [Doc. No. 144] on December 25, 2017. The Opposition argues that the Movant is not entitled to relief from stay to proceed with the nonbankruptcy action because the Movant does not possess a colorable claim to property of the estate. Opposition at 10. The Opposition also argues that the "best interest factors" weigh heavily against granting the relief sought. *Id.* at 12. Lastly, the Opposition argues that the Movant misrepresents that it is a creditor of the Estate. *Id.* at 16.

The Reply

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CONT... 32 Cold, LLC

Chapter 11

The Movant filed the Reply to the Opposition (the "Reply") [Doc. No. 145] on December 29, 2017. The Reply contends that the Opposition attempts to disprove the core factual allegations of the Movant's claims in the nonbankruptcy action against the Debtor, which is improper in the context of relief from stay proceedings. Reply at 2. The Reply argues that the Movant has a colorable claim against the Debtor, and that the Opposition is the first instance where the Debtor has argued that the Movant does not have a claim. *Id.* at 3–4.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under

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32 Cold, LLC

Chapter 11

this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. §§ 362(a)(1), (a)(6).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing Movant to continue the intended state court complaint will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

The Opposition is overruled. The Opposition attempts to litigate the facts at issue in the nonbankruptcy action, *i.e.* whether the Debtor or some other party is liable to the Movant for the Movant's claims related to the alleged loss of inventory. However, "relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate." *In re Luz Int'l, Ltd.*, 219 B.R. at 842. The Court finds that the Movant has sustained its burden to show that it has a "colorable claim" to property of the Estate. The Opposition further attempts to argue that the Movant is not a creditor of the Debtor. However, that issue depends on the resolution in of the issues being litigated in the nonbankruptcy action. The nonbankruptcy forum is the appropriate forum to resolve these issues.

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CONT... 32 Cold, LLC

Chapter 11

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The Debtor's Opposition is overruled. The Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Evidentiary Objections

The Movant filed the "Objections by Movant Red Chamber Co. to Declaration and Exhibits Submitted in Support of the Opposition" (the "Movant's Objections") [Doc. No. 146] on December 29, 2017. The Movant objects to evidence submitted in support of the opposition on a number of grounds, including privileged settlement communications. However, "[b]ecause the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections." *Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010).

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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10:00 AM

CONT... 32 Cold, LLC

Chapter 11

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-21722 Aldrey James D Claudio and Kristine Joy Ching Claudio

Chapter 7

#6.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Toyota Prius, VIN:JTDKN3DU7F1971069 . (Estle, Mark)

Docket 12

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Aldrey James D Claudio and Kristine Joy Ching Claudio Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Aldrey James D Claudio

Represented By
Roland H Kedikian

Joint Debtor(s):

Kristine Joy Ching Claudio

Represented By
Roland H Kedikian

Trustee(s):

Richard K Diamond (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-23251 Timothy Michael Morse and Jessica V Morse

Chapter 7

#7.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C2F5 4GH5 64936 .

Docket 12

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Timothy Michael Morse and Jessica V Morse Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy Michael Morse

Represented By
Raymond J Bulaon

Joint Debtor(s):

Jessica V Morse

Represented By
Raymond J Bulaon

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:17-25317 Jeff Hermosillo

Chapter 7

#8.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER

Docket 7

Tentative Ruling:

1/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant cause a notice to quit to be served upon the Debtor on October 10, 2017. The Movant filed an unlawful detainer action on October 18, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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CONT...

Jeff Hermosillo

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jeff Hermosillo

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 08, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#9.00 HearingRE: [1043] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Pending Federal False Claims Act Lawsuit .

Docket 1043

Tentative Ruling:

1/4/2018

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 1043] Second Amended Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 912]
- 2) Opposition to Jane Winter's Motion for Relief from the Automatic Stay [filed by RollinsNelson Grp, LLC et al.] [Doc. No. 1046]
 - a) Request for Judicial Notice in Support of Opposition to Jane Winter's Motion for Relief from the Automatic Stay [Doc. No. 1047]
 - b) Notice of Ruling and Supplemental Response to Jane Winter's Motion for Relief from the Automatic Stay [Doc. No.1055]
- 3) Response and Opposition of Debtor, Gardens Regional Hospital and Medical Center, Inc., to Motion for Relief from Automatic Stay [Doc. No. 1048]
- 4) Reply Brief Re Movant Jane Winter's Motion for Relief from the Automatic Stay Under 11 U.S.C. Section 362 (the "Reply") [Doc. No. 1056]
- 5) Reply of the Official Committee of Unsecured Creditors Regarding Motion of Jane Winter for Relief from the Automatic Stay [Doc. No. 1057]
- 6) Sur-Reply to "Reply Brief Re Movant Jane Winter's Motion for Relief from the Automatic Stay Under 11 U.S.C. Section 362" [filed by the Debtor] (the "Sur-Reply") [Doc. No. 1062]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 08, 2018

Hearing Room 1568

10:00 AM

CONT... **Gardens Regional Hospital and Medical Center, Inc.**

Chapter 11

I. Facts and Summary of Pleadings

Jane Winters seeks stay-relief as to Gardens Regional Hospital and Medical Center, Inc. (the "Debtor") pursuant to §362(d)(1), for the purpose of prosecuting a *qui tam* action pending against the Debtor in the United States District Court for the Central District of California (the "Qui Tam Action").

The Qui Tam Action

Ms. Winters commenced the Qui Tam Action on November 14, 2014, naming as defendants the Debtor, RollinsNelson LTC Corp. ("RollinsNelson LTC"), Vicki Rollins and Bill Nelson (officers of RollinsNelson LTC), S&W Health Management Services, Inc. ("S&W"), and Beryl Weiner (a partial owner of S&W). [Note 1] Ms. Winters worked as the Director of Care Management at the Debtor's Emergency Room from August 11, 2014 until she was terminated on November 6, 2014. Ms. Winters alleges that the Debtor, during the time it was managed by Sycamore Healthcare Services LLC ("Sycamore"), sought Medicare reimbursement for rendering medically unnecessary services, thereby defrauding the United States in violation of the False Claims Act. She further alleges that the Debtor terminated her employment in retaliation for her attempts to stop the Debtor's alleged violations of the False Claims Act.

On March 16, 2017, the United States elected not to intervene in the Qui Tam Action, and all papers pertaining to the action were unsealed. On December 29, 2017, the District Court dismissed with prejudice all of Ms. Winter's claims against S&W, Beryl Weiner, RollinsNelson LTC, Vicki Rollins, and Bill Nelson. The District Court did not dismiss Ms. Winter's retaliation claim against the Debtor. Ms. Winters intends to appeal the District Court's ruling.

Papers Filed in Connection with Ms. Winter's Stay-Relief Motion

The Debtor opposes Ms. Winter's motion for stay-relief for the following reasons:

- 1) Ms. Winters has not agreed to limit her recovery to the Debtor's applicable insurance and is not waiving any deficiency claim against the Debtor or property of the estate. The Debtor believes that there will be funds available to make a small distribution to general unsecured creditors. However, the costs of defending against Ms. Winter's allegations in the District Court could jeopardize any recovery that unsecured creditors might otherwise receive. The Debtor is currently investigating whether

**United States Bankruptcy Court
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CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- insurance coverage exists to defend against Ms. Winter's claims. Short of insurance coverage, the Debtor has no ability to defend against the claims.
- 2) If stay-relief were granted, Ms. Winters would likely seek discovery from the Debtor relating to claims against other parties. The Debtor has little staff left and a limited ability to respond to such discovery; the costs of responding would only add additional administrative expenses with no benefit to the estate.
 - 3) The Debtor has no objection to stay-relief, provided that Ms. Winters agrees to seek recovery only from applicable insurance and agrees to waive any deficiency claim against the Debtor or property of the estate.

The Debtor filed a Sur-Reply on January 4, 2018. The Debtor states that the filing of the Sur-Reply was necessary given the significant effect of the District Court's December 29, 2017 dismissal of all claims in the Qui Tam Action other than the retaliation claim against the Debtor. According to the Debtor, the Qui Tam Action can be resolved more expeditiously by way of a claim objection now that only the retaliation claim remains. The Debtor states that it is prepared to file a claim objection within one week of the January 8th hearing on the lift-stay motion. The Debtor states that if the retaliation claim is litigated in the District Court, it will be required to retain litigation counsel.

Prior to the District Court's dismissal of the claims against them, Vicki Nelson, Bill Nelson, RollinsNelson LTC, and RollinsNelson Grp, LLC ("RNG") [Note 2] (collectively, the "RNG Parties") filed an opposition to the lift-stay motion. The RNG Parties make many of the same arguments as the Debtor. The RNG Parties further assert that stay-relief should be denied because in the event stay-relief is granted, they will likely be burdened with substantial discovery requests in the Qui Tam Action.

The Official Committee of Unsecured Creditors (the "Committee") requests that the hearing on the stay-relief motion be continued until shortly after the Court's determination of the Committee's "Motion for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of Debtor's Estate and (II) Settlement Authority" (the "Standing Motion") [Doc. No. 1039]. On December 29, 2017, the Court set a briefing schedule on the Standing Motion and a related motion for approval of a compromise (the "Compromise Motion"). Pursuant to the Court's order, the Standing Motion and Compromise Motion will stand submitted as of February 28, 2018.

According to the Committee, a continuance of the stay-relief motion is appropriate for the following reasons:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

- 1) The estate has a right of indemnification against Sycamore and its principals, agents, and affiliates (which include S&W and Mr. Weiner) with respect to Ms. Winter's retaliation claim. The Debtor has not taken any actions to enforce the estate's indemnification rights. If the Standing Motion is granted, the Committee is the appropriate party to assert the estate's indemnification rights and to address Ms. Winter's claims against the estate.
- 2) Trial in Ms. Winter's action is scheduled for November 27, 2018. The discovery cutoff is September 4, 2018. Therefore, a short continuance of the lift-stay motion will not prejudice any party in the Qui Tam Action.

In her reply papers in support of the lift-stay motion, Ms. Winters asserts that she should not be required to limit any recovery against the Debtor to applicable insurance. Ms. Winters states that she has no objection to the Committee's request that her lift-stay motion be decided in conjunction with the Committee's Standing Motion.

II. Findings and Conclusions

Although the Local Bankruptcy Rules do not provide for the filing of sur-replies in contested matters, the Court finds it appropriate to consider the Debtor's Sur-Reply in view of the substantial effect that the District Court's recent ruling in the Qui Tam Action has on the lift-stay motion.

The Court declines the Committee's request to defer ruling upon the lift-stay motion until the Standing Motion has been adjudicated. Unless and until the Court determines that the Committee should be granted derivative standing to pursue certain claims of the estate, the Debtor is the proper party to take any and all action with respect to such claims.

The Motion is GRANTED pursuant to §362(d)(1), to permit Ms. Winters to continue to adjudicate her retaliation claim against the Debtor in the District Court. First, the interests of judicial efficiency are best served by adjudication of Ms. Winter's claims in the District Court. The District Court is already intimately familiar with the Qui Tam Action, having recently issued an eleven-page Memorandum of Decision dismissing with prejudice many of Ms. Winter's claims. In addition, the Qui Tam Action has been proceeding before the District Court since November 14, 2014.

Second, the Court is not persuaded by the Debtor's argument that adjudication of Ms. Winter's retaliation claim before the Bankruptcy Court, by way of a claim objection, would save the estate significant expense. The Debtor states that it will be

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 08, 2018

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10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

required to retain litigation counsel if Ms. Winter's retaliation claim is adjudicated before the District Court. But it is not clear to the Court why litigation before the District Court will cost more than litigation before the Bankruptcy Court. In either case the Federal Rules of Civil Procedure will apply, and of course the same law will apply. In the event that adjudication of disputed issues of material fact becomes necessary, an evidentiary hearing would be required regardless of the forum.

The automatic stay remains in effect with respect to the enforcement of any judgment against the Debtor or estate property. Ms. Winters is permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. Ms. Winters may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that Ms. Winters may seek recovery in connection with her proof of claim and may seek a determination that her claim is non-dischargeable pursuant to §1141(d)(6)(A). Because this Motion was opposed, Ms. Winter's request for waiver of the 14-day stay prescribed by Federal Rule of Bankruptcy Procedure 4001(a)(3) is DENIED. Ms. Winter's request that stay-relief be binding in any future bankruptcy case, regardless of who the debtor may be, is DENIED.

Ms. Winters shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The operative Second Amended Complaint names additional defendants; however, those defendants are not relevant to the instant stay-relief motion.

Note 2

RollinsNelson LTC is one of the defendants in the Qui Tam Action but has not previously appeared in the Debtor's bankruptcy. RNG, another entity affiliated with Vicki Rollins and Bill Nelson, has been actively involved in the bankruptcy.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Monday, January 08, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#1.00

Hearing

RE: [41] Motion to Set Aside Entry of Default Filed by Defendant TT Investment Los Angeles Fund I, LLC, a California limited liability company

Motion to Set Aside Entry of Default

Docket 41

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Represented By

Cynthia Futter

Lantern Brands, Inc., a California

Represented By

Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By

Cynthia Futter

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#2.00

Hearing

RE: [40] Motion to Set Aside Entry of Default Filed by Defendants Blue Sky Communications

Docket 40

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Represented By

Cynthia Futter

Lantern Brands, Inc., a California

Represented By

Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By

Cynthia Futter

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#3.00 Hearing

RE: [553] Motion to Convert Case From Chapter 11 to 7. Notice of Motion and Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. 1112(a) and (b); Declaration of Benjamin Kirk Benjamin Kirk (Attachments: # 1 Declaration of Benjamin Kirk, Exhibits 1-2 # 2 Proof of Service) (Talerico, Derrick)

Docket 553

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

11:00 AM

2:17-11157 Juan Andrade

Chapter 7

#100.00 APPLICANT: Trustee: BRAD D KRASNOFF

Hearing re [23] and [24] Trustee's Final Report and Applications for Compensation

Docket 24

Tentative Ruling:

1/8/2018

No objection has been filed in response to the Trustee's Final Report. The Court approves the fees and expenses, and payment, as requested by the Trustee, as :

Total Fees: \$1,851.70

Total Expenses: \$35.22

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Juan Andrade

Represented By
Luis G Torres

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

11:00 AM

2:14-13735 Sharon Dahan

Chapter 7

#101.00 CHARGES: U.S. BANKRUPTCY COURT

Hearing re [62] and [63] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

1/8/2018

See Cal. No. 103, incorporated by reference.

Party Information

Debtor(s):

Sharon Dahan

Represented By
Sam X J Wu
John P Kreis

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

11:00 AM

2:14-13735 Sharon Dahan

Chapter 7

#102.00 APPLICANT: Accountant for Trustee: Hahn Fife & Company

Hearing re [62] and [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

On July 5, 2017 the Chapter 7 Trustee filed the "Trustee's Notice of Motion and Motion under LBR 2016-2 for Authorization to Employ Paraprofessionals and/or Authorization to Pay Flat Fee to Tax Preparer" (the "Application") [Doc. No. 51]. On July 26, 2017 the Court entered the Order Approving the Application and authorizing the Trustee to employ Hahn, Fife & Company (the "Applicant") and to pay the Applicant a flat fee not exceeding \$1,000.00 [Doc. No. 54]. The Court now approves as final the flat fee paid to the Applicant as set forth below.

Fees: \$1,000.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Sharon Dahan

Represented By
Sam X J Wu
John P Kreis

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

11:00 AM

2:14-13735 Sharon Dahan

Chapter 7

#103.00 APPLICANT: Trustee: David M Goodrich

Hearing re [62] and [63] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. The Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$8,000.00

Total Expenses: \$31.01

Charges U.S. Bankruptcy Court: \$700.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Sharon Dahan

Represented By
Sam X J Wu
John P Kreis

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 09, 2018

Hearing Room 1568

11:00 AM

2:14-13735 Sharon Dahan

Chapter 7

#104.00 APPLICANT: Attorney for Trustee: Sulmeyer Kuptez

Hearing re [62] and [63] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

1/8/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$18,038.50

Expenses: \$279.31

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Sharon Dahan

Represented By
Sam X J Wu
John P Kreis

Trustee(s):

David M Goodrich (TR)

Represented By
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 10, 2018

Hearing Room 1568

10:00 AM

2:12-22639 Claire Levine

Chapter 7

#1.00 Status Hearing re [414] Status Conference On Consummation Of Amended Settlement Agreement

fr: 3-21-17; 5-23-17; 9-6-17

Docket 0

***** VACATED *** REASON: CONTNUED 1-24-18 AT 10:00 AM.**

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 10, 2018

Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

#2.00 Hearing

RE: [825] Motion RE: Objection to Claim Number by Claimant CIT Bank, N.A. fka OneWest Bank, N.A.. Notice of Motion and Chapter 7 Trustee's Motion Objecting to Claim of CIT Bank, N.A., f/k/a OneWest Bank, N.A.; Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

FR. 9-19-17; 10-3-2017

Docket 825

***** VACATED *** REASON: CONTINUED 3-7-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 10, 2018

Hearing Room 1568

10:00 AM

2:16-12719 Chafic L Damouni

Chapter 7

#3.00 Show Cause Hearing
RE: [35] Application for OSC as to Why Fadi Awwad and Joseph A. West
Should Not Be Held In Contempt for Violation of the Automatic Stay and
Discharge Order and Order Them to Pay Compensatory and Punitive Damages;
Declaration of Chafic L. Damouni in Support Thereof with Proof of Service

Docket 35

***** VACATED *** REASON: PER ORDER ENTERED 1-3-18**

Party Information

Debtor(s):

Chafic L Damouni

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 10, 2018

Hearing Room 1568

10:00 AM

2:09-29228 Castellino Villas, a K.F. LLC

Chapter 11

#4.00 MOVANT: CASTELLINO VILLAS, LLC

Post confirmation status conference

fr. 2-16-11; 8-17-11; 2-13-12; 8-14-12; 12-13-12; 7-16-13; 1-14-14; 6-19-14; 1-22-15; 6-9-15; 1-12-16; 7-12-16; fr. 1-10-17; 6-13-17; 10-11-17

Docket 6

***** VACATED *** REASON: PER ORDER ENTERED 1-5-18**

Party Information

Debtor(s):

Castellino Villas, a K.F. LLC

Represented By
Ron Bender

Movant(s):

Castellino Villas, a K.F. LLC

Represented By
Ron Bender

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 10, 2018

Hearing Room 1568

11:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#100.00 Hearing re [167] and [168] objection to claim no. 31

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-23-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, January 11, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#1.00 HearingRE: [14] Motion to Dismiss Adversary Proceeding with proof of service

Docket 14

Tentative Ruling:

1/10/2018:

For the reasons set forth below, the Motion to Dismiss is GRANTED in part and DENIED in part. The Court finds that the Complaint fails to state a claim with respect to the allegation that the Defendants are alter egos of one another. However, the Trustee is given leave to amend. In all other respects, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company (the "Complaint") [Doc. No. 1]
- 2) Notice of Motion and Motion to Dismiss Adversary Complaint for Failure to State a Claim Or in the Alternative for a More Definite Statement (the "Motion") [Doc. No. 14]
- 3) Trustee's Notice of Opposition and Opposition to Defendants' Motion to Dismiss (the "Opposition") [Doc. No. 16]
- 4) No Reply is on file

I. Facts and Summary of Pleadings

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 30, 2012, the Debtor received a discharge and the case was closed. On March 13, 2013, upon the motion of the United States Trustee (the "UST"), the Court reopened the case to permit the UST to investigate whether a complaint to revoke the Debtor's discharge was warranted, based upon the Debtor's alleged failure to report all income and assets on her schedules. Bankr. Doc. No. 27. The UST did not commence an action to revoke the Debtor's discharge, and on June 14, 2013, the case was re-closed. Bankr. Doc. No. 30.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, January 11, 2018

Hearing Room 1568

10:00 AM

CONT... Anne Lan Peterson

Chapter 7

In June of 2016, the Chapter 7 Trustee (the “Trustee”) was contacted by counsel for the Debtor’s former spouse, Ronald Peterson. Counsel advised the Trustee that Ronald [Note 1] intended to make an offer to purchase from the Debtor alleged community property assets of the estate that the Debtor had failed to schedule. The proposed offer exceeded \$100,000. On July 7, 2016, upon the motion of the UST, the Court reopened the case to permit the administration of the undisclosed assets. Bankr. Doc. No. 34.

On October 19, 2017, the Trustee filed a Complaint against Ronald; Maitreya, LLC, a Nevada LLC; and Maitreya, LLC, an Arizona LLC (collectively, the “Defendants”). The Complaint’s allegations are as follows:

- 1) Ronald was married to the Debtor from 1997 to 2010. On September 28, 2001, the Debtor and Ronald acquired real property located at 359 W. Langston Street, Upland, California 91786 (the “Real Property”) as “husband and wife as joint tenants.”
- 2) Maitreya, LLC (“Maitreya Nevada”) is a limited liability company, organized in Nevada, that is wholly owned by Ronald and the Debtor. Maitreya, LLC (“Maitreya Arizona”) is a limited liability company, organized in Arizona, that is wholly owned by Ronald and the Debtor. Ronald, Maitreya Nevada, and Maitreya Arizona are all alter egos of each other, and the recognition of their separate existence would be inequitable and would perpetrate a fraud upon creditors.
- 3) On February 23, 2004, the Debtor and Ronald executed and recorded a Grant Deed transferring title to the Real Property to Maitreya LLC. [Note 2] On March 31, 2010, in connection with a marital dissolution proceeding commenced in the San Bernardino Superior Court (the “Dissolution Proceeding”), the Debtor served upon Ronald a Schedule of Assets and Debts (the “Schedule”); in the Schedule, the Debtor claimed an interest in the Real Property as well as various items of personal property, including vehicles, collectible records, and the recording business Rotten Records LLC (the “Personal Property” and, together, with the Real Property, the “Property”).

Pursuant to the foregoing allegations, the Trustee seeks the following relief:

- 1) A declaration that the Property is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2).
- 2) Sale of the Real Property pursuant to §363(h), in the event that the Real Property is not community property of the Debtor and Ronald.

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- 3) Turnover of the Property.
- 4) Avoidance of the post-petition transfer of any of the Property to Maitreya Arizona.
- 5) A declaration that to the extent the Property was transferred to Maitreya Arizona post-petition, such transfer is void *ab initio* as a violation of the automatic stay.
- 6) Dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

In his Opposition to the Defendants' Motion to Dismiss, the Trustee attaches a proposed First Amended Complaint. The factual allegations of the First Amended Complaint are the same as those of the Complaint, except that the First Amended Complaint (1) withdraws the fourth claim for avoidance and recovery of postpetition transfers to Maitreya Arizona, and (2) amends the allegations regarding violation of the automatic stay.

Defendants' Motion to Dismiss

Defendants move to dismiss the Complaint for failure to state a claim upon which relief can be granted, pursuant to Civil Rule 12(b)(6). In the alternative, Defendants seek a more definite statement pursuant to Civil Rule 12(e). Defendants make the following arguments in support of the Motion:

- 1) The Complaint fails to identify the Personal Property with sufficient specificity. The Complaint identifies the Personal Property as "the Debtor's community property interest in a number of vehicles, collectible records, and the recording business Rotten Records, LLC." Complaint at ¶13. The Complaint does not identify the make, model number, or year of the vehicles, and does not define what constitutes "collectible records." Absent clarification, Defendants will be subjected to burdensome discovery to determine what property is and is not at issue. As a result of this lack of specificity, all allegations pertaining to the Personal Property fail to state a claim. In the event the Court does not dismiss such allegations, the Trustee should be ordered to provide a more definite statement of what Personal Property is at issue.
- 2) The Complaint alleges that the Debtor and Ronald transferred the Real Property to Maitreya LLC on February 23, 2004. This allegation amounts to a judicial admission that as of February 23, 2004, the Real Property was

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transmuted into the property of Maitreya LLC, and was no longer community property. Thus, as of the date of the petition, the Real Property was not community property. Accordingly, the claims for turnover and a declaration that the Real Property is community property fail to state a claim.

- 3) The Complaint seeks to dissolve Maitreya Nevada, pursuant to Nevada Revised Statute §86.495, which provides: "Upon application by or for a member, the district court may decree dissolution of a limited liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement." Because the Trustee has failed to allege facts showing that it is not reasonably practicable for the business of Maitreya Nevada to continue, the claim for dissolution fails.
- 4) The Complaint alleges that Ronald, Maitreya Nevada, and Maitreya Arizona are alter egos of each other, but fails to allege specific facts substantiating this allegation. The alter ego allegations are threadbare recitals of the elements of the cause of action which fail to state a claim. More significantly, under California law, the alter ego doctrine may be invoked to enable a plaintiff to impose corporate liability upon the corporation's principals, but may not be invoked to make the corporation's assets liable for the debts of the individual shareholders, as the Trustee attempts to do here. *See Postal Instant Press, Inc. v. Kaswa Corp.*, 162 Cal. App. 4th 1510, 1512 (Cal. Ct. App. 2008) ("a third party creditor may not pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability").

The Trustee's Opposition to the Motion to Dismiss

The Trustee makes the following arguments in Opposition to the Motion to Dismiss:

- 1) The Complaint sufficiently defines the Personal Property at issue. "Personal Property" is defined as various items of personal property listed on the Schedule that the Debtor filed in the Dissolution Proceeding. This puts Ronald on notice as to what property is at issue. Further, having previously been married to the Debtor, Ronald has knowledge of the property that he and his former spouse owned. Thus, there is no merit to Ronald's contention that the Complaint, as pleaded, will subject Ronald to burdensome discovery to ascertain what property is at issue.
- 2) There is no merit to the argument that the Trustee has admitted that the Real

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Property is no longer community property. Defendants' argument is based on the premise that transfer of the Real Property to a limited liability company effected a transmutation from community property to separate property. That premise is incorrect, as more than mere transfer of title is required to transmute property from community property to separate property.

- 3) The Trustee's claim for dissolution of Maitreya Nevada is properly pleaded. Defendants contend that the Trustee has not established adequate grounds for dissolution under Nevada law. However, it is not clear that any of the Defendants even have standing to assert that claim. The entire interest in Maitreya Nevada is community property and therefore property of the estate. Accordingly, the Trustee is the only party with the right to liquidate Maitreya Nevada. Defendants argue that the Complaint does not plead facts sufficient to support a finding that it is not reasonably practicable for the business of Maitreya Nevada to continue. The facts alleged show that it is not reasonably practicable to carry on Maitreya Nevada's business, because the LLC was created by a married couple to hold title to their community property, and the marriage is in the process of dissolution. It follows that the LLC no longer has its business purpose.
- 4) The alter ego allegations should not be dismissed. The Complaint alleges that Ronald and the Debtor created Maitreya Nevada and purportedly transferred title to the Real Property to that entity. These allegations show that the LLCs are mere extensions of Ronald, and that abiding by their formal existence would serve only to defraud creditors of the Debtor's estate and the Debtor herself.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief

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survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

As set forth below, the Court finds that the majority of the Complaint's allegations state a claim upon which relief can be granted. However, the Complaint's alter ego claims do not contain sufficient allegations of fact to state a claim. The Court grants the Trustee leave to amend. Because the Motion to Dismiss was directed to the original Complaint, rather than the proposed First Amended Complaint attached to the Trustee's Opposition, this ruling is directed toward the original Complaint, not the proposed First Amended Complaint.

The Complaint Identifies the Property That is at Issue with Sufficient Specificity

There is no merit to Defendants' contention that the Complaint fails to state a claim because it does not sufficiently define the property that is at issue. The Complaint defines "Personal Property" as the various items of personal property listed on the Schedule that the Debtor filed in the Dissolution Proceeding. That definition is sufficient to put the Defendants on notice as to the property that is at issue. Because the Complaint references the Schedule which identifies the Personal Property, the Trustee is not required to specify the make and model of the vehicles. Defendants' request for dismissal based on lack of specificity, as well as Defendants' request for a more definite statement pursuant to Civil Rule 12(e), are both denied.

The Trustee Has Not Admitted that the Real Property is Not Community Property

Contrary to Defendants' contention, the Complaint does not contain any judicial admission that the Real Property is not community property. Defendants' theory is that the allegation that the Real Property was transferred to Maitreya LLC on February

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23, 2004 is equivalent to an admission that as of February 23, 2004, the Real Property was no longer community property. Defendants are mistaken.

Defendants' argument is based upon the false premise that the transfer of community property to a limited liability company transmutes the property from community property to separate property. Under California law, property acquired during marriage is presumed to be community property, and a claim that such property is not community property must be proven by a preponderance of the evidence. *Valli v. Valli (In re Marriage of Valli)*, 58 Cal. 4th 1396, 1400, 324 P.3d 274, 276 (2014). The Complaint alleges that the Real Property was acquired while the Debtor and Ronald were married. This allegation is sufficient to invoke the community property presumption. The allegation that Defendants purported to transfer the Real Property to Maitreya LLC does not contradict the allegation that the Real Property remains community property, as the mere transfer of title does not necessarily transmute community property to separate property.

The Claim for Dissolution of Maitreya Nevada is Properly Pleaded

The Court rejects Defendants' contention that the Trustee has failed to allege sufficient facts to show that he is entitled to dissolved Maitreya Nevada pursuant to Nevada Revised Statute ("NRS") §86.495. NRS §86.495 provides in relevant part:

Upon application by or for a member, the district court may decree dissolution of a limited-liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement.

The parties have not cited, and the Court has been unable to locate, any decisions—whether reported or unreported—applying NRS §86.495. Applying the plain language of the statute, the Court finds that the Trustee has alleged facts sufficient to show that he is entitled to dissolution. The Trustee alleges that Maitreya Nevada is wholly owned by the Debtor and Ronald, and that the Debtor and Ronald's membership interests in Maitreya Nevada are community property and therefore property of the estate. The Trustee alleges that as the sole owner of Maitreya Nevada, he desires to liquidate the entity.

Pursuant to §704(a)(1), the Trustee has a statutory obligation to "collect and reduce the money and property of the estate for which such trustee serves, and close such estate as expeditiously as possible with the best interests of parties in interest." Having alleged that he is the sole owner of Maitreya Nevada, it follows that the Trustee has alleged facts sufficient to establish that continuation of Maitreya Nevada's

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business is no longer reasonable practicable. This is particularly so given that continuation of the business conflicts with the Trustee's statutory obligation to liquidate the estate's assets as expeditiously as possible.

Defendants' Arguments With Respect to Equitable Tolling Are Not Relevant

Defendants assert that there is no basis upon which the Trustee can assert that the statute of limitations has been equitably tolled. The only instance in which the Complaint allegedly violates the statute of limitations is with respect to the claim for avoidance of a post-petition transfer. Since the Trustee has agreed to withdraw this claim, Defendants' arguments with respect to equitable tolling are not relevant.

The Alter Ego Allegations Fail to State a Claim, But the Trustee is Given Leave to Amend

The Court finds that the Trustee has failed to allege sufficient facts showing that he is entitled to relief on the grounds that the Defendants are alter egos of each other. The Trustee alleges the elements of the alter ego cause of action, but does not allege facts showing how the elements necessary to sustain an alter ego claim have been satisfied. For example, the Trustee alleges no facts demonstrating that Defendants disregarded corporate formalities or that Defendants commingled assets. Accordingly, the Complaint fails to state a claim that the Defendants are alter egos of one another. However, the Trustee is given leave to amend. **A First Amended Complaint must be filed by no later than January 25, 2018. (The Court notes that the Trustee has attached a proposed First Amended Complaint to the Opposition. Since the proposed First Amended Complaint has not been filed, the Court will designate the amended Complaint that the Trustee has been given leave to file as the First Amended Complaint.) A response to that complaint will be due on or before February 16, 2018.**

There is no merit to Defendants' contention that the Complaint is doomed to fail on the grounds that the Trustee cannot rely upon an alter ego theory to hold the assets of Maitreya Nevada and Maitreya Arizona liable for Ronald's debts. Defendants are correct that under California law, the corporate veil may not be pierced in this manner to reach the assets of a corporation. See *Postal Instant Press, Inc. v. Kaswa Corp.*, 162 Cal. App. 4th 1510, 1512 (Cal. Ct. App. 2008) ("a third party creditor may not pierce the corporate veil to reach corporate assets to satisfy a shareholder's personal liability"). However, California courts have permitted this type of veil piercing to occur with respect to limited liability companies. As one court explained:

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Postal Instant Press does not preclude application of outside reverse veil piercing in this case for several reasons. To begin with, Curci seeks to disregard the separate status of an LLC, not a corporation. The court's decision *Postal Instant Press* was expressly limited to corporations. In addition, the different facts before us, as well as the nature of LLC's, do not present the concerns identified in *Postal Instant Press*.

Baldwin, the judgment debtor, holds a 99 percent interest in JPBI. His wife holds the remaining one percent interest, but she is also liable for the debt owed to Curci.... There simply is no “innocent” member of JPBI that could be affected by reverse piercing here. (Compare *Postal Instant Press, supra*, 162 Cal.App.4th at p. 1520, 77 Cal.Rptr.3d 96 [“ ‘[T]o the extent that the corporation has other non-culpable shareholders, they obviously will be prejudiced if the corporation's assets can be attached directly.’ ”].)

Curci Investments, LLC v. Baldwin, 14 Cal. App. 5th 214, 222–23, 221 Cal. Rptr. 3d 847, 852 (Ct. App. 2017).

As was the case in *Curci*, the present case does not implicate the danger that innocent parties will be affected by the veil piercing the Trustee seeks to accomplish, given that the Defendant LLCs in this action are wholly owned by Ronald and the Debtor.

In view of this ruling, the Status Conference set for January 16, 2018, is vacated. Upon the filing of the First Amended Complaint, the Court will issue a Scheduling Order that will set forth new dates that will govern this action.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is GRANTED in part and DENIED in part. The Court finds that the Complaint fails to state a claim with respect to the allegation that the Defendants are alter egos of one another. However, the Trustee is given leave to amend as set forth above. In all other respects, the Motion is DENIED.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

Note 2

The Complaint does not specify whether the Real Property was transferred to Maitreya Nevada or Maitreya Arizona.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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#2.00 Hearing re: [513] Motion To Vacate Order For Examination Under Bankruptcy Rule 2004

Docket 0

Tentative Ruling:

1/10/2018:

Tentative Ruling:

For the reasons set forth below, Trinity's motion seeking to vacate the order requiring it to submit to a Rule 2004 examination is DENIED.

Pleadings Filed and Reviewed:

- 1) Order Setting Hearing on Motion to Vacate Order for Examination Under Bankruptcy Rule 2004 [Doc. No. 519]
- 2) Motion to Vacate Order Granting Motion for Examination Under FRBP 2004 (the "Motion") [Doc. No. 513]
- 3) Procedural Objection and Request for Hearing or Written Opposition to the Motion of Trinity Financial Services, LLC to Vacate the Order for Examination and Production Under Fed. R. Bankr. P. 2004 [Doc. No. 515]
- 4) Opposition to the Motion of Trinity Financial Services, LLC to Vacate the Order for Examination and Production Under Fed. R. Bankr. P. Rule 2004 (the "Opposition") [Doc. No. 526]
 - a) Evidentiary Objection to the Declaration of Henry D. Paloci, III in Support of the Motion of Trinity Financial Services, LLC to Vacate the Order for Examination and Production Under Fed. R. Bankr. P. Rule 2004 [Doc. No. 527]
 - b) Compendium and Appendix of Meet-and-Confer Correspondence [Doc. No. 528]
 - c) Request for Judicial Notice in Support of Opposition to the Motion of Trinity Financial Services, LLC to Vacate the Order for Examination and Production Under Fed. R. Bankr. P. Rule 2004 [Doc. No. 529]
 - d) Table of Contents and Authorities to Opposition [Doc. No. 530]

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- 5) Chapter 7 Trustee's Joinder in Opposition to the Motion of Trinity Financial Services, LLC to Vacate the Order for Examination and Production Under Fed. R. Bankr. P. Rule 2004 [Doc. No. 531]
- 6) Reply to Opposition to Motion to Vacate Order Granting Motion for Examination Under FRBP 2004

I. Facts and Summary of Pleadings

Background

Claire Levine ("Debtor") filed a voluntary Chapter 11 petition on April 4, 2012. On July 30, 2012, the case was converted to Chapter 7. *See* Doc. No. 78. Prior to the petition date, the Debtor initiated a palimony action against Gerald Goldstein, a high net worth music and entertainment executive (the "2008 Action"). The Debtor alleged that she had rescued Goldstein from financial disaster, saving his home from foreclosure and his business from bankruptcy, and had devoted her time, labor, and capital to Goldstein's music and entertainment businesses, which the parties agreed would be their joint businesses. The Debtor further alleged that Goldstein had siphoned joint assets, concealed asset transfers, and engaged in a course of conduct designed to deny the Debtor her rightful share of the assets of the joint businesses. The Debtor and Goldstein executed a settlement agreement under which the 2008 Action was dismissed without prejudice.

The Debtor and Goldstein are co-trustees of the Amadeus Trust dated January 24, 2000 (the "Amadeus Trust"). As of the commencement of the case, the Amadeus Trust held title to, among others, properties located at 1027 Napoli Drive, Pacific Palisades, CA 90272 (the "Napoli Property"), 11847 Gorham Avenue, #303, Los Angeles, CA (the "Brentwood Condo"), and 3800 Wailea Avenue, E201, Wailea, Maui (the "E201 Property"). On December 3, 2012, Goldstein filed a proof of claim (the "Goldstein Claim") in the amount of \$5,571,022.62. The Goldstein Claim alleges that Debtor, as a co-trustee of the Amadeus Trust and a co-owner of properties held by the trust, is responsible for 50% of the expenses of maintaining the trust properties. The Goldstein Claim alleges that Goldstein paid all the expenses of maintaining the properties, and that the Debtor failed to pay any of the expenses for which she was responsible. Other than the Goldstein Claim, total unsecured claims amount to approximately \$120,000.

After the 2008 Action was dismissed, the Debtor alleged that instead of complying with his fiduciary obligations to and his agreements with the Debtor, Goldstein undertook a course of conduct that exposed the parties' assets to substantial

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devaluation. The Debtor commenced a second action against Goldstein, which the Chapter 7 Trustee ("Trustee") is now prosecuting as the real party in interest; the action is entitled *Howard M. Ehrenberg, Chapter 7 Trustee and Real Party in Interest for Claire Levine v. Gerald Goldstein et al.* (the "Civil Complaint"). The Civil Complaint alleges that Goldstein wrongfully withdrew up to \$30 million in equity from Levine and Goldstein's jointly-held properties, and seeks damages in that amount. Civil Complaint at ¶83. The Civil Complaint seeks an adjudication that Debtor holds an undivided one-half interest in all of the properties, as well as an undivided one-half interest in Goldstein's music and entertainment businesses and assets. *Id.* at ¶156.

On September 24, 2015, the Court approved a global settlement between the Debtor, the Trustee, Goldstein, the Amadeus Trust, and various businesses controlled by Goldstein (the "Original Settlement Agreement"). The Original Settlement Agreement was conditioned on the short sale of property owned jointly by the Debtor and Goldstein, located at 3800 Wailea Avenue, B101, Wailea, Maui (the "Wailea Property"), to HAR-Bronson ("Bronson"). Bronson was then required to resell the Wailea Property (the "Resale"). Upon the Resale, the following would occur:

- 1) Debtor would receive \$1.4 million from the net proceeds of the Resale. If net sale proceeds were less than \$1.4 million, Goldstein would make up the difference, such that the Debtor would receive the total sum of \$1.4 million from the Resale.
- 2) Goldstein and the Debtor would cause the Amadeus Trust to quitclaim the Napoli Property and Brentwood Condo to the Debtor.
- 3) Goldstein and the Debtor would cause the Amadeus Trust to quitclaim the E201 Property to Goldstein.
- 4) Goldstein would withdraw the Goldstein Claim.
- 5) The Civil Complaint would be dismissed with prejudice.
- 6) As payment for administrative fees, the Trustee would accept funds remaining from the previous Court-approved sale of property located at 15 E. 69th St., Apt. 4D, New York, New York (the "New York Property"), in addition to \$50,000 from the proceeds of the Resale.

Consummation of the Original Settlement Agreement would have resolved all outstanding disputes between the Debtor and Goldstein, and would have facilitated the dismissal of the case.

On January 19, 2017, the Court approved an amended settlement agreement (the "Amended Settlement Agreement"). The Amended Settlement Agreement largely

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tracks the terms of the original Settlement Agreement, but modifies provisions pertaining (1) to the short sale of the Wailea Property and (2) to the distribution of the sale proceeds upon Resale. The key changes are as follows:

- 1) Effectiveness of the Amended Settlement Agreement is contingent upon occurrence of the short sale to Bronson, rather than upon occurrence of the subsequent Resale. The parties have 180 days from the date of execution of the Amended Settlement Agreement to conclude the short sale. The deadline will be automatically extended for 90 days unless any party gives written notice of intent to cancel the Amended Settlement Agreement. Only three such automatic extensions (for a total of 270 days) may occur. Bronson shall offer the current lender no less than \$4.3 million to effectuate the short sale.
- 2) Upon completion of the short sale, Bronson shall list the Wailea Property for Resale with an initial price of \$8.95 million (the original Settlement Agreement did not specify a minimum listing price).
- 3) After payment of closing costs and property taxes, proceeds of the Resale shall be distributed as follows:
 - a) \$5.3 million to Bronson;
 - b) \$300,000 to the estate;
 - c) \$1.1 million to the Debtor;
 - d) \$50,000 to the Trustee on account of Trustee fees;
 - e) \$150,000 to law firm Nemecek & Cole ("N&C") in partial satisfaction of attorneys' fees and costs owed by Goldstein and entities affiliated with Goldstein;
 - f) \$150,000 to Bronson; and
 - g) Any remaining proceeds to be divided equally between Bronson and N&C; after N&C is paid in full, any remaining proceeds to Bronson.

Trinity Financial Services, LLC ("Trinity") asserts a secured interest against the Wailea Property. In e-mail correspondence exchanged during 2015 between Trinity and Steven Guttman (a transaction attorney working to consummate the Amended Settlement Agreement), the parties discussed the release of Trinity's recorded encumbrance against the Wailea Property in exchange for a payment of \$50,000. The Debtor's position is that Trinity and the Debtor reached an agreement pursuant to which Trinity's encumbrance would be released for a payment of \$50,000, and that Trinity subsequently refused to perform under the agreement. The Debtor has filed a motion seeking to enforce the alleged agreement; that motion is set for hearing on

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January 24, 2018. Trinity takes the position that it discussed the release of its encumbrance but that an agreement was never formalized.

During the summer of 2017, Peter Rudinskas, an unsecured creditor whose claim will be paid in full if the Amended Settlement Agreement is consummated, requested that Trinity provide information regarding its interest in the Wailea Property. Mr. Rudinskas' objective was to obtain the information informally in lieu of moving for a Rule 2004 examination. In August 2017, the discussions between Trinity and Mr. Rudinskas broke down. Specifically, on August 22, 2017, Trinity sent Mr. Rudinskas an e-mail stating: "As an unsecured creditor you don't have standing to request any of these materials. If you disagree, feel free to take the steps to request a Rule 2004 exam." In a responsive e-mail, Mr. Rudinskas asserted that he had standing because the materials were necessary to consummate the Amended Settlement Agreement, and consummation of the Amended Settlement Agreement would produce proceeds sufficient to pay Mr. Rudinskas' unsecured claim in full. Trinity replied: "Feel free to do whatever you think you need to do. My client is assessing its options."

On December 5, 2017, Mr. Rudinskas moved for an order requiring Trinity and two of its officers, Don A. Madden III and David Vo, to appear for a Rule 2004 examination (the "Rule 2004 Motion"). Having concluded from the August e-mail exchange that a conference with Trinity to arrange a mutually-agreeable examination time would be futile, Mr. Rudinskas did not make any additional attempts to meet and confer with Trinity prior to filing the motion. On December 7, 2017, the Court entered an order requiring Trinity, Mr. Madden, and Mr. Vo (collectively, the "Examinees") to submit to a Rule 2004 Examination, with such examination to take place by no later than December 31, 2017, but not prior to December 26, 2017. Doc. No. 505 (the "Rule 2004 Order"). On December 25, 2017, Examinees filed a motion seeking to vacate the Rule 2004 Order.

Trinity's Motion to Vacate the Rule 2004 Order

Trinity makes the following arguments in support of its Motion to Vacate the Rule 2004 Order:

- 1) Mr. Rudinskas does not have standing to conduct a Rule 2004 examination of Trinity, because he is an unsecured creditor with no direct interest in the Amended Settlement Agreement.
- 2) Mr. Rudinskas failed to properly meet and confer with Trinity before filing the Rule 2004 Motion. The e-mail exchange from August 2017 does not qualify as an attempt to meet and confer because it had become stale and because it did

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not discuss the date, time, place, and scope of the examination.

- 3) Because Mr. Rudinkas did not properly serve the Rule 2004 Motion upon Trinity, Trinity lacked the opportunity to oppose the Motion before the Court entered the Rule 2004 Order. The Proof of Service states that the Rule 2004 Motion was mailed on December 5, 2017, but the USPS tracking information indicates that the Rule 2004 Motion was not mailed until December 7, 2017.

Mr. Rudinkas' Opposition to the Motion to Vacate the Rule 2004 Order

Mr. Rudinkas makes the following arguments in Opposition to Trinity's Motion to Vacate the Rule 2004 Order:

- 1) Prior to filing the Rule 2004 Motion, multiple attempts to obtain a stipulated date for the examination were made, but Trinity refused to agree to a date based upon its contention that Mr. Rudinkas lacked standing to proceed. After negotiations broke down in August 2017, Mr. Rudinkas advised Trinity: "Given your client's reluctance to provide information by other means to allow me to evaluate your interest in property of the estate, I will be proceeding forthwith, after having diligently attempted to conduct a motion conference in the manner contemplated by local rule."
- 2) Trinity's contention that the USPS tracking information shows that the Rule 2004 Motion was not mailed on the date set forth on the Proof of Service is incorrect. The tracking information shows that the Rule 2004 Motion arrived at a regional sorting facility on December 7, 2017. Trinity confuses an "acceptance" scan (which is issued at a retail counter when an item is mailed) with an "in-transit" notation (which is issued when an item is already enroute).
- 3) The Local Bankruptcy Rules provide that an order compelling an entity to submit to a Rule 2004 Examination may be issued upon the filing and service of a motion; there is no requirement that entities be given the opportunity to oppose issuance of a Rule 2004 Order. Examinees who oppose being subjected to a Rule 2004 examination instead have the ability to seek a protective order.

The Trustee filed a joinder to Mr. Rudinkas' Opposition to the Motion to Vacate the Rule 2004 Order.

Trinity's Reply to Mr. Rudinkas' Opposition

On January 8, 2018, Trinity replaced the attorney who filed the Motion to Vacate

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the Rule 2004 Order. Trinity's new counsel filed a statement indicating that it has not had sufficient time to prepare a substantive reply to Mr. Rudinkas' Opposition.

II. Findings and Conclusions

The Motion to Vacate fails on multiple fronts. **[Note 1]** First, Trinity failed to follow the proper procedure to voice its objections to the Rule 2004 examination. Local Bankruptcy Rule ("LBR") 2004-1(d) provides that "a motion for examination will be ruled on without a hearing pursuant to LBR 9013-1(p)." LBR 9013-1(p) provides, in relevant part, that motions decided thereunder "may be determined without a hearing." The LBRs do not contemplate that entities subjected to a Rule 2004 order will have an opportunity to oppose the issuance of the Rule 2004 Order. Instead, entities ordered to appear for examination may move for a protective order pursuant to LBR 2004-1(f). A motion for a protective order "must be filed and served not less than 14 days before the date of the examination, and set for hearing not less than 2 days before the scheduled examination" Here, Trinity did not move for a protective order. Instead, it waited until the day before the Rule 2004 examination had been noticed to file the Motion to Vacate.

Second, Trinity asserts that the Court erred in ordering the Rule 2004 Examination because Mr. Rudinkas failed to meet and confer with Trinity regarding the scope of the examination prior to filing the Rule 2004 Motion. Contrary to Trinity's contention, the Court finds that Mr. Rudinkas sufficiently complied with the meet and confer requirement. The e-mails submitted by Mr. Rudinkas in support of the Rule 2004 Motion show that he attempted to meet and confer with Trinity during the summer of 2017. These negotiations went nowhere, as Trinity took the position that Mr. Rudinkas had no standing to compel it to submit to an examination.

Trinity's position is that Mr. Rudinkas was required to re-initiate the meet-and-confer process prior to filing the Rule 2004 Motion in December 2017. Based upon the record before it, the Court finds that Mr. Rudinkas had reasonably concluded that any further meet-and-confer attempts with Trinity would be futile. Mr. Rudinkas' previous attempts to establish a mutually-agreeable examination date went nowhere because Trinity took the position that Mr. Rudinkas lacked standing to compel Trinity to submit to examination. Further, Mr. Rudinkas apprised Trinity of his intent to seek a Rule 2004 Order without engaging in any additional meet-and-confer activities: "Given your client's reluctance to provide information by other means to allow me to evaluate your interest in property of the estate, I will be proceeding forthwith, after having diligently attempted to conduct a motion conference in the

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manner contemplated by local rule."

Third, the Court finds that Mr. Rudinkas has standing to compel Trinity to submit to a Rule 2004 examination. Bankruptcy Rule 2004 provides: "On motion of *any party in interest*, the court may order the examination of any entity." Further, persons "who are directly and adversely affected pecuniarily" have standing to seek relief before the Bankruptcy Court. *Matter of Fondiller*, 707 F.2d 441, 442 (9th Cir. 1983).

Mr. Rudinkas seeks to examine Trinity in order to obtain information that will be useful in effectuating consummation of the Amended Settlement Agreement. If the Amended Settlement Agreement is successfully consummated, unsecured creditors such as Mr. Rudinkas will receive a 100% distribution upon their claims. If the Amended Settlement Agreement is not consummated, unsecured creditors will likely receive only a minimal distribution. The Amended Settlement Agreement provides for the withdrawal of the claim of Gerald Goldstein, which exceeds \$5 million. The claims of all other unsecured creditors total approximately \$120,000. Thus, if the Amended Settlement Agreement cannot be consummated and Mr. Goldstein's claim is allowed, the recovery to unsecured creditors—including Mr. Rudinkas—will be substantially diluted.

Trinity asserts, in a conclusory fashion, that the document production demanded in the Rule 2004 Order is overbroad and unduly cumbersome. Trinity does not specify which specific document requests are overly broad; Trinity does not even attempt to indicate which categories of production are overly broad. Trinity has waived its ability to object to the scope of document production.

On September 5, 2017, the Court entered an order advising the parties to the Amended Settlement Agreement that they would have one final opportunity to complete the short sale contemplated by the settlement. The Court has stated that if the short sale is not completed by January 24, 2018, it will proceed with the adjudication of the Debtor's objection to Gerald Goldstein's proof of claim. In view of this impending deadline, Trinity must submit to a Rule 2004 examination by no later than January 18, 2018. Mr. Rudinkas and Trinity shall meet and confer and select the exact date and time of the examination.

Based upon the foregoing, the Motion to Vacate is DENIED. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Mr. Rudinkas submitted evidentiary objections to the declarations submitted by Trinity in support of the Motion to Vacate. As the Court's ruling is not based upon the facts set forth in the declarations submitted by Trinity, the Court does not rule upon these evidentiary objections. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these [evidentiary] objections.").

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

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2:16-17275 Alan Riche

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Adv#: 2:17-01526 Riche et al v. Broidy et al

#100.00 HearingRE: [8] Motion to Dismiss Adversary Proceeding for Lack of Standing / Lack of Subject Matter Jurisdiction

Docket 8

Tentative Ruling:

1/10/2018:

For the reasons set forth below, the Motion is DENIED and the Court *sua sponte* remands the Complaint to the State Court.

Pleadings Filed and Reviewed:

- 1) Notice of Removal of Action Pending in State Court to Bankruptcy Court [Doc. No. 1]
- 2) Defendants' Motion to Dismiss for Lack of Standing / Lack of Subject Matter Jurisdiction Pursuant to FRCP 12(b)(1) (the "Motion") [Doc. No. 8]
- 3) Plaintiffs' Opposition to Motion to Dismiss (the "Opposition") [Doc. No. 11]
- 4) Defendants' Reply to Plaintiffs' Opposition to Motion to Dismiss for Lack of Standing / Lack of Subject Matter Jurisdiction Pursuant to FRCP 12(b)(1) (the "Reply") [Doc. No. 12]

I. Facts and Summary of Pleadings

This is a legal malpractice action brought by Alan Riche and Wendy Riche, two Chapter 7 Debtors, against their former bankruptcy counsel. Plaintiffs commenced a voluntary Chapter 7 petition on May 31, 2016. On January 19, 2017, the Court approved the Chapter 7 Trustee's motion to sell Plaintiffs' home. Bankr. Doc. No. 78. Applying §522(c), the Court found that the Internal Revenue Service was entitled to receive approximately \$60,000 which otherwise would have been paid to Plaintiffs on account of their homestead exemption. *See* Ruling Granting Sale Motion [Bankr. Doc. No. 75].

Plaintiffs filed the malpractice action (the "Complaint") in the Los Angeles Superior Court on July 27, 2017, approximately one year subsequent to the filing of their Chapter 7 petition. Defendants removed the Complaint to the Bankruptcy Court

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on November 7, 2017. On November 27, 2017, Plaintiffs filed a statement demanding a jury trial; asserting that the Complaint was not a core proceeding and that the Bankruptcy Court lacked subject matter jurisdiction; and refusing to consent to the entry of final judgment by the Bankruptcy Court. Adv. Doc. No. 7.

In the Complaint, Plaintiffs allege that at the time they filed the petition, Defendants assured them that their home was not at risk of liquidation because there was no non-exempt equity for the Trustee to administer. Plaintiffs allege that the Defendants acted negligently in performing the equity calculation by failing to conduct a search of real property records, which would have revealed that one of the deeds of trust against their home had not been recorded, thereby leaving substantial equity in the home subject to administration. Plaintiffs further allege that Defendants negligently failed to advise them that the IRS was entitled to receive \$60,000 of their homestead exemption. Plaintiffs seek damages according to proof, but in no less than \$100,000, based on the loss of approximately \$60,000 of their anticipated homestead exemption and the loss of their home.

Plaintiffs' malpractice claims against Defendants were not listed in their initial bankruptcy schedules. On August 16, 2017—six days subsequent to the filing of the Trustee's Final Report—Plaintiffs filed amended schedules listing their malpractice claims. Bankr. Doc. No. 99. On November 15, 2017, the Trustee filed a Final Account, certifying that the estate has been fully administered and requesting to be discharged. Bankr. Doc. No. 107.

Defendants' Motion to Dismiss

Defendants move to dismiss the Complaint, pursuant to Civil Rule 12(b)(1), on the grounds that Plaintiffs lack standing to pursue the Complaint because the malpractice claims arose prepetition, are an asset of the estate, and can only be pursued by the Trustee. Defendants make the following arguments in support of the Motion:

- 1) Plaintiffs allege that Defendants committed malpractice by advising them to commence a Chapter 7 petition. The malpractice claims arise prepetition, and are thus assets of the estate, because Plaintiffs allege that Defendants committed malpractice by advising them to seek bankruptcy protection rather than advising them to attempt to work out compromises with their unsecured creditors. In *Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. v. Alvarez (In re Alvarez)*, 224 F.3d 1273, 1278 (11th Cir. 2000), the court held that claims against a law firm for filing a Chapter 7 petition instead of a Chapter 11

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petition were property of the estate.

- 2) Since the malpractice claims are property of the estate, those claims may be pursued only by the Trustee, who is the real party in interest. Plaintiffs lack standing, and the case must be dismissed for lack of subject matter jurisdiction.

Plaintiffs' Opposition to the Motion to Dismiss

Plaintiffs make the following arguments in opposition to the Motion to Dismiss:

- 1) Even if Plaintiffs' malpractice claims were property of the estate, those claims have been abandoned to Plaintiffs under §554(c). Plaintiffs filed amended schedules which listed the malpractice claims. On November 15, 2017, the Trustee filed a Final Account. No timely objections to the Final Account have been filed. All scheduled assets have been administered and any interest the estate may have had in the malpractice claims have been abandoned to the Plaintiffs by operation of law, pursuant to §554(c).
- 2) If the Court finds that the estate has an interest in Plaintiffs' malpractice claims that has not been abandoned, the Court should defer ruling on the Motion to Dismiss until the Trustee has determined whether to administer the malpractice claims.
- 3) The Court should not find that the malpractice claims are property of the estate, because the estate itself is the beneficiary of the alleged malpractice—but for Defendants' negligence, Plaintiffs would not have commenced a Chapter 7 petition and the estate would not have benefitted from the substantial equity in Plaintiffs' former home.

Defendants' Reply in Support of the Motion to Dismiss

Defendants make the following arguments in their Reply to Plaintiffs' Opposition:

- 1) At the time Plaintiffs filed the Complaint, the malpractice claims did not belong to them because those claims had not been scheduled and therefore could not have been abandoned to the Plaintiffs. Jurisdiction "depends upon the state of things at the time of the action brought." *Morongo Band of Mission Indians v. Cal. State Bd. of Equalization*, 858 F.2d 1376, 1381 (9th Cir. 1988). Plaintiffs "cannot rely on events that unfolded after the filing of the complaint to establish ... standing." *Wilbur v. Locke*, 423 F.3d 1101, 1107 (9th Cir. 2005), *abrogated on other grounds by Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010).

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- 2) Plaintiffs' contention that the malpractice claims have been abandoned to them is incorrect. Assets are abandoned under §554(c) only upon the closing of the case. Although the Trustee has filed a Final Account, the case has not been closed.

II. Findings and Conclusions

The Court Makes No Findings With Respect to What Transpired During the Prepetition Legal Consultation Between Plaintiffs and Defendants

Plaintiffs devote substantial space in their Motion to Dismiss to disputing the factual allegations of the Complaint. Where a motion to dismiss is predicated upon jurisdictional grounds, the Court in some circumstances may hear evidence regarding factual disputes:

Ordinarily, where a jurisdictional issue is separable from the merits of a case, the court may determine jurisdiction by the standards of a Rule 12(b)(1) motion to dismiss for lack of jurisdiction. In such a situation, the district court is:

free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary. In such circumstances, "[n]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims."

Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987).

As further explained below, the Court does not find it necessary to determine disputed factual issues to adjudicate the jurisdictional questions raised by the Motion to Dismiss. Therefore, the Court makes no findings with respect to what transpired during the pre-petition legal consultation between Plaintiffs and Defendants.

The Malpractice Claims Are Not Property of the Estate

The primary dispute is whether Plaintiffs' malpractice claims are property of Plaintiffs' bankruptcy estate. Defendants assert that the claims have not been abandoned by the Trustee, and remain property of the estate, because Plaintiffs' bankruptcy case has not been closed. Plaintiffs assert that the claims have been abandoned because no party has timely objected to the Trustee's Final Account, which certifies that the estate has been fully administered.

The focus on whether the malpractice claims have been abandoned skips the

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threshold issue of whether those claims were ever property of the estate in the first place. The Court finds that the malpractice claims did not accrue prepetition and therefore are not property of the estate. As the Ninth Circuit has explained:

"To determine when a cause of action accrues, and therefore whether it accrued pre-bankruptcy and is an estate asset, the Court looks to state law." *Boland v. Crum (In re Brown)*, 363 B.R. 591, 605 (Bankr.D.Mont.2007) (citing *Cusano*). "It is important, however, to distinguish principles of accrual from principles of discovery and tolling, which may cause the statute of limitations to begin to run after accrual has occurred for purposes of ownership in a bankruptcy proceeding." *Cusano*, 264 F.3d at 947.

In California, "generally, a cause of action accrues and the statute of limitation begins to run when a suit may be maintained. Ordinarily this is when the wrongful act is done and the obligation or the liability arises, but it does not accrue until the party owning it is entitled to begin and prosecute an action thereon. In other words, a cause of action accrues upon the occurrence of the last element essential to the cause of action." *Howard Jarvis Taxpayers Assn. v. City of La Habra*, 25 Cal.4th 809, 815, 107 Cal.Rptr.2d 369, 23 P.3d 601 (2001) (citations and internal quotation marks omitted). Therefore, if a claim "could have been brought," it has accrued. *Cusano*, 264 F.3d at 947.

Goldstein v. Stahl (In re Goldstein), 526 B.R. 13, 21 (B.A.P. 9th Cir. 2015).

In California, attorneys are liable for malpractice in accordance with general principles of tort liability. *Budd v. Nixen*, 6 Cal. 3d 195, 200, 491 P.2d 433, 436 (1971) (superseded by statute on other grounds). The elements of a cause of action for professional negligence are:

(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.

If the allegedly negligent conduct does not cause damage, it generates no cause of action in tort. The mere breach of a professional duty, causing only nominal damages, speculative harm, or the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence. Hence, until the client suffers appreciable harm as a consequence of his attorney's negligence, the client cannot establish a cause of action for malpractice.

Id. (internal citations omitted).

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The gravamen of the Complaint is that Defendants committed professional malpractice by negligently advising Plaintiffs to file a voluntary Chapter 7 petition, when Defendants should have instead recognized that bankruptcy was inadvisable because it would ultimately result in Plaintiffs losing their home and forfeiting a portion of their homestead exemption to the IRS. Although the allegedly negligent advice was rendered prepetition, the harm emanating from that advice did not arise until postpetition—at the time the Trustee obtained the order authorizing the sale of the Plaintiffs' home and directing that approximately \$60,000 of Plaintiffs' homestead exemption be paid to the IRS. Nothing about the filing of the petition made the future sale of Plaintiffs' home inevitable. It is possible that the Trustee could have elected not to administer the home; that Plaintiffs' former bankruptcy counsel could have negotiated a stipulation with the Trustee to provide for dismissal of the case; or that counsel could have devised some other strategy to prevent the sale of the home. Thus, as of the date of the petition, the only injury to Plaintiffs was contingent and speculative. Therefore, no claim for breach of professional duty existed upon the petition date, given that "the threat of future harm—not yet realized—does not suffice to create a cause of action for negligence." *Budd*, 6 Cal. 3d at 200.

Defendants cite *Johnson, Blakely, Pope, Bokor, Ruppel & Burns, P.A. v. Alvarez (In re Alvarez)*, 224 F.3d 1273, 1278 (11th Cir. 2000) for the proposition that a malpractice claim based upon an attorney's misguided commencement of a bankruptcy petition is property of the estate. Defendants' reliance upon *Alvarez* is misplaced. In *Alvarez*, the attorney ignored his client's instructions to file a Chapter 11 petition and filed a Chapter 7 petition instead. In determining that *Alvarez's* malpractice claims arose prepetition, the court reasoned that *Alvarez* suffered harm at the moment the Chapter 7 petition was filed. The court explained that at the moment of filing, *Alvarez's* property interests vested in the estate, rather than remaining under his control as would have been the case had the attorney filed a Chapter 11 petition as *Alvarez* had intended. *See Alvarez*, 224 F.3d at 1277 ("Alvarez's loss of ownership and control of his assets upon the bankruptcy filing constitutes a significant and tangible change which obviously caused harm to him. No one would suggest that the victim of a conversion is not harmed when deprived of ownership and control of an asset."). Here, by contrast, the alleged harm to Plaintiffs did not occur until the Trustee sold the Plaintiffs' home, which did not happen until well after the petition was filed. Again, as discussed, the filing of the petition did not make sale of Plaintiffs' home inevitable.

Having found that Plaintiffs' malpractice claims are not property of the estate, it

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follows that there is no merit to Defendants' argument that Plaintiffs have no standing to prosecute those claims. [Note 1]

The Court Sua Sponte Remands the Action to the State Court

Based upon its finding that the malpractice claims are not property of the estate, the Court lacks subject matter jurisdiction over the Complaint, and therefore must remand the action to the State Court. *See* 28 U.S.C. §1447(c) ("If at any time before final judgment it appears that the ... court lacks subject matter jurisdiction, the case shall be remanded.").

The Bankruptcy Court has jurisdiction over "all cases under title 11." 28 U.S.C. § 1334(a). "Generally, in the bankruptcy context, the word 'case' is a term of art which refers to 'that which is commenced by the filing of a petition; it is the "whole ball of wax," the chapter 7, 9, 11, 12 or 13 case.'" *Blevins Elec., Inc. v. First Am. Nat'l Bank (In re Blevins Elec., Inc.)*, 185 B.R. 250, 253 (Bankr. E.D. Tenn. 1995).

The Bankruptcy Court also has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The three types of jurisdiction conferred under 28 U.S.C. §1334(b) are known as "arising under," "arising in," and "related to" jurisdiction. "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). "Arising in" jurisdiction applies to "those administrative proceedings that, while not based on any right created by title 11, nevertheless have no existence outside bankruptcy." *Id.* "Related to" jurisdiction exists if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.... An action is related to bankruptcy if the action could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (internal citations omitted).

The Court lacks "arising under" jurisdiction because the Complaint's causes of action arise under state law, not under title 11. The Court lacks "arising in" jurisdiction because the Complaint is not an administrative proceeding of the type that has no existence outside of bankruptcy. The Court lacks "related to" jurisdiction because there is no conceivable manner in which the outcome of the proceeding could affect the bankruptcy estate. The estate has been fully administered and, as set forth above, the estate has no interest in the claims raised in the Complaint.

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III. Conclusion

Based upon the foregoing, the Motion is DENIED and the Complaint is REMANDED to the State Court. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Court finds that the Trustee has had an adequate opportunity to oppose the determination that the malpractice claims are not an asset of the estate, and has not done so. Although the Trustee did not receive notice of the Motion to Dismiss, the Trustee received notice of the Complaint, the Opposition to the Motion to Dismiss, and the Reply in Support of the Motion to Dismiss. The opposition and reply papers discuss the parties' contentions with respect to whether the malpractice claims constitute estate property. More significantly, a review of the Complaint would have apprised the Trustee of the issue of whether the claims asserted therein constitute estate property.

Party Information

Debtor(s):

Alan Riche

Represented By
Stella A Havkin

Defendant(s):

Alan F Broidy

Pro Se

Law Offices of Alan F. Broidy, APC

Pro Se

Illyssa I Fogel

Represented By
Illyssa I Fogel

Illyssa I. Fogel & Associates

Represented By

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John Does 1-10

Illyssa I Fogel

Pro Se

Joint Debtor(s):

Wendy Riche

Represented By
Stella A Havkin

Plaintiff(s):

Alan Riche

Represented By
Thomas W Dressler

Wendy Riche

Represented By
Thomas W Dressler

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jeffrey I Golden
Reem J Bello

**United States Bankruptcy Court
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10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#1.00 Status HearingRE: [1] Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (91 (Declaratory judgment)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Shechtman, Zev)

Docket 1

Tentative Ruling:

1/12/2018

This hearing is vacated and no appearances are required. Pursuant to the ruling issued in connection with the January 11, 2018 hearing on Defendants' Motion to Dismiss, the Trustee's deadline to file a First Amended Complaint is January 25, 2018. Upon the filing of the First Amended Complaint, the Court will issue a scheduling order setting forth the dates that will apply to this action.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Pro Se

Maitreya, LLC, a Nevada limited

Pro Se

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2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01074 Goodrich v. Lucent Product, Inc., a California corporation, d/

#2.00 Status Conference

RE: [1] Adversary case 2:17-ap-01074. Complaint by David M. Goodrich against Lucent Product, Inc., a California corporation, d/b/a Lunette Eye. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 7-18-17; 10-17-17

Docket 1

Tentative Ruling:

1/12/2018

No appearances are required. Pursuant to a settlement agreement which has been approved by the Court, the Trustee intends to dismiss this action upon receipt of the settlement payment. A continued status conference to monitor the consummation of the settlement shall be held on March 13, 2018, at 10:00 a.m. A Joint Status Report is due by no later than fourteen days prior to the hearing.

Within seven days of this hearing, the Trustee shall submit an order continuing the Status Conference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Lucent Product, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By

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Chapter 7

Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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2:15-11688 Shasa USA LLC

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Adv#: 2:17-01115 Goodrich v. Shanghai Jingtong International Trading Co.

#3.00 Status Hearing

RE: [27] Request that the Clerk Issue Another Summons and Notice of Status Conference (LBR 7004-1(a)(1)(B))

Docket 27

***** VACATED *** REASON: CONTINUED 2-25-19 AT 9:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:16-17275 Alan Riche

Chapter 7

Adv#: 2:17-01526 Riche et al v. Broidy et al

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01526. Notice of Removal of Action pending in state court. by Alan Riche, Wendy Riche against Alan F Broidy, Law Offices of Alan F. Broidy, APC, Illyssa I Fogel, Illyssa I. Fogel & Associates. (Fee Not Required). Nature of Suit: (01 (Determination of removed claim or cause)) (Fogel, Illyssa)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alan Riche

Represented By
Stella A Havkin

Defendant(s):

Alan F Broidy

Pro Se

Law Offices of Alan F. Broidy, APC

Pro Se

Illyssa I Fogel

Represented By
Illyssa I Fogel

Illyssa I. Fogel & Associates

Represented By
Illyssa I Fogel

John Does 1-10

Pro Se

Joint Debtor(s):

Wendy Riche

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Alan Riche

Chapter 7

Plaintiff(s):

Alan Riche

Represented By
Illyssa I Fogel

Wendy Riche

Represented By
Illyssa I Fogel

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jeffrey I Golden
Reem J Bello

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

***** VACATED *** REASON: CONTINUED 2-13-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#6.00 Status Hearing RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

Docket 1

Tentative Ruling:

1/12/2018

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

Timothy M Rosen

Chapter 7

motions to be heard is the next closest date which is available for self-calendaring.)

- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen

Chapter 7

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#7.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

Docket 1

***** VACATED *** REASON: CONTINUED 1-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

Trustee(s):

Rosendo Gonzalez (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

Green Jane Inc

Chapter 7

Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-15374 Sarmen Ghazaryan

Chapter 7

Adv#: 2:17-01385 Financial Services Vehicle Trust, by and through i v. Ghazaryan

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01385. Complaint by Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC, a Delaware limited liability company against Sarmen Ghazaryan. false pretenses, false representation, actual fraud)) (Caley, Rebecca)

fr. 11-14-17

Docket 1

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 A.M.**

Tentative Ruling:

11/13/2017

Defendant's default was entered on September 14, 2017. Doc. No. 18. Plaintiff is ORDERED to file a motion for default judgment by no later than December 15, 2017. A continued status conference will be held on January 16, 2018, at 10:00 a.m. A status report must be submitted by no later than fourteen days prior to the hearing. If default judgment has been entered, the continued status conference will go off calendar. All other dates previously set by the Court are vacated.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sarmen Ghazaryan

Represented By
Vilen Khachatryan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Sarmen Ghazaryan

Chapter 7

Defendant(s):

Sarmen Ghazaryan

Pro Se

Plaintiff(s):

Financial Services Vehicle Trust, by

Represented By
Rebecca A Caley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01473 Construction Laborers Trust Funds For Southern Cal v. ROBBINS

#9.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01473. Complaint by Construction Laborers Trust Funds for So Calif against BRADLEY HILTON ROBBINS. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Hamasaki, Marsha)

fr. 12-12-17

Docket 1

Tentative Ruling:

1/12/2018

This action has settled. Pursuant to the parties' request, made because Defendant is proceeding *in pro per*, the Status Conference will remain on calendar so that the terms of the stipulated judgment may be confirmed on the record.

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

BRADLEY HILTON ROBBINS

Pro Se

Plaintiff(s):

Construction Laborers Trust Funds

Represented By
Marsha M Hamasaki
J. David Sackman
Jeffrey D Sackman

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-17843 Berger Bros., Inc.

Chapter 7

Adv#: 2:17-01510 Berger Bros., Inc. v. Oltmans Construction Co., Inc. et al

#10.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01510. Notice of Removal of State Court Action BC 677553 (Sup Ct.CA, LA) by Berger Bros., Inc.. Steven)

Docket 1

Tentative Ruling:

1/12/2018

The Chapter 7 Trustee (the "Trustee") commenced this action against Oltmans Construction Co., Inc. ("Oltmans") and Westside Family YMCA ("Westside YMCA") in the Los Angeles Superior Court. The Trustee asserts claims for (1) breach of contract, (2) account stated, (3) reasonable value, and (4) foreclosure of a mechanic's lien. Oltmans removed the action to the Bankruptcy Court and filed a statement of non-consent to the Bankruptcy Court's entry of final judgment, as well as a demand for a jury trial. However, in the Joint Status Report, Oltmans modifies its position, stating that it *does* consent to the Bankruptcy Court's entry of final judgment (although it reserves the right to seek withdrawal of the reference). According to the Joint Status Report, the Trustee and Oltmans are drafting a stipulation to remand the case upon certain unspecified conditions.

The Trustee and Oltmans must file the contemplated stipulation for remand by no later than February 2, 2018. If the parties cannot agree upon the terms of the stipulation by that date, the Court will issue an order requiring Oltmans to show cause why this action should not be remanded.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Berger Bros., Inc.

Chapter 7

Debtor(s):

Berger Bros., Inc.

Represented By
Dean G Rallis Jr

Defendant(s):

Oltmans Construction Co., Inc.

Represented By
Steven G Polard

Westside Family YMCA aka YMCA

Pro Se

DOES 1 through 30, inclusive

Pro Se

Plaintiff(s):

Berger Bros., Inc.

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-17843 Berger Bros., Inc.

Chapter 7

Adv#: 2:17-01510 Berger Bros., Inc. v. Oltmans Construction Co., Inc. et al

#11.00 Status Hearing RE: [10] Counterclaim by Oltmans Construction Co., Inc. against Berger Bros., Inc. Counterclaims of Oltmans Construction Co. (Polard, Steven)

Docket 10

Tentative Ruling:

1/12/2018

See Cal. No. 10, above, incorporated herein by reference.

Party Information

Debtor(s):

Berger Bros., Inc.

Represented By
Dean G Rallis Jr

Defendant(s):

Oltmans Construction Co., Inc.

Represented By
Steven G Polard

Westside Family YMCA aka YMCA

Pro Se

DOES 1 through 30, inclusive

Pro Se

Plaintiff(s):

Berger Bros., Inc.

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-18077 Tamara Ann Lopez

Chapter 7

Adv#: 2:17-01489 Lopez v. U.S. Department of Education

#12.00 Status Hearing RE: [1] Adversary case 2:17-ap-01489. Complaint by Tamara Ann Lopez against U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

Docket 1

Tentative Ruling:

1/12/2018

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

Tamara Ann Lopez
calendar.)

Chapter 7

- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Tamara Ann Lopez

Chapter 7

Plaintiff(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#13.00 Status Hearing RE: [1] Adversary case 2:17-ap-01512. Complaint by Fred Rosenberg against ROBERT MARK CARPENTER. fraud as fiduciary, embezzlement, larceny)) (Ure, Thomas)

Docket 1

Tentative Ruling:

1/12/2018

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

ROBERT MARK CARPENTER

Chapter 7

calendar.)

- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... ROBERT MARK CARPENTER

Chapter 7

Plaintiff(s):

Fred Rosenberg

Represented By
Thomas B Ure

FRIENDGIFTR, INC

Represented By
Thomas B Ure

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-20655 Brandon J Duley

Chapter 7

Adv#: 2:17-01513 Duley v. Navient Corporation et al

#14.00 Status Hearing RE: [1] Adversary case 2:17-ap-01513. Complaint by Brandon J Duley against Navient Corporation, Department of Education. (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Raba, Claire)

Docket 1

Tentative Ruling:

1/12/2018

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

Brandon J Duley
calendar.)

Chapter 7

- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Brandon J Duley

Represented By
Claire J Raba

Defendant(s):

Navient Corporation

Pro Se

Department of Education

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Brandon J Duley
DOES 1-10 inclusive

Pro Se

Chapter 7

Plaintiff(s):

Brandon J Duley

Represented By
Leigh E Ferrin
Claire J Raba

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01507 Yoo v. Tan et al

#15.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01507. Complaint by Timothy J Yoo against Tran Hung Tan. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363 (h)))(Avery, Wesley)

Docket 1

***** VACATED *** REASON: CONTINUED 2-6-18 at 10:00 AM**

Tentative Ruling:

1/12/2018

No appearances required. The Court has entered an order continuing this status conference to February 6, 2018, at 10:00 a.m., to take place concurrently with the hearing on the Debtor's relatd motion to dismiss the complaint and the underlying bankruptcy case.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Tran Hung Tan

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Hiep Tan Tran

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01508 Yoo v. Tran

#16.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01508. Complaint by Timothy J Yoo against Hiep Tan Tran. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Avery, Wesley)

Docket 1

***** VACATED *** REASON: CONTINUED 2-6-18 AT 10:00 A.M.**

Tentative Ruling:

1/12/2018

No appearances required. The Court has entered an order continuing this status conference to February 6, 2018, at 10:00 a.m., to take place concurrently with the hearing on the Debtor's relatd motion to dismiss the complaint and the underlying bankruptcy case.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Hiep Tan Tran

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#17.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) (Richards, Jeremy)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED 2-13-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Pro Se

Lantern Brands, Inc., a California

Pro Se

TT Investment Los Angeles Fund I,

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT...

Liberty Asset Management Corporation

Gail S Greenwood

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-24457 8590 Sunset A-FS, LLC dba Cafe Primo

Chapter 11

#18.00 Hearing
RE: [4] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8590 W. SUNSET BLVD., #8.1, 8.1S, 10.1S,15.1B, WEST HOLLYWOOD, CA 90069 . (Durringer, Stephen)

fr: 1-8-18

Docket 4

Tentative Ruling:

1/16/2018

Hearing required.

Party Information

Debtor(s):

8590 Sunset A-FS, LLC dba Cafe

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

2:17-23344 Luis De Jesus Ramos and Devi Renee Ramos

Chapter 7

#19.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: 1HGC R2F3 0EA1 71852 .

Docket 17

Tentative Ruling:

1/12/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

10:00 AM

CONT... Luis De Jesus Ramos and Devi Renee Ramos Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Luis De Jesus Ramos

Represented By
Stephen L Burton

Joint Debtor(s):

Devi Renee Ramos

Represented By
Stephen L Burton

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01401 Yoo v. Gardner et al

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:16-ap-01401. Complaint by Timothy J Yoo against Tamara Nicole Gardner. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Yoo (TR), Timothy)

FR. 5-16-17; 6-13-17; 9-12-17; 11-14-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Tamara Nicole Gardner

Represented By
Stella A Havkin

Tamara Nicole Gardner

Represented By
Stella A Havkin

Plaintiff(s):

Timothy J Yoo

Represented By
Timothy J Yoo
Carmela Pagay

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01478 Yoo v. Del Real et al

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:16-ap-01478. Complaint by Timothy J. Yoo against Luz Angelica Del Real, Sergio Arellano, Tamara Nicole Gardner. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)) (Pagay, Carmela)

fr: 6-13-17; 9-12-17; 11-14-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Luz Angelica Del Real

Represented By
Stella A Havkin

Sergio Arellano

Represented By
Stella A Havkin

Tamara Nicole Gardner

Represented By
Stella A Havkin

Plaintiff(s):

Timothy J. Yoo

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

CONT... Tamara Nicole Gardner

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:16-ap-01343. Complaint by Crystal Waterfalls, LLC against Huesing Holdings LLC. (Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Landsberg, Ian)

FR. 4-11-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Huesing Holdings LLC

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#104.00 Pre-Trial Conference
RE: [11]RE: [11] **COUNTERCLAIM** by Huesing Holdings LLC against Crystal Waterfalls, LLC for Reformation of Deeds of Trust with Proof of Service

Docket 11

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Huesing Holdings LLC

Represented By
Kyra E Andrassy

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#105.00 PRETRIAL
RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17

Docket 1

***** VACATED *** REASON: CONTINUED 4-17-18 at 11:00**

Tentative Ruling:

7/10/2017 (amended after hearing): The Committee and Ms. Ho engaged in a day-long session of mediation on June 26, 2017, and a second mediation session is scheduled to take place on July 26, 2017. Based upon the request of both the Committee and Ms. Ho that trial not be scheduled until 2018 in order to reduce attorneys' fees, the Court ORDERS that the following dates shall apply:

A continued status conference will take place on October 17, 2017, at 10:00 a.m. A Joint Status Report, which should discuss the status of settlement negotiations between the Committee and Ms. Ho, must be submitted by no later than fourteen days prior to the hearing.

A pretrial conference will take place on January 16, at 11:00 a.m. A Joint Pretrial Stipulation must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing.

Trial will take place during the week of **February 26, 2018**. The trial day commences at 9:00 a.m. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

Because William Crockett's withdrawal as counsel for Benjamin Kirk will not delay the proceedings, the Court will grant Mr. Crockett's motion to withdraw. Mr. Kirk is

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11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

strongly advised to retain new counsel. Mr. Kirk is further advised that if he does not retain counsel, he will be held to the same standard as an attorney, and the trial date will not be continued based on his lack of representation by counsel.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 11

#106.00 HearingRE: [13] U.S. Trustee Motion to dismiss or convert under 11 U.S.C. Section 1112(b) of the Bankruptcy Code; Declaration of Legal Clerk; Proof of Service . (Law, Dare)

Docket 13

Tentative Ruling:

1/11/2018

The Court GRANTS the United States Trustee's Motion requesting conversion of the case to Chapter 7. Conversion of the case serves the best interest of creditors and the Estate.

Pleadings Filed and Reviewed:

- 1) Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon ("Motion") [Doc. No. 13]
 - a) Declaration of Hatty Yip [Doc. No. 13]
 - b) Declaration of Maria A. Ramos [Doc. No. 13]
- 2) Supplement to Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 19]
- 3) No opposition filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Crestalliance, LLC (the "Debtor") filed a voluntary Chapter 11 petition on November 22, 2017 (the "Petition") [Doc. No. 1]. The Petition was deficient of a number of required documents and disclosures. The Debtor's Schedules state that the Debtor owns or has an interest in three separate properties (collectively, the "Properties"). See "Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy Under Chapter 11" [Doc. No. 10] at 6. The Debtor previously filed a

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11:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 11

Chapter 11 case on August 24, 2017, Case No. 2:17-bk-20450-ER. That case was dismissed without a re-filing bar on October 18, 2017 [Doc. No. 39] pursuant to the Court's Order Granting the United States Trustee's Motion to Dismiss or Convert [Doc. No. 39].

The Motion

The United States Trustee ("UST") filed the "Motion Under 11 U.S.C. § 1112 (b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon" (the "Motion") [Doc. No. 20] on December 14, 2017. The Motion seeks to Convert, Dismiss or Appoint a Chapter 11 Trustee due to the Debtor's failure to file required documents and information. To date, no Disclosure Statement or Plan of Reorganization has been filed or submitted by the Debtor. The Debtor has also failed to comply with the requirements of the United States Trustee Chapter 11 Notices and Guides, the Bankruptcy Code and/or Local Rules by failing to provide documents, financial reports or attend requested meetings as follows:

1. Notice of Setting/Increasing Insider Compensation;
2. Application to Employ Attorney;
3. Declaration of Debtor Regarding Compliance with U.S. Trustee Chapter 11 Guidelines and Requirements for Chapter 11 Debtors in Possession ("Chapter 11 Compliance Declaration");
4. Real Property Questionnaire
5. Sufficient evidence of closing all pre-petition bank accounts
6. Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts;
7. Sufficient evidence of current insurance coverage
8. Proof of required certificates and/or applicable licenses in the Chapter 11 Compliance Declaration;

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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

CONT...

CRESTALLIANCE, LLC

Chapter 11

9. A list of insiders in the Chapter 11 Compliance Declaration;
10. Financial Statement of information in the Chapter 11 Compliance Declaration;
11. A projected cash flow statement for the first 90 days of operation under chapter 11;
12. A conformed copy of the recording of the Debtor's bankruptcy petition in each county in which real property is owned;
13. A Statement of Major Issues and Timetable Report;
14. Provide copies of the preceding two years of state and federal income tax returns and the most recent payroll and sales tax returns at the Initial Debtor Interview;
15. An Employee Benefit Plan Questionnaire;
16. Monthly Operating Report(s):
 - a. Since filing
 - b. For the following periods: MOR for November and December 2017 will be due by the hearing date on the Motion;
17. Pay quarterly fees:
 - a. Since filing
 - b. For the following quarters: 4th Quarter 2017 fees continue to accrue. At the time of the hearing 1st Quarter 2018 fees will be accruing.

Based on a review of the Debtor's Schedules, the UST believes that dismissal is in the best interest of creditors because it appears that there are no assets that a trustee can readily administer in a Chapter 7 case. The principal place of business listed on the Petition appears to be a UPS store. "Declaration of Maria A. Ramos"

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11:00 AM

CONT... CRESTALLIANCE, LLC
("Ramos Declaration") [Doc. No. 13].

Chapter 11

The UST filed the "Supplement to Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon" ("Supplement to the Motion") [Doc. No. 19] on January 9, 2018. The Supplement to the Motion states that no timely opposition to the Motion has been filed. New information has come to light after the Debtor's principal testified at the meeting of creditors held on January 8, 2018. First, notwithstanding the dismissal of the Debtor's first case and the Debtor's request that the Court not impose a re-filing bar, the Debtor has failed to submit any compliance or documents to the UST. "Declaration of Hatty Yip" ("Yip Declaration") [Doc. No. 13] at ¶ 4. Second, the UST notes that it appears the Debtor has hired a real estate agent and received an offer; however, the Debtor has not filed an application to employ counsel, an application to employ any real estate agent, or any sale motion. *Id.* at ¶ 5. It also appears that the Debtor may have spent cash collateral/post-petition rental proceeds without Court authorization. *Id.* at ¶ 6. Lastly, the Debtor's principal testified at the meeting of creditors that there may be \$700,000 equity in the Properties. *Id.* at ¶ 7. It also appears that the Debtor loaned over \$580,000 to another entity in 2017, but this transaction was not listed on the Debtor's Schedules. *Id.* at ¶ 8.

Based on this, the UST believes that cause exists to convert the case to Chapter 7 and that conversion to Chapter 7 is in the best interest of the Estate. The UST does not believe that the Debtor's principal can act as a fiduciary or fulfill the debtor-in-possession requirements. Additionally, the UST believes that based on the equity in the Properties and the outstanding recent loans to another entity, a Chapter 7 trustee can fully evaluate and administer the Estate. Lastly, there does not appear to be any business to operate other than liquidating the properties.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including: "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or

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Los Angeles
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11:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 11

the bankruptcy administrator, if any);" "(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;" "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;" and "(K) failure to pay any fees or charges required under chapter 123 of title 28." 11 U.S.C. § 1112(b)(4). Here, the Court finds sufficient "cause" for dismissal or conversion of the Debtor's case pursuant to 11 U.S.C. § 1112(b). The Debtor has, among other things, failed to provide multiple required documents and disclosures and has failed to pay quarterly fees to the UST as described above. Additionally, it appears based on the equity in the Properties and the recent loans to another entity, that a Chapter 7 trustee can fully evaluate the assets and administer the Estate.

Having determined that cause exists, the Court must next determine whether dismissal or conversion serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)). Here, conversion of the case serves the best interest of creditors and the Estate. The UST has not received any compliance and there does not appear to be any business to operate. However, because there appears to be assets for a trustee to administer, conversion to Chapter 7 is in the best interest of creditors.

III. Conclusion

In conclusion, the Court GRANTS the United States Trustee's Motion requesting conversion of the case to Chapter 7. Conversion of the case serves the best interest of creditors and the Estate.

The United States Trustee shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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CONT... CRESTALLIANCE, LLC

Chapter 11

Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

**United States Bankruptcy Court
Central District of California
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Tuesday, January 16, 2018

Hearing Room 1568

11:00 AM

2:17-21317 Kristine Aleksanyan

Chapter 7

#107.00 HearingRE: [12] Motion for extension of time to file a complaint objecting to discharge under 11 U.S.C. 727 and/or motion to dismiss case under 11 U.S.C. 707(b)(3) by the United States Trustee only; Memorandum of Points and Authorities and Declaration of Alvin Mar in Support Thereof (Mar, Alvin)

Docket 12

Tentative Ruling:

1/11/2018

For the reasons set forth below, the UST's Motion is GRANTED in its entirety. The UST shall have through and including March 23, 2018 to file a Motion to Dismiss under § 707(b)(3) and a Complaint Objecting to the Debtor's Discharge under § 727.

Pleadings Filed and Reviewed:

- 1) Motion of the United States Trustee for Extension of Deadline Date for Filing A Motion to Dismiss under § 707(b)(3) and a Complaint Objecting to the Debtor's Discharge under § 727 by the United States Trustee Only (the "Motion") [Doc. No. 12]
- 2) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Kristine Aleksanyan (the "Debtor") filed a voluntary Chapter 7 petition on September 15, 2017 (the "Petition") [Doc. No. 1]. The first date set for the Debtor's § 341(a) meeting of creditors was October 23, 2017.

On December 21, 2017, the United States Trustee (the "UST") filed the "Motion of the United States Trustee for Extension of Deadline Date for Filing A Motion to Dismiss under § 707(b)(3) and a Complaint Objecting to the Debtor's Discharge under § 727 by the United States Trustee Only" (the "Motion") [Doc. No. 12]. The Motion requests that the Court extend the deadline for filing a motion to dismiss under § 707(b)(3) and a complaint objecting to the debtor's discharge under § 727 for

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CONT... Kristine Aleksanyan

Chapter 7

approximately ninety (90) days up to and including March 23, 2018 to allow the UST to complete his investigation into whether the Debtor's case warrants dismissal under § 707(b)(3). The UST states that a review of the Debtor's Petition, schedules, and testimony at the § 341(a) meeting held on December 1, 2017, raises questions regarding the Debtor's financial affairs. The UST requires additional time to conduct an investigation and obtain documents to determine the Debtor's financial affairs. Such investigation will include conducting the Debtor's examination under FRBP 2004.

II. Findings of Fact and Conclusions of Law

Bankruptcy Rules 4004(a) and 1017(e)(1) control the time frames for a complaint under § 727 or a motion to dismiss under § 707(b)(3). Bankruptcy Rules 4004(a) and 1017(e)(1) provide that such a complaint or motion shall be filed no later than 60 days following the first date set for the § 341(a) meeting of creditors. Pursuant to Rules 4004(a) and 1017(e)(1), the Court may extend the deadline for filing a complaint objecting to the Debtor's discharge and motion to dismiss for abuse if the motion to extend time is filed before the expiration of the 60-day time period.

Here, the Court finds that cause exists for the extension of the deadline, and that the Motion was filed prior to the expiration of the 60-day time period under Bankruptcy Rules 4004(a) and 1017(e)(1). The first date for the Debtor's § 341(a) meeting of creditors was October 23, 2017; thus, the deadline for the motion to extend time was December 22, 2017, and the Motion was filed by the UST on December 21, 2017. Therefore, the UST's Motion was filed timely. Additionally, the Court finds that the UST needs additional time to complete his investigation of the Debtor's financial affairs, which is part of the UST's statutory duties under 28 U.S.C. § 586.

III. Conclusion

Based on the foregoing, the Court GRANTS the UST's Motion in its entirety. The UST shall have through and including **March 23, 2018** to file a Motion to Dismiss under § 707(b)(3) and a Complaint Objecting to the Debtor's Discharge under § 727.

The UST shall lodge a conforming order within seven (7) days of the hearing.

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CONT... Kristine Aleksanyan

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kristine Aleksanyan

Represented By
Garabed Kamarian

Trustee(s):

John J Menchaca (TR)

Pro Se

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Wednesday, January 17, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#1.00 Hearing

RE: [258] Motion For Summary Judgment Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or, in the Alternative, for Equitable Subordination of Claims and Proofs of Claim; Memorandum of Points and Authorities in Support Thereof

fr. 11-7-17

Docket 258

***** VACATED *** REASON: CONTINUED 1-24-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis

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CONT... EPD Investment Co., LLC

Chapter 7

Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#2.00 Hearing

RE: [259] Motion For Summary Judgment Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent; Memorandum of Points and Authorities in Support Thereof

fr. 11-7-17

Docket 259

***** VACATED *** REASON: CONTINUED 1-24-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

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CONT... EPD Investment Co., LLC

Chapter 7

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#3.00 Pre-Trial Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17

Docket 234

***** VACATED *** REASON: CONTINUED 2-21-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

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CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#4.00 HearingRE: [11] Motion to Dismiss Adversary Proceeding

Docket 11

Tentative Ruling:

1/16/2018

For the reasons set forth below, the Motion to Dismiss is DENIED. Defendants must answer the Complaint by no later than January 31, 2018. By separate order, the Court will require the Alleged Contemnors to show cause why they should not be held in contempt for violating the automatic stay.

Pleadings Filed and Reviewed:

- 1) Defendants' Motion to Dismiss:
 - a) Complaint for: (1) Declaratory Relief; (2) Avoidance of Equitable Claim to Debtor's BevTech Shares and Interest in License Agreement Pursuant to 11 U.S.C. §544(a); (3) Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. §550(a); (4) Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; (5) Subordination of Claim Pursuant to 11 U.S.C. §510(b); and (6) Objection to Claim Pursuant to 11 U.S.C. §502(b) (the "Complaint") [Adv. Doc. No. 1]
 - b) BevTech, Inc., and Green CO2 IP, LLC's Motion to Dismiss the Trustee's Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can BE Granted Under FRCP Rule 12(b)(2) and (6) and Rule 7012 of the Bankruptcy Code (the "Motion to Dismiss") [Adv. Doc. No. 11]
 - i) Notice of Motion to Dismiss [Adv. Doc. No. 12]
 - c) Opposition of Chapter 7 Trustee to BevTech, Inc., and Green CO2 IP, LLC's Motion to Dismiss the Trustee's Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can Be Granted Under FRCP Rule 12(b)(2) and (6) and Rule 7012 of the Bankruptcy Code (the "Opposition") [Adv. Doc. No. 14]
 - d) BevTech, Inc., and Green CO2 IP, LLC's Reply to Chapter 7 Trustee's Opposition to BevTech, Inc., and Green CO2 IP, LLC's Motion to Dismiss the

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CONT...

Green Jane Inc

Chapter 7

Trustee's Complaint for Lack of Personal Jurisdiction and for Failure to State a Claim Upon Which Relief Can BE Granted Under FRCP Rule 12(b)(2) and (6) and Rule 7012 of the Bankruptcy Code (the "Reply") [Adv. Doc. No. 19]

- i) Supplemental: Exhibits A–C [Adv. Doc. No. 20]
- 2) Trustee's Application for Issuance of Order to Show Cause Re Contempt:
 - a) Notice of Motion and Motion of Chapter 7 Trustee for Entry of Order to Show Cause Why Green Co2 IP, LLC, BevTech, Inc., Michael K. Schutte, Daniel Schneider, Brett Schutte, Randall Willard and Willard & Associates, P.C. Should Not be Held in Contempt for Violation of the Automatic Stay [Bankr. Doc. No. 133]
 - b) Objection to Issuance of Order to Show Cause Why Green Co2 IP, LLC, BevTech, Inc., Michael K. Schutte, Daniel Schneider, Brett Schutte, Randall Willard and Willard & Associates, P.C. Should Not be Held in Contempt for Violation of the Automatic Stay [Bankr. Doc. No. 135]

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on March 6, 2017 (the "Petition Date"). On May 26, 2017, the Court converted the case to Chapter 7. *See* Memorandum of Decision (1) Converting Case to Chapter 7, (2) Denying Motion to Dismiss for Improper Venue or in the Alternative to Transfer Venue, and (3) Denying as Moot Debtor's Application to Employ Stillman & Associates as General Bankruptcy Counsel (the "Conversion Memorandum") [Bankr. Doc. No. 58] and Order Converting Case to Chapter 7 [Bankr. Doc. No. 61]. In the Conversion Memorandum, the Court found that the Debtor had been "woefully deficient" and had "displayed a cavalier attitude" regarding its obligations to comply with reporting requirements imposed by the United States Trustee (the "UST"). Conversion Memorandum at 6–7.

Rosendo Gonzalez has been appointed as the Chapter 7 Trustee (the "Trustee"). On August 29, 2017, the Court granted the Trustee's application to employ Greenberg Glusker Fields Claman & Machtinger LLP ("Greenberg Glusker") as special litigation counsel. Bankr. Doc. No. 105. On October 30, 2017, the Trustee filed a complaint against BevTech, Inc. ("BevTech") and Green CO2 IP, LLC ("GCO2 IP") (the "Complaint").

The Complaint's Allegations

The allegations of the Complaint are as follows:

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The Transfer of 80% of BevTech's Shares to the Debtor

The Debtor and the Debtor's wholly-owned subsidiary, GI SPE-Green CO2, LLC ("GI-SPE") and BevTech are parties to an Agreement in Corporate Reorganization dated as of January 1, 2015 (the "Reorganization Agreement"). Complaint at ¶11. Under the Reorganization Agreement, BevTech and GI-SPE would merge. *Id.* The Debtor, as the parent company of the merged entity GI-SPE, would receive 80% of all of BevTech's issued and outstanding voting and non-voting shares (the "BevTech Shares"). *Id.* at ¶12. The intent of the Reorganization Agreement was to effectuate a "reverse triangular A reorganization," pursuant to Internal Revenue Code §368(a)(2) (E), for the purpose of avoiding tax liability. *Id.* The Reorganization Agreement closed prior to the Petition Date and the BevTech Shares transferred to the Debtor in their entirety. *Id.* at ¶13. Pursuant to the Reorganization Agreement and Debtor's ownership of the BevTech Shares, the Debtor was entitled to certain shareholder distributions (the "BevTech Distributions"). The BevTech Distributions have not been paid and are being withheld by BevTech. *Id.* at ¶15.

The License Agreement

Prior to execution of the Reorganization Agreement, BevTech transferred certain valuable intellectual property rights (the "BevTech IP") to a newly formed entity, GCO2 IP, for no consideration. *Id.* at ¶18. The shareholders of BevTech and GCO2 IP were substantially identical. *Id.* The purpose of the transfer of the BevTech IP was to entice shareholders of BevTech, who would lose most of their shares in BevTech through the Reorganization Agreement, to authorize BevTech's merger with the Debtor through the Reorganization Agreement. *Id.* at ¶¶18–19. Following the transfer of the BevTech IP to GCO2 IP, the Debtor, BevTech, and GCO2IP entered into a License Agreement dated as of January 1, 2015 (the "License Agreement"). Under the License Agreement, GCO2 IP licensed the BevTech IP back to BevTech, which, in turn, would be controlled by the Debtor pursuant to the Reorganization Agreement.

The Colorado Action

Prior to the Petition Date, on November 23, 2015, BevTech and GCO2 IP (collectively, the "BevTech Parties") filed a complaint against, among others, the Debtor and the Debtor's former principal, Michael Citron, in the Larimer County District Court in the State of Colorado (the "Colorado Court"), Case No. 15-cv-31002 (the "Colorado Action"). In the Colorado Action, BevTech alleges that the Debtor

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failed to meet milestones under the License Agreement that the Debtor was required to meet in order to earn the BevTech Shares. Pursuant to the operative Third Amended Complaint, the BevTech Parties have elected rescission of the License Agreement and the Reorganization Agreement as their sole remedy. On March 10, 2017, the Colorado Court entered an order that the BevTech Parties' claims against Mr. Citron for breach of fiduciary duty were not affected by the automatic stay. The Colorado Court conducted a two-day trial as to the claims against Mr. Citron on March 16–17, 2017, and thereafter entered judgment against Mr. Citron in the amount of \$491,821.66. *Id.* at ¶32.

BevTech's Proof of Claim

On October 2, 2017, BevTech filed Proof of Claim No. 17 (the "BevTech Claim"), asserting an unsecured claim in the amount of \$880,998.37. *Id.* at ¶34. The basis for the claim is "[e]xpenses and debt incurred at the behest of the Debtor." *Id.*

The Complaint's Claims for Relief

Based upon the foregoing allegations, the Complaint seeks the following relief:

- 1) A declaratory judgment stating that the BevTech Shares are property of the estate pursuant to §541(a). *Id.* at ¶38.
- 2) Avoidance of the BevTech Parties' claims for rescission in the Colorado Action, pursuant to §544(a), accompanied by a judgment confirming that the BevTech Shares and Debtor's interest in the License Agreement are assets of the Bankruptcy Estate. *Id.* at ¶¶40–42.
- 3) To the extent that the Court finds that the BevTech Parties' claims for rescission are avoidable, recovery of such claims for the benefit of the estate, pursuant to §550(a). *Id.* at ¶44.
- 4) Turnover of the BevTech Distributions, pursuant to §542(a). *Id.* at ¶47.
- 5) Subordination of the BevTech Claim pursuant to §510(b), based on the fact that the BevTech Claim arises in connection with the purchase of securities of the Debtor or an affiliate of the Debtor. *Id.* at ¶51.
- 6) Disallowance of the BevTech Claim pursuant to §502(b), because the rescission remedy elected by BevTech in the Colorado Action precludes BevTech from obtaining any monetary damages against the Debtor in connection with the Reorganization Agreement and/or License Agreement. *Id.* at ¶56.

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BevTech and GCO2 IP's Motion to Dismiss

BevTech and GCO2 IP (collectively, the "Defendants") move to dismiss the Complaint for lack of personal jurisdiction, pursuant to Civil Rule 12(b)(2), and for failure to state a claim upon which relief can be granted, pursuant to Civil Rule 12(b)(6). Defendants make the following arguments in support of the Motion to Dismiss:

On November 6, 2017, Randall M. Willard, BevTech's counsel in the Colorado Action, discovered that the Debtor before the Court is not the same corporate entity as the corporation that BevTech contracted with. BevTech entered into the Reorganization and License Agreement with Green Jane, Inc., a Delaware corporation ("Green Jane-Delaware"). The entity that commenced bankruptcy proceedings is Green Jane, Inc., a Colorado corporation ("Green Jane-Colorado"). The federal tax identification number listed by the Debtor on its voluntary petition is 47-3308995, which is the tax identification number that belongs to Green Jane-Colorado. Further, on May 22, 2017, the Debtor filed a "Statement and Designation of Foreign Corporation" with the California Secretary of State, which indicates that the filing corporation's jurisdiction is Colorado. The address shown in the "Statement and Designation of Foreign Corporation" is the same address used by the Debtor on the voluntary petition.

Because the entity with whom BevTech contracted with, Green Jane-Delaware, is not before the Court, the Trustee's Complaint must be dismissed for lack of personal jurisdiction and for failure to state a claim upon which relief can be granted. All of the claims raised in the Complaint presuppose that the Debtor is Green Jane-Delaware, when in fact the Debtor is Green Jane-Colorado. The Trustee may raise only claims against BevTech or GCO2 IP that arise from transactions or agreements involving Green Jane-Colorado. The Complaint raises no such claims, as all its allegations are directed at transactions entered into between BevTech, GCO2 IP, and Green Jane-Delaware.

Even if Green Jane-Delaware (the entity with which BevTech and GCO2 IP contracted with) is the Debtor before the Court, the Complaint must still be dismissed for lack of jurisdiction, because Green Jane-Delaware lacked the legal capacity to seek bankruptcy protection. At the time of the filing of the petition, Green Jane-Delaware's corporate existence had been voided by the Delaware Secretary of State because of a \$407,690.03 tax delinquency. As a result, Green Jane-Delaware lacked legal capacity to file for bankruptcy, and likewise lacked legal capacity even to convene a meeting of the board of directors to consider and approve a bankruptcy filing. It is likely that the Debtor intentionally filed the case as Green Jane-Colorado because it did not want to

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pay the substantial tax bill necessary to revive Green Jane-Delaware.

The Trustee's Opposition to the Motion to Dismiss

The Trustee makes the following arguments in Opposition to the Motion to Dismiss:

Although the voluntary petition erroneously listed the tax identification number of Green Jane-Colorado rather than the correct tax identification number for the Debtor, Green Jane-Delaware, the contents of the Schedules and Statement of Financial Affairs clearly refer to the liabilities, creditors, and equity holders of the Green Jane-Delaware. In the Conversion Memorandum, the Court recognized that the Debtor is a Delaware corporation. The use of the tax identification number for Green Jane-Colorado on the Petition was nothing more than an inadvertent clerical error. In addition, contrary to the assumption underlying the Motion to Dismiss, the tax identification number listed on the Petition is not dispositive as to the Debtor's identity. Further, the fact that the Debtor's address in the Petition is also the address of Green Jane-Colorado shows only that Green Jane-Delaware and Green Jane-Colorado share the same address, which is not surprising as both entities are related and were both incorporated by Michael Citron.

There is no merit to BevTech's contention that the Debtor's delinquent status with the state of Delaware invalidates the bankruptcy filing. "Even corporations which have forfeited their state charters may retain sufficient corporate identity and power necessary to file a voluntary petition under chapter 7 if chapter 7 would afford a process for orderly liquidation of the estate which is consistent with state law." 2 Collier on Bankruptcy ¶301.08[1], p. 310-13 (R. Levin & H. Sommers eds., 16th ed.) (footnote omitted). Delaware law provides that a corporation's failure to pay taxes shall cause the charter of the corporation to become void "and all powers conferred by law upon the corporation are declared inoperative." Del. Code Ann. Tit. 8 §510. This provision "must be read in light of [Delaware Corporations Code] §312(e), which provides for retroactive validation of contracts made during this voided period and exclusive corporate liability under such contracts if the certificate is reinstated." *Midland Interiors, Inc. v. Burleigh*, 2006 WL 3783476, at *4 (Del. Ch. Dec. 19, 2006). Pursuant to Delaware Corporations Code §312, upon the payment of delinquent taxes the corporation is revived with the same force and effect as if its certificate of incorporation had not been voided.

Similar to the procedure in Delaware, California also provides for the revival of a corporation whose charter has been suspended for failure to pay taxes. The similarities

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between a "suspended" corporation in California and a "void" corporation in Delaware are especially relevant in light of the decision in *In re Feature Homes*, 116 B.R. 731, 733 (Bankr. E.D. Cal. 1990). In *Feature Homes*, the Franchise Tax Board argued that the suspended status of the Debtor for failure to file a tax return stripped the Debtor of standing to seek relief under the Bankruptcy Code. The court rejected this argument and allowed the bankruptcy case to proceed, reasoning:

It is clear that such an interpretation would impermissibly turn the priority scheme underlying the Bankruptcy Code on its head by allowing states to expressly condition an entity's right to file a petition in bankruptcy upon the satisfaction of their prepetition claims. Such a result was obviously not contemplated or intended by Congress.

Feature Homes, 116 B.R. at 733.

Although the Debtor is a Delaware entity and Delaware law applies, the holding of *Feature Homes* is fully applicable. Regardless of whether a Chapter 11 reorganization could have ultimately occurred, now that the case has been converted to Chapter 7, the Debtor remains eligible for liquidation. This rule makes sense from the vantage point of creditors, who are especially in need of the protections afforded by a collective proceeding where corporate formalities have not been followed.

Even corporations that have been dissolved—as opposed to the Debtor's mere "void" status for tax delinquency—have been held to have standing to seek bankruptcy protection. See *Santa Fe Minerals v. BEPCO (In re 15375 Memorial Corp.)*, 382 B.R. 652, 681 (Bankr. D. Del. 2008) ("Bankruptcy courts have consistently held that where state law authorizes a dissolved corporation to remain in existence after dissolution to wind up its affairs, the dissolved corporation is eligible to file for bankruptcy protection under Section 109 of the Bankruptcy Code."), *rev'd on other grounds*, 400 B.R. 420 (D. Del. 2009), *aff'd*, 589 F.3d 605 (3d Cir. 2009). The result in *BEPCO* is applicable here because Delaware law provides that any dissolved corporation "shall nevertheless be continued, for the term of 3 years from such expiration or dissolution . . ., to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets." Delaware Corporations Code §278 (Del. Code Ann. Tit. 8, §510).

In addition, the Motion to Dismiss should be stricken because it was not filed timely. The Trustee agreed to extend the Defendants' time to respond to the Complaint to December 8, 2017, but Defendants did not file the Motion to Dismiss until December 11, 2017. Further, it is inappropriate for Defendants to raise the

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argument that the wrong Debtor is before the Court in the context of a Motion to Dismiss. Such an argument should be asserted in the main bankruptcy case and after notice to creditors.

BevTech and GCO2 IP's Reply in Support of the Motion to Dismiss

BevTech and GCO2 IP make the following arguments in reply to the Trustee's Opposition:

Contrary to the Trustee's contention, Defendants were entitled to assert their arguments with respect to the Debtor's identity in the context of a Motion to Dismiss, and were not required to raise these arguments in the main bankruptcy case. Defendants' jurisdictional arguments are a defense that may be properly raised in an adversary proceeding pursuant to Civil Rule 12(b).

The Court should not strike the Motion to Dismiss because it was filed on Monday, December 11 rather than on Friday, December 8. The minor delay was due to excusable neglect and does not prejudice the Trustee.

The Trustee's reliance upon *Feature Homes*, for the proposition that Green Jane-Delaware's void status does not prevent it from filing for bankruptcy protection, is misplaced. *Feature Homes* involves a California corporation and the application of California law. Under Delaware law, a void corporation cannot take any action. Thus, Green Jane-Delaware could not have filed for bankruptcy and could not have even issued a corporate resolution finding that a bankruptcy petition was necessary.

The Trustee's Application for Issuance of an Order to Show Cause Re Contempt and BevTech and GCO2 IP's Opposition

The Trustee applies for issuance of an order requiring BevTech, GCO2 IP, Michael K. Schutte, Daniel Schneider, Brett Schutte, Randall Willard, and Willard & Associates, PC (collectively, the "Alleged Contemnors") to show cause why they should not be held in contempt for violating the automatic stay. According to the Trustee, on December 4, 2017, the Alleged Contemnors served upon the Trustee a "Notice of Material Default" (the "Notice of Default"), purporting to terminate the license to the BevTech IP granted to Green Jane-Delaware pursuant to the License Agreement. The Trustee notes that the Alleged Contemnors served the Notice of Default only one week after the Court, in connection with the denial of BevTech's motion for stay-relief, had found that the License Agreement was one of the principal assets of the estate.

The Alleged Contemnors do not dispute issuing the Notice of Default, but contend

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that their actions do not violate the stay because it is Green Jane-Colorado, not Green Jane-Delaware, that is the Debtor before the Court.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

The Court Declines to Strike the Motion to Dismiss

As a threshold matter, the Court declines the Trustee's request that the Motion to Dismiss be stricken as untimely. The Motion to Dismiss was filed on Monday, December 11, 2017—three days after the Friday, December 8 deadline. The Trustee has not been prejudiced by this minor delay.

The Debtor Before the Court is Green Jane-Delaware

Where a motion to dismiss is predicated upon jurisdictional grounds, the Court in

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some circumstances may hear evidence regarding factual disputes:

Ordinarily, where a jurisdictional issue is separable from the merits of a case, the court may determine jurisdiction by the standards of a ... motion to dismiss for lack of jurisdiction. In such a situation, the district court is:

free to hear evidence regarding jurisdiction and to rule on that issue prior to trial, resolving factual disputes where necessary. In such circumstances, "[n]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims."

Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987).

Having considered the evidence presented by Defendants, the Court finds that the Debtor before it is Green Jane-Delaware, not Green Jane-Colorado. Accordingly, the Court rejects Defendants' contention that the Complaint must be dismissed either on jurisdictional grounds or for failure to state a claim upon which relief can be granted.

In support of their contention that the petition was filed by Green Jane-Colorado, Defendants primarily rely upon the Debtor's use of Green Jane-Colorado's tax identification number on the voluntary petition. The Court finds that the tax identification number is not controlling for purposes of determining the Debtor's identity. Of the vast amount of information contained in the voluntary petition and accompanying schedules, the tax identification number is only one small component. Here, all the information aside from the tax identification number indicates that the Debtor is Green Jane-Delaware, not Green Jane-Colorado. The assets, liabilities, and creditors listed on the schedules are those of Green Jane-Delaware. The License Agreement entered into between Green Jane-Delaware and the Defendants that is at issue in this litigation is scheduled. Bankr. Doc. No. 11, ¶62. The "Corporate Resolution Authorizing Filing [of] Chapter 11 Petition" states that the Debtor is a Delaware corporation.

Defendants also point to the "Statement and Designation of Foreign Corporation" (the "Foreign Corporation Designation") to support their claim that Green Jane-Colorado is the Debtor before the Court. On May 22, 2017, Michael Citron filed the Foreign Corporation Designation. The document lists Colorado as the jurisdiction in which "Green Jane, Inc." was formed, and lists Green Jane, Inc.'s business address as "13763 Fiji Way, Suite EU-4, Marina Del Rey, CA 90292." Defendants' theory is that the Foreign Corporation Designation provides further evidence that it was Green Jane-Colorado that filed the petition, because the address listed on the petition is the same

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as the address on the Foreign Corporation Designation.

The Court rejects Defendants' contention that the Foreign Corporation Designation indicates that Green Jane-Colorado is the entity that commenced bankruptcy proceedings. Green Jane-Colorado and Green Jane-Delaware are related entities that were both incorporated by Michael Citron. Thus, it is not surprising that Mr. Citron would use the same address for both entities.

Along similar lines, Defendants assert that Mr. Citron's failure to file a Foreign Corporation Designation on behalf of Green Jane-Delaware shows that the Debtor before the Court must be Green Jane-Colorado. The assumption underlying the argument is that if Mr. Citron had intended to cause Green Jane-Delaware to seek bankruptcy protection, he would have filed a Foreign Corporation Designation on behalf of that entity. The Court finds Defendants' argument to be unpersuasive. In the Conversion Memorandum, the Court found that the Debtor's compliance with its obligations under the Bankruptcy Code had been "woefully deficient." Conversion Memorandum at 6. The Court noted that Mr. Citron was responsible for certain of the deficiencies, noting, for example, that Mr. Citron had failed to sign the Debtor's March Monthly Operating Report as required by the Local Bankruptcy Rules. *Id.* at p. 7, ¶4. The only inference to be drawn from Mr. Citron's failure to file a Foreign Corporation Designation on behalf of Green Jane-Delaware is that Mr. Citron did not act diligently to insure that Green Jane-Delaware's interests were protected prior to the conversion of the case to Chapter 7.

The Voiding of Green Jane-Delaware's Corporate Status for Failure to Pay Taxes Did Not Prevent Green Jane-Delaware from Commencing the Petition

In the alternative, Defendants assert that Green Jane-Delaware lacked the ability to commence a bankruptcy petition because its status as a corporation had been voided for failure to pay taxes. The Court finds this argument to be without merit.

Delaware law provides that a corporation's failure to pay taxes shall cause the charter of the corporation to become void "and all powers conferred by law upon the corporation are declared inoperative." Del. Code Ann. Tit. 8 §510. If a corporation subsequently cures the tax delinquencies, its charter can be revived. Revival of the charter retroactively validates all actions taken during the period when the charter was void. Del. Code Ann. Tit. 8, §510.

California law contains similar provisions. In California, a corporation may be "suspended" if it fails to meet its tax obligations. Cal. Rev. Code §§23301 & 23305. A corporation that has been suspended for failure to comply with tax obligations may

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have its corporate powers reinstated if it files all delinquent tax returns and pays delinquent taxes and penalties. *Id.* at §23305. Reinstatement is sometimes referred to as “revival.” “The revival of corporate powers validates any procedural step taken on behalf of the corporation while it was under suspension.” *Benton v. Cty. of Napa*, 226 Cal. App. 3d 1485, 1490, 277 Cal. Rptr. 541, 545 (Cal. Ct. App. 1991).

In view of the similarities between California and Delaware law with respect to the status of corporations with tax delinquencies, the Court finds the holding in *In re Feature Homes, Inc.*, 116 B.R. 731, 733 (Bankr. E.D. Cal. 1990) to be controlling. The *Feature Homes* court rejected the contention that a corporation’s suspended status prevented it from seeking bankruptcy protection:

It is clear that such an interpretation would impermissibly turn the priority scheme underlying the Bankruptcy Code on its head by allowing states to expressly condition an entity's right to file a petition in bankruptcy upon the satisfaction of their prepetition claims. Such a result was obviously not contemplated or intended by Congress.

Feature Homes, 116 B.R. at 733.

In addition, the Court finds that under Delaware law, even if the Debtor had been dissolved—rather than merely voided—it still would have been eligible to seek bankruptcy protection. “Bankruptcy courts have consistently held that where state law authorizes a dissolved corporation to remain in existence after dissolution to wind up its affairs, the dissolved corporation is eligible to file for bankruptcy protection under Section 109 of the Bankruptcy Code.” *Santa Fe Minerals v. BEPCO (In re 15375 Memorial Corp.)*, 382 B.R. 652, 681 (Bankr. D. Del. 2008), *rev’d on other grounds*, 400 B.R. 420 (D. Del. 2009), *aff’d*, 589 F.3d 605 (3d Cir. 2009). *BEPCO’s* holding applies because Delaware law authorizes a dissolved corporation to remain in existence for the purpose of winding up its affairs. *See* Delaware Corporations Code § 278 (Del. Code Ann. Tit. 8, §510) (providing that any dissolved corporation “shall nevertheless be continued, for the term of 3 years from such expiration or dissolution . . . , to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets”).

The Court Will Require the Alleged Contemnors to Appear and Show Cause Why They Should Not be Held in Contempt for Violating the Automatic Stay

In opposition to the Trustee’s application for issuance of an Order to Show Cause Re: Contempt, the Alleged Contemnors proffer the same arguments as Defendants advance in the Motion to Dismiss. Having rejected Defendants’ arguments, and

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having found that the Debtor before the Court is Green Jane-Delaware, not Green Jane-Colorado, the Court finds it appropriate to require the Alleged Contemnors to show cause why they should not be held in contempt for serving upon the Trustee a document purporting to rescind the License Agreement. The Court will set the date and time of the hearing on the Order to Show Cause by separate order.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is DENIED. Defendants must answer the Complaint by no later than January 31, 2018. By separate order, the Court will require the Alleged Contemnors to show cause why they should not be held in contempt for violating the automatic stay.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Represented By
Stuart R Simone

Green CO2 IP, LLC, a Colorado

Represented By
Stuart R Simone

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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10:00 AM

2:17-12677 Green Jane Inc

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#4.10 HearingRE: [131] Motion to Approve Compromise Under Rule 9019 Motion of Chapter 7 Trustee for Entry of Order to Approving Stipulation Among Chapter 7 Trustee, HRBenefix Co, LLC, Jesus Menendez, and Gloria Dual-Menendez; Declaration of Rosendo Gonzalez in Support Thereof (Melissinos, C)

Docket 131

Tentative Ruling:

1/16/2018

Pleadings Filed and Reviewed:

- 1) Motion of Chapter 7 Trustee for Entry of Order Approving Stipulation Among Chapter 7 Trustee, HRBenefix Co., LLC, Jesus Menendez, and Gloria Dual-Menendez (the "Motion") [Doc. No. 131]
 - a) Stipulation Among Chapter 7 Trustee, HRBenefix Co., LLC, Jesus Menendez, and Gloria Dual-Menendez for Rescission of Membership Interest Purchase Agreement (the "Stipulation") [Doc. No. 130]
 - b) Notice of Motion of Chapter 7 Trustee for Entry of Order Approving Stipulation Among Chapter 7 Trustee, HRBenefix Co., LLC, Jesus Menendez, and Gloria Dual-Menendez [Doc. No. 132]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on March 6, 2017. On May 26, 2017, the Court converted the case to Chapter 7. The Chapter 7 Trustee (the "Trustee") seeks approval of a compromise between the Trustee, on the one hand, and HRBenefix Co., LLC, Jesus Menendez, and Gloria Dual-Menendez, on the other hand.

HRBenefix Co., LLC ("HRB") is a human resources provider. On September 29, 2015, the Debtor, Jesus Menendez, and Gloria Dual-Menendez entered into a Membership Interest Purchase Agreement (the "MIPA"), which provided that the Debtor would acquire 80% of the membership interests of HRB from Jesus Menendez and Gloria Dual-Menendez, HRB's owners. As consideration for this transfer of the membership interests in HRB, the Debtor was to transfer 100,000 of its shares of

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stock and fulfill certain other conditions.

HRB, Jesus Menendez, and Gloria Dual-Menendez assert that none, or virtually none, of the conditions of the MIPA were met. HRB, Jesus Menendez and Gloria Dual-Menendez deny that any membership interests were ever transferred, and HRB, Jesus Menendez and Gloria Dual-Menendez deny that they ever received any stock in the Debtor.

On December 16, 2015, HRB received \$20,000.00 from TCG International Holdings, a company which the Trustee understands is owned and/or controlled (or was owned and/or controlled at that time) by Michael Citron, the Chief Executive Office of the Debtor.

To resolve outstanding issues regarding the MIPA, the parties have agreed that the MIPA shall be rescinded in its entirety. In exchange, the bankruptcy estate will receive \$20,000 (the "Rescission Payment"), and HRB, Jesus Menendez, and Gloria Dual-Menendez will waive all claims they may have against the estate.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that all three of the settlement agreements are adequate, fair, and reasonable, and are in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the compromise. No creditors have objected to the compromise, which will yield proceeds of \$20,000 for the estate.

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Difficulties to Be Encountered in the Matter of Collection

This factor weighs strongly in favor of approving the compromise. HRB is a closely held corporation. Thus, even if the Trustee were to prevail upon his claim that he holds an 80% interest in HRB, it is likely that HRB's principals would refuse to work for the benefit of the estate, rendering any victory hollow.

Complexity of the Litigation

This factor weighs in favor of approving the compromise, given that the litigation involves numerous disputed issues of fact as to whether the MIPA is enforceable.

Probability of Success on the Merits

This factor weighs in favor of approving the compromise. As noted, even if the Trustee prevailed, the victory would yield no benefit to the estate given that HRB's principals would likely refuse to work for the estate.

Based upon the foregoing, the Motion is GRANTED.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner

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C John M Melissinos

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#5.00 Status Hearing re status of the Probate Matter and related issues.

fr: 5-30-17

Docket 0

Tentative Ruling:

1/16/2018

No appearances required. In compliance with a previous Court order, concerning the status of a Probate Code § 850 Petition ("Probate Petition") filed by Monge Investment, Inc. ("Debtor") in California Superior Court [Doc. No. 539], the Debtor submitted the Status Report on January 8, 2018. Doc. No. 602. On November 30, 2017, the state court approved the settlement of the Probate Petition. Prior to that, on October 23, 2017, the United States Trustee filed a Motion for an Order Lifting the Previous Stay and Setting a Deadline for Filing of the Plan [Doc. No. 585]. On November 15, 2017 the Court, after the hearing on the UST's Motion, entered the Order Granting the Motion to Lift the Stay and set March 15, 2018 as the deadline for the Debtor to file a Plan and Disclosure Statement [Doc. No. 591].

Because the Probate Petition has been settled, and the stay relating to that action has been lifted, no further status conference is necessary regarding the Probate Petition. The deadline for the Debtor to file a Plan and Disclosure statement is March 15, 2018.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
David M Reeder

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2:15-16507 Mary Loo

Chapter 7

#6.00 APPLICANT: Accountant for Trustee : LEA Accountancy, LLP

Hearing re [68] and [69] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

1/16/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,231.01

Expenses: \$128.99

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mary Loo

Represented By
Kirk A Laron

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

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2:15-16507 Mary Loo

Chapter 7

#7.00 APPLICANT: Attorney for Trustee: Dumas & Kim, APC

Hearing re [68] and [69] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

1/16/2018

On March 23, 2017, the Court entered the Order Approving the First Interim Application for Fees and Expenses" [Doc. No. 60] filed by this applicant, Dumas & Kim, APC. The Court's Order stated that "[t]he approved fees and costs shall be the total amount of fees and costs paid to Dumas & Kim, APC, in this bankruptcy case." Therefore, the Court approves as final all fees and expenses perviously awarded to this applicant on an interim basis as set forth below.

Fees: \$15,500.00

Expenses: \$750.86

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mary Loo

Represented By
Kirk A Laron

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

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2:15-16507 Mary Loo

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#8.00 APPLICANT: Trustee: Sam S. Leslie

Hearing re [68] and [69] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

1/16/2018

No objection has been filed in response to the Trustee's Final Report. The Court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,950.00

Total Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Mary Loo

Represented By
Kirk A Laron

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

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10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#9.00 Hearing
RE: [445] Motion to Approve Compromise Under Rule 9019 / Memorandum of Points & Authorities In Support of Motion for Order Approving Settlement With The Lee Group (Greenwood, Gail)

Docket 445

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

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Wednesday, January 17, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#10.00 Hearing

RE: [542] Motion to Approve Compromise Under Rule 9019 / Memorandum of Points & Authorities In Support of Motion for Order Approving Settlement With The Lee Group (Greenwood, Gail)

Docket 542

***** VACATED *** REASON: CONTINUED 1-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

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Wednesday, January 17, 2018

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10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#11.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

fr. 1-16-18

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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11:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#100.00 Pre-Trial Conference RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-11-17, 9-12-17

Docket 0

*** VACATED *** REASON: CONTINUED 3-13-18 AT 11:00 AM..

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

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CONT... Morad Javedanfar

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Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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Hearing Room 1568

11:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#101.00 Hearing re [181] Objection to Claim #26 by Claimant Pedro Polio Class. in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-23-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 17, 2018

Hearing Room 1568

11:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#102.00 Hearing re [183] Supplemental Objection to Claim #26 by Claimant Pedro Polio Class.
in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class.

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-23-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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2:17-13943 Unity Courier Service, Inc.

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#103.00 Hearing re [182] Second Objection to Claim #26 by Claimant Pedro Polio Class. in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class.

Docket 0

***** VACATED *** REASON: CONTINUED TO 1-23-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
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Los Angeles
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#104.00 Hearing
RE: [212] Motion/ Creditor and Class Claimant Pedro Polio's Motion for
Application of FRCP Rule 23 Class Certification;

Docket 212

***** VACATED *** REASON: CONTINUED 1-23-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
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Los Angeles
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2:16-13575 Liberty Asset Management Corporation

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Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#1.00 Hearing
RE: [40] Motion to Set Aside Entry of Default Filed by Defendants Blue Sky
Communications

FR. 1-9-18

Docket 40

Tentative Ruling:

1/17/2018:

For the reasons set forth below, the Committee's motion for entry of default judgment is DENIED, and the Defendants' motion to set aside the default is GRANTED. Defendants must answer the Complaint by no later than February 1, 2018. The Court will conduct a Status Conference on March 13, 2018, at 10:00 a.m., at which time the Court will set dates that will govern the course of this action.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion for Entry of Default Judgment:
 - a) Motion for Default Judgment Under LBR 7055-1 [Doc. No. 30]
 - b) Opposition of Defendants to Motion of Unsecured Creditors Committee for Entry of Default Judgment [Doc. No. 38]
 - i) Evidentiary Objections to and Request to Strike Portions of Declaration of Gail Greenwood in Support of the Committee's Motion for Entry of a Default Judgment [Doc. No. 39]
 - c) Reply Brief in Support of the Official Committee of Unsecured Creditors' Motion for Entry of Default Judgment [Doc. No. 50]
 - i) Response to Defendants' Evidentiary Objections to Portions of the Declaration of Gail Greenwood in Support of the Committee's Motion for Entry of a Default Judgment [Doc. No. 51]
- 2) Defendants' Motion to Set Aside Entry of Default:

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- a) Notice of Motion and Motion of Defendants to Set Aside Entry of Default [Doc. No. 41]
- b) Opposition to Defendants' Motion to Set Aside Entry of Default [Doc. No. 49]
- c) Reply of Defendants in Support of Motion of Defendants to Set Aside Entry of Default [Doc. No. 53]

I. Facts and Summary of Pleadings

The Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Committee") seeks entry of default judgment against Blue Sky Communications, Inc., Lantern Brands, Inc., and TT Investment Los Angeles Fund I, LLC (collectively, the "Defendants"). The Clerk of the Court entered default against the Defendants on October 23, 2017. Defendants move to set aside the entry of default.

Defendants assert a lien against property located at 1020 Baldwin Avenue, Arcadia, CA (the "Baldwin Property"). The Complaint alleges, among other things, that the lien should be recharacterized as an equity investment in a failed business venture, and that any claims asserted by Defendants in connection with the lien should be disallowed.

The Baldwin Property was marketed for sale and ultimately sold in Liberty Asset Management Corporation's bankruptcy case. One of the defendants, TT Investment Los Angeles Fund I, LLC ("TT"), was the original buyer, pursuant to a sale order entered on November 9, 2016. Bankr. Doc. No. 276 (the "Sale Order"). The sale to TT did not close, and the Baldwin Property was ultimately sold to a different buyer.

One of the disputed issues in connection with the proposed sale to TT was whether TT held a valid lien against the Baldwin Property. The Sale Order contained provisions regarding the allowability of TT's asserted lien. TT takes the position that even though the sale did not close, it holds an allowed claim pursuant to the provisions of the Sale Order. The Committee argues that the Sale Order's provisions regarding the allowability of TT's asserted secured claim were contingent upon the closing of the sale. According to the Committee, because the sale did not close, it may now attempt, by way of the Complaint, to invalidate the lien asserted by TT and the other defendants. Defendants take the position that the Committee is judicially estopped from contesting the validity of their liens, given that the Committee was actively involved in the negotiations resulting in the Sale Order.

Defendants move to set aside the entry of default, on the grounds that their agent for service of process did not timely forward the Complaint to them. Defendants state

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that they acted diligently to set aside the default as soon as they learned of the Complaint. The Committee opposes the motion to set aside default, and argues that default judgment should be entered. According to the Committee, Defendants' failure to respond to the Complaint was culpable because Defendants' former counsel, Theodore Maloney, was aware of the Complaint. Gail Greenwood, one of the Committee's attorneys, testifies that she spoke with Mr. Maloney by telephone regarding the Complaint on October 6, 2017. Greenwood Decl. at ¶4 [Doc. No. 23]. Mr. Maloney acknowledges speaking with Ms. Greenwood and reviewing a copy of the Complaint, but maintains that he thought the Complaint he reviewed was a draft, intended by the Committee as a negotiating tactic for the purpose of convincing TT to reduce the allowed amount of its claim. Maloney Decl. at ¶¶5–7.

II. Findings and Conclusions

At the outset, the Court notes that the parties devote substantial space to asserting their positions with respect to whether Defendants' claims have been allowed in connection with the Sale Order. The issues before the Court are whether the default should be set aside or whether instead default judgment should be entered. The Court does not address the preclusive effect, if any, of the Sale Order. **[Note 1]**

Civil Rule 55(c)—made applicable to these proceedings by Bankruptcy Rule 7055—provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

The Court finds it appropriate to set aside the default, and deny the Committee's motion for entry of default judgment. First, the Committee is not prejudiced by the setting aside of the default. "To be prejudicial, the setting aside of a [default] must result in greater harm than simply delaying resolution of the case. Rather, 'the standard is whether [plaintiff's] ability to pursue his claim will be hindered.'" *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *as amended on*

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denial of reh'g and reh'g en banc (May 9, 2001). The non-defaulting party's ability to pursue its claim may be hindered if the delay has caused tangible harm such as "loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." *Id.*

Here, default was entered on October 23, 2017, and Defendants moved to set aside the default on November 29, 2017. There is no indication that this relatively short delay has resulted in any tangible harm to the Committee.

Second, although the Court makes no determination as to the preclusive effect of the Sale Order, Defendants have presented sufficient evidence to show that they may have a meritorious defense. At the very least, the Court cannot categorically determine that no meritorious defense exists.

Third, entry of default is not the result of Defendants' culpable conduct. The Committee's position is that Defendants' former counsel was aware of the Complaint and that therefore the Defendants' failure to timely respond was culpable. The Court finds Mr. Maloney's explanation that he believed the Complaint he reviewed had not been filed and was a negotiating tactic to be plausible. The Committee and Mr. Maloney had already engaged in extensive negotiations regarding the allowability of TT's claim in connection with the Sale Order. It would not have been unreasonable for Mr. Maloney to conclude that the Complaint he received was a draft intended to commence further negotiations regarding the allowability of the claim.

Finally, the Court notes that the Committee filed unduly lengthy papers in connection with what should have been a routine issue—whether a default that was entered only several months ago should be set aside. The resources the Committee devoted to this issue exceeded its importance.

III. Conclusion

Based upon the foregoing, the Committee's motion for entry of default judgment is DENIED, and the Defendants' motion to set aside the default is GRANTED. Defendants must answer the Complaint by no later than February 1, 2018. The Court will conduct a Status Conference on March 13, 2018, at 10:00 a.m., at which time the Court will set dates that will govern the course of this action. The parties must submit a Joint Status Report by no later than fourteen days prior to the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The evidentiary objections submitted by Defendants pertain to disputes regarding the Sale Order which are not relevant to the matters presently before the Court. The Court does not rely upon the disputed evidence and therefore does not rule upon Defendants' evidentiary objections. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections.").

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Represented By
Cynthia Futter

Lantern Brands, Inc., a California

Represented By
Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By
Cynthia Futter

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards

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Liberty Asset Management Corporation

Gail S Greenwood

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2:16-13575 Liberty Asset Management Corporation

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Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#2.00

Hearing

RE: [41] Motion to Set Aside Entry of Default Filed by Defendant TT Investment Los Angeles Fund I, LLC, a California limited liability company

Motion to Set Aside Entry of Default

FR. 1-9-18

Docket 41

Tentative Ruling:

1/17/2018:

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Represented By
Cynthia Futter

Lantern Brands, Inc., a California

Represented By
Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By
Cynthia Futter

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Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#3.00 Hearing
RE: [30] Motion for Default Judgment Under LBR 7055-1 (Greenwood, Gail)

FR. 12-5-17; 12-13-17

Docket 30

Tentative Ruling:

1/17/2018:

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a Pro Se

Lantern Brands, Inc., a California Pro Se

TT Investment Los Angeles Fund I, Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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#4.00 Hearing

RE: [553] Motion to Convert Case From Chapter 11 to 7. Notice of Motion and Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. 1112(a) and (b); Declaration of Benjamin Kirk Benjamin Kirk (Attachments: # 1 Declaration of Benjamin Kirk, Exhibits 1-2 # 2 Proof of Service) (Talerico, Derrick)

FR. 1-9-17

Docket 553

Tentative Ruling:

1/17/2018:

For the reasons set forth below, Motion DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b) (the "Motion") [Doc. No. 553]
 - a) Order Continuing Hearing on "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 566]
 - i) Ex Parte Motion to Continue Hearing on "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 555]
 - ii) Joinder by the Official Committee of Unsecured Creditors to the Debtor's Ex Parte Motion to Continue Hearing on "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 556]

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- iii) JD Brothers LLC Joinder to Ex Parte Motion to Continue Hearing on "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 559]
- iv) Withdrawal, Motion to Strike, and Opposition to "Ex Parte Motion to Continue Hearing on Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" and Opposition to "Joinder by the Official Committee of Unsecured Creditors to the Debtor's Ex Parte Motion to Continue Hearing" [Doc. No. 558]
- 2) The Official Committee of Unsecured Creditors' Opposition to Kirk's Motion for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b) (the "Opposition") [Doc. No. 569]
 - a) Request for Judicial Notice in Support of the Official Committee of Unsecured Creditors' Opposition to Kirk's Motion for Conversion to Chapter 7 [Doc. No. 570]
- 3) Comments of Levene, Neale, Bender, Yoo & Brill LLP Re: "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 571]
 - a) Request for Judicial Notice in Support of Comments of Levene, Neale, Bender, Yoo & Brill LLP Re: "Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b)" [Doc. No. 572]
- 4) Reply to Opposition of Official Committee of Unsecured Creditors and to Comments of Debtor's Bankruptcy Counsel to Motion of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation for Conversion to Chapter 7 Pursuant to 11 U.S.C. §1112(a) and (b) (the "Reply") [Doc. No. 576]

I. Facts and Summary of Pleadings

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan provided over this case. On January 30, 2017, the case was reassigned to the undersigned judge.

Liberty's petition was signed by Benjamin Kirk as CEO. On the List of Equity Security Holders, Mr. Kirk represented that he held 100% of Liberty's common shares. On June 9, 2016, the Court granted Liberty's application to employ Lawrence

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R. Perkins as Liberty's Chief Restructuring Officer ("CRO"), and to employ Sierra Constellation Partners, LLC ("SCP") to provide restructuring and management advisory services under the direction of the CRO, with such employment effective as of March 28, 2016. *See* Order Approving Application for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing and Approving (I) Employment and Retention of Lawrence R. Perkins as Chief Restructuring Officer, and (II) Employment of Sierra Constellation Partners, LLC [Doc. No. 94]. The application to employ the CRO and SCP, which Mr. Kirk signed in his capacity as Liberty's CEO, provided in relevant part: "The CRO will report to the Board of the Debtor and will not have his duties or authority modified by the Board unless there is a hearing before the bankruptcy court, on shortened time notice to creditors respecting such changes in duties or authority." *See* Application for an Order Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code Authorizing and Approving (I) Employment and Retention of Lawrence R. Perkins as Chief Restructuring Officer, and (II) Employment of Sierra Constellation Partners, LLC (the "Employment Application") [Doc. No. 23] at ¶17.

On November 17, 2016, Judge Donovan conducted a hearing on a motion brought on Liberty's behalf by Mr. Kirk, which sought to divest Mr. Perkins from his role as Liberty's CRO, and to replace him with Samuel R. Biggs. The motion also sought to replace SCP with the firm SLBiggs. The Court denied the motion and set forth the reasons for the denial on the record:

Existing professionals were appointed because, among other things, the Committee had no confidence in the Kirk management. Kirk himself conceded that he didn't have the wherewithal personally to manage the predicaments into which the Debtors have come.... [I]t seems to me from comments made in hearings and comments made in pleadings, that there is reason to go forward with the Committee's efforts to identify assets and to take appropriate action to resolve ownership and opportunities for recovery of substantial funds with respect to assets that otherwise have been difficult to nail down and which in many cases lack significant value but for which the Committee has identified some \$35,000,000 or so in assets that might have significant value for creditors.

Under these circumstances, it seems to me that Kirk should not be allowed to change management in this case midstream, having failed to produce an explicit valid persuasive reason to change professionals or in changing professionals to risk the recovery of assets for the benefit of creditors solely at

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Kirk's whim.

Among other things, the change in assets here, if nothing else, would cause delay. It would cause added cost to the estate. The cost added seemingly would risk waste, and yet the applications and the pleadings before me don't provide any substantial reason or adequate cause, while at the same time they threaten if the application were to be granted, serious detriment to the Debtor's estate.

It seems to me that the best interest of creditors lies in staying the course with duly appointed, carefully appointed current professionals that were appointed with the explicit support of Mr. Kirk ... where Mr. Kirk has articulated no new strategy

Kirk complains that the Debtor sold [the Baldwin property] short by 15 or so million dollars, 10 or 15 million dollars. That matter was litigated and concluded against Mr. Kirk in favor of the practicality and necessity of completing a sale after ample marketing, after ample opportunity for anybody with a better price to come in with something better than the stalking horse offer, with no better offer in sight after months of marketing and discussion. And at the same time, there's nothing in any present order or authority existing in this case to in any way limit Mr. Kirk or Mr. Kirk's counsel to offer or present a better buyer any time with respect to any property in the estate. Kirk always has the opportunity to do that. Kirk never has done that since this case was filed

Overriding in my mind all of the shortcomings in Kirk's applications today is the fact that Kirk's conduct to date has produced significant disputes concerning perpetuation ownership and management accompanied by a highly unusual loss of meaningful important real estate investment records relating to management, financing, sales, and alarmingly, unexplained disposition of sales proceeds, all leaving many significant creditors holding the bag, most of those creditors being unsecured, some with secured claims.

So it seems to me that any change in professionals today would accomplish no improvement in the possibilities of a successful reorganization or program for the payment of creditors [than] what we have now in prospect. Rather, it would seem to me that a change in professionals, based on today's pleadings, would produce disruption of what appears to me to be an orderly, methodical effort of competent Kirk-nominated and court-approved professionals working effectively toward establishing the evidence to best identify, preserve, and recover the assets of the estates for the benefit of creditors, as well as for

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Debtor's principals and responsible employees and managers as these—as circumstances may permit.

Perkins' CRO declaration establishes that when he was appointed it was because of the Committee's lack of confidence in Kirk's management, and he was appointed with—as I say, with Kirk's specific consent. In effect, the Debtor agreed at the outset that ... Perkins was qualified to represent the Debtor's interest in Chapter 11 management of the entity. At the time, Kirk agreed that he would not have a decision making role in the reorganization but would be kept apprised of developments.

Transcript of November 17, 2016 Hearing [Doc. No. 289] at 31:15–35:6; *see also* Order Denying Debtors' Motions and Applications to Employ Substitute Professionals [Doc. No. 297] at 3 (finding that "Kirk ceded authority in written agreements (1) for Perkins [the CRO] to manage the business [of Liberty] and its real estate assets, exclusive of any direct Kirk participation, and (2) for Perkins to hire and fire employees, including insiders").

On October 17, 2017, the Court denied Mr. Kirk's motion for reconsideration of an order approving a settlement agreement resolving the action *10th Street Santa Monica Project LLC and Liberty Asset Management Corporation v. Maxwell Real Estate Investment LLC et al.* (the "Maxwell Action"). *See* Memorandum of Decision Denying Benjamin Kirk's Motion for Reconsideration of Order Approving Settlement Agreement [Doc. No. 473] and Order Denying Benjamin Kirk's Motion for Reconsideration of Order Approving Settlement Agreement [Doc. No. 474]. In denying the motion for reconsideration, the Court rejected Mr. Kirk's assertion that the CRO had breached his fiduciary duties by failing to achieve optimal value for Liberty's assets:

Mr. Kirk's argument that the CRO cannot be trusted to act in Liberty's best interests, based on assertions that the CRO has failed to fulfill his fiduciary duties, is similarly unpersuasive. Mr. Kirk's primary contention is that the CRO caused Liberty to sell various real properties for prices far below market value. Most of the sales of which Mr. Kirk complains were subject to Bankruptcy Court oversight, overbidding, and extensive marketing. In the end, the properties proved to be less valuable than Mr. Kirk hoped. However unpleasant this reality may be to Mr. Kirk, it does not demonstrate a lack of diligence by the CRO.

Doc. No. 473 at p. 3.

On December 29, 2017, the Court entered judgment in favor of the Committee,

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and against Mr. Kirk and Lucy Gao, jointly in severally, in the amount of \$74,140,695.29. *See* Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29 [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] and Judgment in Favor of Plaintiff and Against Defendants, Jointly and Severally, in the Amount of \$74,140,695.29 [Doc. No. 142, Adv. No. 2:16-ap-01337-ER]. The Court found that Liberty had sustained damages in excess of \$74 million in connection with Mr. Kirk and Ms. Gao's breach of their fiduciary duty to account for Liberty's assets.

The Motion to Convert to Chapter 7

Mr. Kirk asserts that he is Liberty's sole equity holder and seeks conversion of the case to Chapter 7 for cause pursuant to §1112(b). Liberty's Board of Directors (the "Board"), acting through Mr. Kirk, Liberty's sole Board member, moves for conversion to Chapter 7 pursuant to §1112(a). Movants make the following arguments and representations in support of the Motion:

Liberty Has Terminated the Employment of the CRO and SCP

In prior efforts to exercise his 100% ownership interest in Liberty, Mr. Kirk chose to seek and obtain an order from the Court before taking action to remove the CRO and Liberty's professionals. That approach, however, was not required under any law or court order. California Corporations Code §300(a) provides in relevant part:

the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

Under the plain language of the statute, Liberty's Board retains ultimate authority over the employment and retention of a chief restructuring officer. Short of the appointment of a Chapter 11 Trustee, nothing in the Bankruptcy Code pre-empts California state law on this issue of corporate governance. "[T]he presumption against displacing state law by federal bankruptcy law is just as strong in bankruptcy as in other areas of federal legislative power. . . . [I]f Congress wished to grant an exemption from otherwise applicable nonbankruptcy state law, 'the intention would be clearly expressed.'" *PG&E Co. v. Cal. ex rel. Cal. Dept of Toxic Substances Control*, 350 F.3d 932, 943 (9th Cir. 2003).

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On December 13, 2017, the Board held a special meeting and executed a resolution (the "Resolution") authorizing and directing the termination of CRO Lawrence Perkins. The Resolution provides in relevant part:

Be it RESOLVED, that the Company, by and through the Board, be and hereby is, authorized and directed to seek conversion of the Company's bankruptcy case (Case No. 2:16-bk-13575) to a chapter 7;

Be it further RESOLVED, Lawrence Perkins [the CRO] and SierraConstellation Partners, LLC shall be terminated upon entry of an order converting the Company's bankruptcy case to a chapter 7;

Be it further RESOLVED, that effective immediately, any authority that Lawrence Perkins or SierraConstellation Partners, LLC may have to act for or on behalf of the Company or to bind or commit the Company in any fashion, is revoked;

Be it further RESOLVED, that until Lawrence Perkins and SierraConstellation Partners, LLC are terminated, they may continue their employment by the Company solely to assist the Company's counsel in providing reports or other information required for administration of the bankruptcy case.

Be it further RESOLVED, that should any court find that the Board cannot modify and terminate the employment of Lawrence Perkins and SierraConstellation Partners, LLC as set forth herein, the Company, by and through the Board, shall be authorized to rescind the employment agreements of Lawrence Perkins and SierraConstellation Partners, LLC on the grounds that it is unlawful and prejudicial to the public interest.

Be it further RESOLVED, that should the [sic] Lawrence Perkins and SierraConstellation Partners, LLC[s] employment agreement be rescinded, [Liberty] is authorized to reengage Mr. Perkins and SierraConstellation for the limited purpose of assisting the Company's counsel in providing reports or other information required for administration of the bankruptcy case until terminated upon entry of an order converting the Company's bankruptcy case to a chapter 7.

Doc. No. 553 at Ex. 2.

If the Court Finds that Liberty Cannot Terminate the CRO and SCP, Liberty in the Alternative Rescinds the Contract Providing for the CRO and SCP's Employment

In the event the Court determines that Liberty lacks the ability to terminate the

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CRO and SCP as set forth in the Resolution, Liberty in the alternative elects rescission of the agreement providing for the employment of the CRO and SCP (the "Employment Agreement"). Under California law, any agreement that abrogates the Board's authority to terminate Liberty's employees is unlawful. In prior filings, the CRO has argued that Mr. Kirk agreed that the CRO would be terminated only by order of the Bankruptcy Court. Mr. Kirk denies that he agreed to any such provision. But even if Mr. Kirk did so agree, such a provision would be unlawful in view of Cal. Corp. Code §300(a)'s requirement that "all corporate powers shall be exercised under the ultimate direction of the board." Pursuant to Cal. Civ. Code §1689(b)(5), an unlawful agreement can be rescinded. By providing that the CRO could not be terminated absent an order of the Court, the Employment Agreement is unlawful and is therefore subject to rescission.

The Employment Agreement is additionally subject to rescission pursuant to Cal. Civ. Code §1689(b)(6), which provides that a party may rescind any contract that prejudices the public interest. By eliminating the Board's ultimate management authority over Liberty in derogation of the requirements of Cal. Corp. Code §300(a), the Employment Agreement violates the public interest.

Liberty Exercises Its Absolute Right to Conversion to Chapter 7 Pursuant to §1112(a)
Section 1112(a) provides:

The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—

- (1) the debtor is not a debtor in possession;
- (2) the case originally was commenced as an involuntary case under this chapter; or
- (3) the case was converted to a case under this chapter other than on the debtor's request.

Here, Liberty's has an absolute right to convert to Chapter 7. Liberty remains a debtor in possession as no Chapter 11 Trustee has been appointed, the case was not commenced as an involuntary case, and the case has not been previously converted. To the extent that the CRO asserts that the case should not be converted, he lacks authority to speak for Liberty. As of December 13, 2017, Mr. Kirk, as the sole member of Liberty's Board, is the only person with authority to speak on Liberty's behalf.

In the Alternative, Mr. Kirk Seeks Conversion of the Case to Chapter 7 Pursuant to §

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1112(b)

Section 1112(b) provides that the Court, upon request of a party in interest, "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

As an equity holder in Liberty, Mr. Kirk has standing to seek conversion under § 1112(b). Conversion is in the best interests of creditors because Liberty's material assets have been liquidated and there is no need for the continued employment of the Committee's premium-rate counsel. A Chapter 7 Trustee could liquidate the remaining assets more cheaply than the Committee. In addition, the CRO has mismanaged the estate by failing to timely pay Liberty's taxes, failing to timely pay quarterly US Trustee fees, and failing to require Liberty's annual corporate forms.

The Committee's Opposition to the Motion to Convert

The Committee makes the following arguments in opposition to the Motion to Convert:

Mr. Kirk's real motive for seeking conversion is to dissolve the Committee, which recently obtained a judgment against Mr. Kirk in excess of \$74 million. There is no cause for conversion at this stage of the case. Liberty's assets have been sold, the major claims have been settled, and a plan will be filed this month.

Mr. Kirk lacks the authority to unilaterally terminate the CRO. The application to employ the CRO provides that the CRO "will not have his duties or authority modified by the Board unless there is a hearing before the bankruptcy court, on shortened notice to creditors respecting such changes in duties or authority." The Court has previously rejected Mr. Kirk's attempt to replace the CRO, and its prior conclusions are equally applicable today.

Mr. Kirk does not have an absolute right to convert to Chapter 7. First, Mr. Kirk is not a debtor in possession and therefore cannot seek conversion under §1112(a)(1). Mr. Kirk has no authority to act on Liberty's behalf absent an order of the Court. Unless such an order is issued, the CRO has authority to speak for the Debtor. The Court has already ruled that Mr. Kirk voluntarily ceded control of Liberty to the CRO, including the ability to hire and fire insiders.

Second, in *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007), the Supreme Court held that conversion of a case is subject to exceptions for bad faith conduct. Mr. Kirk's bad faith conduct makes him ineligible to seek conversion.

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Mr. Kirk has not demonstrated cause for conversion under §1112(b). Mr. Kirk asserts that conversion is justified because the Committee is "draining millions of dollars from the estate, [such that] assets are depleting." Motion at 10. The Committee's fees cannot be deemed a substantial or continuing loss to the estate because the Committee's adversary proceedings have recovered substantial assets for the estate. Mr. Kirk's contention that the Committee's fees are excessive should be raised in connection with the Committee's application for compensation.

In addition, pursuant to §1112(b)(2), the case may not be converted to Chapter 7. Section 1112(b) provides:

The court may not convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter if the court finds and specifically identifies unusual circumstances establishing that converting or dismissing the case is not in the best interests of creditors and the estate, and the debtor or any other party in interest establishes that—

(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

(B) the grounds for converting or dismissing the case include an act or omission of the debtor other than under paragraph (4)(A)—

(i) for which there exists a reasonable justification for the act or omission; and

(ii) that will be cured within a reasonable period of time fixed by the court.

Converting the case would not be in the interests of creditors because most of Liberty's assets have been sold, the largest claims have been settled, and the Committee intends to file a Plan within the next thirty days. To the extent that Mr. Kirk has identified alleged omissions by the CRO, those omissions have been cured and have caused no harm to the estate or its creditors.

Comments of Levene, Neale, Bender, Yoo & Brill LLP in Response to the Motion to Convert

Levene, Neale, Bender, Yoo & Brill LLP ("LNBYB") makes the following comments in connection with the Motion to Convert:

Counsel for Mr. Kirk has advised LNBYB that LNBYB does not have authority to file pleadings in this case in response to the Motion to Convert. Although LNBYB disagrees with Mr. Kirk's position based on the fact that it has been employed as an

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estate professional, to avoid needless dispute LNBYB files this pleading in its capacity as a Chapter 11 administrative creditor of Liberty and a party in interest.

Shortly after the appointment of the Committee, in May 2016 a meeting was held at LNBYB's offices. Mr. Kirk, the Committee's counsel, LNBYB, and the CRO attended. The Committee expressed its lack of confidence and continuing concern that Mr. Kirk would be involved in Liberty's decision-making process. Mr. Kirk advised counsel for the Committee that he agreed that the CRO would be the exclusive decision-maker on Liberty's behalf and that Mr. Kirk would be apprised of developments but would not have a decision-making role. Subsequent to the meeting, the parties have behaved consistently with such an agreement. In connection with Liberty's motion to compel the turnover of books and records (the "Turnover Motion"), the CRO and Mr. Kirk both executed declarations. The CRO's declaration stated: "I currently serve as the Debtor's official representative with exclusive authority to act and make decisions on behalf of the Debtor." Neither Mr. Kirk nor his personal counsel, both of whom received a copy of the Turnover Motion, objected to the CRO's declaration.

The extent of Mr. Kirk's interest in Liberty is uncertain based upon his own admissions and testimony. At the hearing on the Turnover Motion, Mr. Kirk testified that Ms. Gao held a 50% interest in Liberty. This statement contradicts Mr. Kirk's current position that he holds a 100% interest in Liberty.

Contrary to Mr. Kirk's contention, the Employment Agreement's provision barring the removal of the CRO absent Court approval does not contravene California law. California Corporations Code §1400 provides in relevant part:

Any domestic corporation with respect to which a proceeding has been initiated under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations of corporations, has full power and authority to put into effect and carry out any plan of reorganization and the orders of the court or judge entered in such proceeding and may take any proceeding and do any act provided in the plan or directed by such orders, without further action by its board or shareholders. Such power and authority may be exercised and such proceedings and acts may be taken, as may be directed by such orders, by the trustee or trustees of such corporation appointed in the reorganization proceeding (or a majority thereof), or if none is appointed and acting, by officers of the corporation designated or a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the board and shareholders of the

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corporation.

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Conversion to Chapter 7 is not in the best interests of creditors. The vast majority of estate assets have been liquidated and most of the litigation has been resolved. No cost savings would be realized by conversion to Chapter 7; instead, costs would increase given that a Chapter 7 Trustee would be required to become familiar with this complex case.

Movants' Reply in Support of the Motion to Convert

Movants make the following arguments in Reply to the Committee's Opposition and the comments submitted by LNBYB:

California Law Does Not Authorize the Abrogation of the Powers of Liberty's Board

Because no Chapter 11 Trustee has been appointed, Liberty is a debtor in possession. Liberty is a corporate entity and it is this entity that is "in possession," not Mr. Kirk or the CRO. The only relevant question is who has authority over Liberty. At one point, the CRO had certain authority over Liberty, but because the Board maintained ultimate authority over Liberty, it exercised that authority to relieve the CRO of his position.

LNBYB contends that the Court's order appointing the CRO grants him exclusive authority over Liberty. California state law does not authorize a Bankruptcy Court to displace a corporate debtor's board of directors. Although Cal. Corp. Code §300(a) permits a Board to delegate day-to-day management authority, "the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the *ultimate direction of the board*" (emphasis added).

LNBYB cites Cal. Corp. Code §1400 for the proposition that a Bankruptcy Court can oust a Debtor's Board. Cal. Corp. Code §1400 merely provides that actions that would require board approval outside bankruptcy can be done by a corporation without board approval in bankruptcy. The statute gives the corporate Chapter 11 Debtor authority to act where it is often impractical to rely upon its board to authorize such action. However, nothing in Cal. Corp. Code §1400(a) suggests that a Bankruptcy Court may remove or otherwise supplant a Debtor's Board.

The only provision in the Bankruptcy Code that pre-empts Cal. Corp. Code §300 (a), and divests a Debtor's Board of its authority to act, is the appointment of a Chapter 11 Trustee.

Both the Committee and LNBYB cite language in the application to approve the employment of the CRO which provides that the CRO's authority will not be

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modified absent a hearing before the Bankruptcy Court. However, this restriction is not found in the CRO's engagement letter with Liberty. Had such a term been set forth in the engagement letter, it would be void and unenforceable. Similarly, any such terms in an order of the Bankruptcy Court are also unenforceable as there are no grounds for the Bankruptcy Court to pre-empt state corporate law.

There is No Proper Basis to Oppose Conversion to Chapter 7

Even if the right to convert to Chapter 7 is not absolute, there is no basis for opposition to the conversion of this case. The Committee relies upon *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007) and related cases for the proposition that conversion may be denied based upon a debtor's bad-faith conduct. Those cases reasoned that conversion could be denied because the debtors were not entitled to the benefits of Chapter 7. The reasoning does not apply here, as no party takes the position that Liberty does not belong in bankruptcy to complete its liquidation.

Where courts have considered a corporate debtor's request to convert from Chapter 11 to Chapter 7, they have held that bad faith does not bar conversion. Instead, conversion is appropriate unless "extreme circumstances" exist that would cause conversion not to be in the best interests of creditors. *See In re Modern Metal Prods. Co.*, 442 B.R. 118 (Bankr. N.D.Ill. 2009) and *In re Kimrow, Inc.*, 534 B.R. 219 (Bankr. M.D. Ga. 2015).

Here, conversion is in the best interests of creditors because costs to the estate will be much greater in a continued Chapter 11 proceeding than under Chapter 7. Much of the work in this case has been done by the Committee's counsel, which has billed at a blended rate of \$802.50 per hour. A Chapter 7 Trustee would be able to retain counsel with lower rates.

II. Findings and Conclusions

To the extent that it seeks to divest the CRO of his operational authority, the Motion to Convert is tantamount to a motion to reconsider the ruling denying Mr. Kirk's previous motion to remove Mr. Perkins as CRO and replace him with Samuel L. Biggs. In connection with that motion, Mr. Kirk advanced many of the same arguments that he asserts now. *See* Doc. No. 245 at 14–16 (asserting that Liberty's Board retains ultimate authority over Liberty's operations pursuant to Cal. Corp. Code §300(a)). In denying Mr. Kirk's motion to replace Mr. Perkins with Mr. Biggs, the Court implicitly rejected Mr. Kirk's contention that, pursuant to Cal. Corp. Code §300 (a), Liberty's Board possessed ultimately authority to determine who would serve as

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its CRO.

To the extent that it relies upon arguments previously raised in connection with the motion to replace Mr. Perkins with Mr. Biggs, the Court will construe the Motion to Convert as a motion for reconsideration under Civil Rule 59(e) and as a motion for relief from a judgment or order under Civil Rule 60(b).

Reconsideration under Civil Rule 59(e) is “an ‘extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.’” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (internal citation omitted). “[A] motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.’ A Rule 59(e) motion may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal citation omitted). A motion for reconsideration may not be used “to rehash the same arguments made the first time or simply express an opinion that the court was wrong.” *In re Greco*, 113 B.R. 658, 664 (D. Haw. 1990), *aff’d and remanded sub nom. Greco v. Troy Corp.*, 952 F.2d 406 (9th Cir. 1991); *see also In re Mannie*, 299 B.R. 603, 608 (Bankr. N.D. Cal. 2003) (internal citation omitted) (“A motion to reconsider should not be used ‘to ask the court “to rethink what the court had already thought through—rightly or wrongly”—or to reiterate arguments previously raised.’”).

Relief from a judgment or order under Civil Rule 60(b) may be granted for various reasons, including (1) mistake, inadvertence, surprise, or excusable neglect and (2) newly discovered evidence that could not have been previously discovered with reasonable diligence. In all cases, a Rule 60(b) motion must be made “within a reasonable time.” Civil Rule 60(c)(1). A Rule 60(b) motion predicated upon (1) mistake, inadvertence, surprise, or excusable neglect or (2) newly discovered evidence must be made within one year. To determine whether a Rule 60(b) motion has been brought within a reasonable time, the Court “takes into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties.” *Sallie Mae Servicing v. Brian T. Williams (In re Williams)*, 287 B.R. 787, 793 (B.A.P. 9th Cir. 2002) (internal citations omitted).

Whether considered under Rule 59(e) or Rule 60(b), the Motion to Convert’s arguments regarding the Board’s ultimate authority to hire and fire Liberty’s CRO are not properly before the Court and must be rejected. Considered under Rule 59(e),

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those arguments are not appropriate because they are nothing more than a reiteration of arguments previously advanced. *See Greco*, 113 B.R. at 664; *Mannie*, 299 B.R. at 608. Considered under Rule 60(b), the arguments must be rejected upon multiple grounds. First, none of the criteria for relief under Rule 60(b)—such as mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence—have been satisfied. Second, and more critically, the arguments have not been raised within a reasonable time. Movants have presented no valid reason for their delay of more than one year in raising the arguments a second time. The delay is particularly egregious given that Mr. Perkins, his advisory firm SCP, and the Committee have expended substantial efforts liquidating Liberty’s assets in reliance upon the orders approving the employment of the CRO and his firm. Removal of the CRO at this juncture would be highly disruptive and prejudicial to the administration of the estate.

Furthermore, Movants have not demonstrated that the Court’s prior determination regarding the Board’s inability to remove the CRO absent Court approval was in error. Mr. Kirk relies primarily upon Cal. Corp. Code §300(a) in support of his position that he has the ability to unilaterally revoke the CRO’s authority to act on Liberty’s behalf. In relevant part, Cal. Corp. Code §300(a) provides:

the business and affairs of the corporation shall be managed and all corporate powers shall be exercised by or under the direction of the board. The board may delegate the management of the day-to-day operation of the business of the corporation to a management company or other person provided that the business and affairs of the corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board.

According to Mr. Kirk, the Employment Application’s provision barring the removal of the CRO absent Bankruptcy Court approval contravenes Cal. Corp. Code §300(a) by divesting Liberty’s Board of ultimate control over the business and affairs of the corporation.

The Court does not agree that the Employment Application contravenes applicable California law. California law contains provisions authorizing a corporation to delegate its authority in the context of a reorganization proceeding. Specifically, Cal. Corp. Code §1400(a) provides:

Any domestic corporation with respect to which a proceeding has been initiated under any applicable statute of the United States, as now existing or hereafter enacted, relating to reorganizations of corporations, has full power and authority to put into effect and carry out any plan of reorganization and the orders of the court or judge entered in such proceeding and may take any

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proceeding and do any act provided in the plan or directed by such orders, without further action by its board or shareholders. Such power and authority may be exercised and such proceedings and acts may be taken, as may be directed by such orders, by the trustee or trustees of such corporation appointed in the reorganization proceeding (or a majority thereof), or if none is appointed and acting, by officers of the corporation designated or a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the board and shareholders of the corporation.

The procedures contemplated by Cal. Corp. Code §1400(a) have been followed in this case. At the outset of the case, Mr. Kirk represented to the Court that he lacked the experience and ability to guide Liberty through Chapter 11. As a result, upon a motion signed by Mr. Kirk, the Court appointed Mr. Perkins as Liberty's CRO. As the CRO, Mr. Perkins acts as a "trustee" of Liberty within the meaning of Cal. Corp. Code § 1400(a). Further, Cal. Corp. Code §1400(a) contemplates that after a CRO such as Mr. Perkins has been appointed, no further action by the debtor's board is necessary or required. In view of this provision, there is no merit to Mr. Kirk's contention that the Employment Agreement contravenes Cal. Corp. Code §300(a) by divesting Liberty of its ability to supervise the corporation's affairs.

In addition, the Court finds that Mr. Kirk is judicially estopped, at this late stage in the proceedings, from asserting that he may unilaterally remove Mr. Perkins absent an order of the Court. "Judicial estoppel, sometimes also known as the doctrine of preclusion of inconsistent positions, precludes a party from gaining an advantage by taking one position, and then seeking a second advantage by taking an incompatible position." 'Judicial estoppel is an equitable doctrine that is intended to protect the integrity of the judicial process by preventing a litigant from playing fast and loose with the courts.'" *Whaley v. Belleque*, 520 F.3d 997, 1002 (9th Cir. 2008).

Mr. Kirk, in his capacity as Liberty's CEO, signed the Employment Application which resulted in the appointment of Mr. Perkins as the CRO. The Employment Application unambiguously provided that Mr. Perkins could only be removed upon a Court order. Having obtained the employment of the CRO based upon a representation that the CRO's employment would continue unless otherwise ordered by the Court, Mr. Kirk is estopped from now taking the position that he can unilaterally revoke the CRO's authority to act on Liberty's behalf.

The Court further finds that Mr. Kirk has not shown cause for conversion pursuant to §1112(b). First, the Court rejects Mr. Kirk's contention that conversion to Chapter

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7 would result in substantial savings. To the contrary, the Court finds that conversion would be more expensive. This case is complex and the new professionals appointed in connection with conversion to Chapter 7 would incur significant costs familiarizing themselves with the facts. Second, the Court finds there to be no merit to Mr. Kirk's allegations that the CRO has not competently discharged his obligations in administering the estate. Mr. Kirk alleges that the CRO failed to timely pay Liberty's taxes, failed to file required corporate forms, and failed to timely pay quarterly UST fees. Having reviewed the CRO's declaration, the Court finds that it is Mr. Kirk, not the CRO, who is to blame for these failures. The CRO's declaration establishes that Mr. Kirk refused to turn over control of Liberty's bank accounts to the CEO for several months, notwithstanding the CRO's multiple requests. This caused delays in the CRO's ability to file certain reports and pay UST fees. The Court notes that all delinquencies have subsequently been remedied.

Plan Confirmation Deadlines

Based upon the Committee's representation that it intends to file a liquidating plan within the next thirty days, the Court sets **February 21, 2018** as the deadline for the filing of a Plan. The deadline for the Committee to obtain approval of a Disclosure Statement is **April 25, 2018**.

To ensure the maximum distribution to creditors, it is imperative that a Plan be confirmed quickly. If a Plan has not been confirmed by **July 25, 2018**, the Court will consider the appointment of a Chapter 11 Trustee or revisit conversion to chapter 7.

Conclusion

Based upon the foregoing, the Motion to Convert is DENIED. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

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#4.10 Hearing
RE: [542] Motion to Approve Compromise Under Rule 9019 / Memorandum of Points & Authorities In Support of Motion for Order Approving Settlement With The Lee Group (Greenwood, Gail)

FR. 1-17-18

Docket 542

Tentative Ruling:

1/17/2018

For the reasons set forth below, the Motions are GRANTED.

Pleadings Filed and Reviewed:

- 1) Papers filed in Crystal Waterfalls, LLC (Case No. 2:15-bk-27769-ER):
 - a) Memorandum of Points and Authorities in Support of Motion for Order Approving Settlement With the Lee Group (the "Motion") [Doc. No. 445]
 - i) Notice of Motion and Hearing Regarding Motion for Order Approving Settlement With the Lee Group [Doc. No. 446]
 - b) No opposition is on file
- 2) Substantially identical papers filed in Liberty Asset Management Corporation (Case No. 2:16-bk-13575-ER):
 - a) Memorandum of Points and Authorities in Support of Motion for Order Approving Settlement With the Lee Group (the "Motion") [Doc. No. 542]
 - i) Notice of Motion and Hearing Regarding Motion for Order Approving Settlement With the Lee Group [Doc. No. 543]
 - b) No opposition is on file

I. Facts and Summary of Pleadings

The Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Committee"), Liberty Asset Management Corporation ("Liberty"), and Crystal Waterfalls, LLC ("Crystal") seek approval of a settlement agreement (the

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“Settlement Agreement”) which resolves the adversary proceeding captioned *Crystal Waterfalls LLC v. HCL 2011, LLC*, Adv. No. 2:15-ap-01671 (the “HCL Adversary”). Substantially identical Motions seeking approval of the Settlement Agreement have been filed in the Liberty and Crystal cases.

Liberty commenced a voluntary Chapter 11 petition on March 21, 2016. Crystal commenced a voluntary Chapter 11 petition on November 19, 2015. Crystal’s primary asset was a hotel property located at 1211 E. Garvey Street, Covina, CA (the “Hotel”). On December 2, 2016, the Court approved the sale of the Hotel for \$22.6 million. *See* Doc. No. 284, Case No. 2:15-bk-27769-ER. After payment of undisputed liens, taxes, and costs of sale, approximately \$9.3 million of the sales proceeds remain (the “Hotel Sales Proceeds”) and are being held by Crystal’s counsel in its attorney-client trust account. *See* Doc. No. 337, Case No. 2:15-bk-27769-ER. The Committee contends that Liberty is the beneficial owner of all of the membership interests in Crystal.

The HCL Adversary Proceeding

On March 24, 2017, Crystal filed a “Second Amended Complaint for (1) Cancellation of Written Instrument, (2) Quiet Title, (3) Avoidance of Fraudulent Transfer (11 U.S.C. §544), and (4) Declaratory Relief” (the “Complaint”) [Adv. No. 2:15-ap-01671-ER, Doc. No. 142] against HCL 2011 LLC (“HCL”). In the Complaint, Crystal alleges that HCL, acting through Benjamin Kirk (“Mr. Kirk”), recorded an unauthorized grant deed (the “Grant Deed”) transferring the Hotel to Washe, LLC (“Washe”). Crystal alleges that Washe, acting through Shelby Ho (“Ms. Ho”), then recorded an unauthorized deed of trust (the “Deed of Trust”) against the Hotel and in favor of HCL, which purported to secure a \$28.5 million loan from HCL to Washe. Crystal alleges that neither it or Washe ever entered into a loan agreement with HCL, ever received any funds from HCL, or ever received any benefit from recordation of the Deed of Trust. Crystal seeks to set aside the Deed of Trust and seeks a declaration that HCL has no interest in the Hotel.

On May 26, 2017, HCL filed a Second Amended Counterclaim (the “Counterclaim”) against Crystal and other parties. HCL seeks a declaration that its Deed of Trust against the Hotel is valid, as well as a declaration that Crystal holds the Hotel Sales Proceeds in constructive trust for the benefit of HCL and a group of investors consisting of Sophia Huang and her family members (the “Lee Group”).

Proofs of Claim Filed by the Lee Group

On October 12, 2016, the Lee Group filed proofs of claim in the Liberty

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bankruptcy case in the aggregate amount of \$35,354,904.12. On November 4, 2016, HCL (on behalf of the Lee Group) filed a proof of claim in the Crystal bankruptcy case in the amount of \$37,310,00.43. HCL asserts that \$28.5 million of its claim in the Crystal case is secured by a deed of trust against the Hotel Sales Proceeds (the "HCL DOT").

Liberty, Crystal, and the Committee dispute the validity of the HCL DOT and the proofs of claim filed by the Lee Investors. Liberty, Crystal, and the Committee assert that the HCL DOT is void and/or may be avoided as a fraudulent transfer pledged in furtherance of a Ponzi scheme, and that even if the HCL DOT is valid, it should be reduced to the net principal amount invested with Liberty. The Lee Group asserts that the HCL DOT and the proofs of claim filed in the Liberty case are valid.

Proof of Claim Filed by JD Brothers

On October 14, 2016, JD Brothers filed a proof of claim in the Liberty bankruptcy case in the amount of \$24,433,689. JD Brothers' claim arises from an investment contract pursuant to which JD Brothers invested \$13 million in exchanged for certain distressed assets as well as a 44.4% interest in HK Grace Building LLC, which owned real property located at 166 Geary Street, San Francisco, CA (the "Geary Property").

The Settlement Agreement

The material terms of the Settlement Agreement are as follows:

- 1) **Lee Group Allowed Secured Claim.** The Lee Investors shall have an allowed secured claim in the amount of \$3.5 million against Crystal (the "Lee Group Allowed Secured Claim").
- 2) **Lee Group Allowed Unsecured Claim.** The Lee Investors shall have an allowed general unsecured claim against Liberty in the amount of \$32.5 million (the "Lee Group Allowed General Unsecured Claim").
- 3) **JD Brothers Allowed Unsecured Claim.** JD Brothers shall not amend its claim against Liberty, and the claim shall be deemed allowed.
- 4) **Payment of Lee Group Claims.** The Lee Group Allowed Secured Claim shall be paid in full (without interest) by Crystal within five days after entry of the orders approving the Settlement Agreement. The Lee Group Allowed General Unsecured Claim will be satisfied pursuant to a plan of liquidation in the Liberty bankruptcy case. The Lee Group Allowed General Unsecured Claim will be in the same class and treated consistently with JD Brothers' general unsecured claim.

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CONT...

Liberty Asset Management Corporation

Chapter 11

- 5) **Payment of HCL Claim.** Upon entry of orders approving the Settlement Agreement, HCL's claim against Crystal shall be reduced to an allowed secured claim in the amount of \$3.5 million, and HCL's claim against Liberty shall be increased to an allowed general unsecured claim in the amount of \$32.5 million. All remaining proofs of claim filed by the Lee Group shall be waived from the claims registers in the Liberty and Crystal cases.
- 6) **Dismissal of the HCL Adversary.** Within five business days after entry of the orders approving the Settlement Agreement, Crystal and HCL will request dismissal of the HCL Adversary with prejudice.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. No creditors have objected to approval of the Settlement Agreement, and the Settlement Agreement is supported by the Committee. The Settlement Agreement is supported by the Lee Group and JD Brothers, which are among the largest creditors in the Crystal and Liberty cases. The Settlement Agreement avoids litigation which would be time consuming and would increase administrative costs.

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CONT... **Liberty Asset Management Corporation**

Chapter 11

Difficulties to Be Encountered in the Matter of Collection

This factor does not apply since the issue is the avoidance of the HCL DOT as opposed to an affirmative recovery.

Complexity of the Litigation

This factor weighs strongly in favor of approving the Settlement Agreement. The litigation involves a complex and fact-intensive web of transactions among numerous parties. Many of the records pertaining to the transactions that would feature prominently in the litigation are no longer available, which only increase complexity.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. While it is possible that litigation could result in the invalidation of the HCL DOT, such an outcome would be time consuming and costly. Thus, from the perspective of the estate and creditors, any improved recovery obtained through additional litigation would be pyrrhic, because the additional recovery would almost certainly be offset by much larger administrative costs.

III. Conclusion

Based upon the foregoing, the Motions are GRANTED and the Settlement Agreement is APPROVED. Crystal and Liberty shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik

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CONT...

Liberty Asset Management Corporation

Chapter 11

Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, January 18, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#4.20 Hearing

RE: [445] Motion to Approve Compromise Under Rule 9019 / Memorandum of Points & Authorities In Support of Motion for Order Approving Settlement With The Lee Group (Greenwood, Gail)

FR. 1-17-18

Docket 445

Tentative Ruling:

1/17/2018

See Cal. No. 4.1, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, January 18, 2018

Hearing Room 1568

10:00 AM

2:17-15374 Sarmen Ghazaryan

Chapter 7

Adv#: 2:17-01385 Financial Services Vehicle Trust, by and through i v. Ghazaryan

#5.00 HearingRE: [28] Motion for Default Judgment

Docket 28

Tentative Ruling:

1/17/2018

For the reasons set forth below, the Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint to Determine Dischargeability of Debt [Doc. No. 1]
- 2) Plaintiff's Motion for Default Judgment Under LBR 7055-1 (the "Motion") [Doc. No. 28]
 - a) Plaintiff's Memorandum of Points and Authorities in Support of its Motion for Entry of Default Judgment [Doc. No. 30]
 - b) Notice of Motion [Doc. No. 29]
 - c) Declaration of Jennifer Walden in Support of Plaintiff's Motion for Default Judgment [Doc. No. 31]
 - d) Declaration of Andrew Gottschlich in Support of Plaintiff's Motion for Default Judgment [Doc. No. 32]
 - e) Declaration of Rebecca A. Caley in Support of Plaintiff's Motion for Default Judgment [Doc. No. 33]
 - f) Declaration of Christopher M. Domin in Support of Plaintiff's Motion for Default Judgment [Doc. No. 34]
 - g) Declaration of Carolyn Byrne in Support of Plaintiff's Motion for Default Judgment [Doc. No. 35]
 - h) Plaintiff's Exhibit List in Support of its Motion for Default Judgment [Doc. No. 36]
 - i) Request for Judicial Notice in Support of Plaintiff's Motion for Entry of Default Judgment [Doc. No. 37]
- 3) No opposition from the Defendant

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CONT... Sarmen Ghazaryan

Chapter 7

I. Facts and Summary of Pleadings

On August 7, 2017, Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC (the "Plaintiff") timely filed a "Complaint to Determine Dischargeability of Debt"(the "Complaint") against Sarmen Ghazaryan (the "Defendant"). After Defendant failed to respond to the summons, the Clerk of the Court entered default against the Defendant on September 14, 2017.

Plaintiff seeks a judgment that indebtedness incurred by Defendant in connection with a vehicle lease is non-dischargeable pursuant to §523(a)(2)(B). Plaintiff alleges that in submitting a credit application in connection with the vehicle lease, Defendant falsely represented that his annual income was \$118,000, when in fact his annual income was less than \$6,000. Defendant has not responded to the Motion for Default Judgment.

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). The Complaint's allegations, as well as the supporting declarations submitted in connection with the Motion for Default Judgment, establish that Plaintiff is entitled to judgment against Defendant for damages of \$27,958.36, accrued interest of \$2,408.62, attorneys' fees of \$17,086.00, and court costs of \$1,356.17.

Section 523(a)(2)(B) excepts from discharge "money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by use of a statement in writing that is materially false; respecting the debtor's ... financial condition; on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and that the debtor caused to be made or published with intent to deceive."

The declarations submitted by Plaintiff establish that it reasonably relied upon Defendants' materially false statements regarding his annual income. Specifically, Plaintiff ran a credit check using its customary procedures, and the credit check did not indicate any red flags. The well-pleaded allegations of the Complaint show that Defendant made the false representations regarding his income for the purpose of deceiving Plaintiff into extending the credit used to finance the vehicle lease.

Plaintiff has established its damages by submitting evidence of the deficiency it incurred on account of unpaid lease payments after it repossessed and sold the vehicle. Finally, Plaintiff has showed that it is entitled to recover costs and attorneys' fees. As

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CONT... **Sarmen Ghazaryan**

Chapter 7

explained by the Ninth Circuit Bankruptcy Appellate Panel in *In re Hung Tan Pham*, 250 B.R. 93, 99 (B.A.P. 9th Cir. 2000), “the determinative question in cases under § 523(a)(2) is whether the successful plaintiff could recover attorney’s fees in a non-bankruptcy court.” Here, Plaintiff could recover attorneys’ fees in state court as a result of the fee provision in the lease agreement that Plaintiff signed. Having reviewed the billing statements submitted in connection with the Motion for Default Judgment, the Court finds that the requested fees of \$17,086.00 are reasonable in view of the work performed.

Based upon the foregoing, the Motion for Default Judgment is GRANTED in its entirety. In view of the granting of the Motion, the Status Conference is taken off calendar. Plaintiff shall submit a conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sarmen Ghazaryan

Represented By
Vilen Khachatryan

Defendant(s):

Sarmen Ghazaryan

Pro Se

Plaintiff(s):

Financial Services Vehicle Trust, by

Represented By
Rebecca A Caley

Trustee(s):

Wesley H Avery (TR)

Pro Se

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10:00 AM

2:17-15374 Sarmen Ghazaryan

Chapter 7

Adv#: 2:17-01385 Financial Services Vehicle Trust, by and through i v. Ghazaryan

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01385. Complaint by Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC, a Delaware limited liability company against Sarmen Ghazaryan. false pretenses, false representation, actual fraud)) (Caley, Rebecca)

fr. 11-14-17; 1-16-18

Docket 1

Tentative Ruling:

1/17/2018

See Cal. No. 5, incorporated in full by reference.

Party Information

Debtor(s):

Sarmen Ghazaryan

Represented By
Vilen Khachatryan

Defendant(s):

Sarmen Ghazaryan

Pro Se

Plaintiff(s):

Financial Services Vehicle Trust, by

Represented By
Rebecca A Caley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, January 18, 2018

Hearing Room 1568

11:00 AM

2:14-26032 Pierce Henry O'Donnell

Chapter 7

#100.00 Hearing
RE: [191] Motion to Allow Claim 6 to determine amount of claim with proof of service

Docket 191

***** VACATED *** REASON: PER ORDER ENTERED 1-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pierce Henry O'Donnell

Represented By
Peter T Steinberg

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 22, 2018

Hearing Room 1568

10:00 AM

2:17-22699 Jenelle Soller

Chapter 7

#1.00 HearingRE: [22] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 BMW 328i (VIN WBAVC53527FZ71622) .

Docket 22

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Jenelle Soller

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jenelle Soller

Represented By
Julie J Villalobos

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, January 22, 2018

Hearing Room 1568

10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#2.00 Hearing
RE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 601 N. Long Beach Blvd., Long Beach, CA 90802 .

fr: 12-4-17

Docket 26

***** VACATED *** REASON: VOLUNTARY DISMISSAL OF MOTION
FILED ON 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, January 22, 2018

Hearing Room 1568

10:00 AM

2:17-22993 Joseph Skaf and Wafaa Shalhoub Skaf

Chapter 7

#3.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 20301 Adriana Pl, Santa Clarita, CA 91351 . (Jafarnia, Merdaud)

Docket 13

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$633,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$692,689.33. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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CONT... Joseph Skaf and Wafaa Shalhoub Skaf

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Joseph Skaf

Represented By
Roland H Kedikian

Joint Debtor(s):

Wafaa Shalhoub Skaf

Represented By
Roland H Kedikian

Trustee(s):

Jason M Rund (TR)

Pro Se

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10:00 AM

2:17-23476 Luis R Mesa

Chapter 7

#4.00 HearingRE: [11] Amended Motion (related document(s): 10 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 14909 16th Avenue Court E, Tacoma, WA 98445 . filed by Creditor Carrington Mortgage Services, LLC) Amended to correct Proof of Service only (Marth, Angie)

Docket 11

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (8th Cir. BAP 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$271,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$288,806.93. The Court finds there is no equity and

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CONT... Luis R Mesa

Chapter 7

there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Luis R Mesa

Represented By

Michael H Raichelson

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:17-23554 David R. Harrier

Chapter 7

#5.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2623 West Norberry Street, Lancaster, CA 93536 . (Schloss, Edward)

Docket 13

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

The subject property has a value of \$300,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. Considering Movant's lien, all senior liens against the property, and the estimated costs of sale, there is an equity cushion of \$23,738.77. There is some, but very little equity and there is no evidence that the property is necessary to a reorganization or that the trustee can administer the property for the benefit of creditors. Movant is protected by a 7.9% equity cushion in the property. The Ninth Circuit has established that an equity cushion of 20%

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CONT...

David R. Harrier

Chapter 7

constitutes adequate protection for a secured creditor. Pistole v. Mellor (In re Mellor), 734 F.2d 1396, 1401 (9th Cir. 1984); *see* Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.), 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Because the equity cushion in this case is less than 20%, the Court concludes that Movant's interest in the collateral is not adequately protected. This is cause to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

David R. Harrier

Represented By

Christopher P Walker

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-24184 Raul Amaya

Chapter 7

#6.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 219 S. Mariposa Avenue #108, Los Angeles, CA 90004 with Exhibits "A" through "C" and proof of service.

Docket 13

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on October 16, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Raul Amaya

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bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

REVISED SUBMISSION PROCEDURE

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Raul Amaya

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:17-24422 Charles Harris

Chapter 7

#7.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1001-A Grand Avenue, Covina, CA 91724 . (Starre, Gary)

Docket 9

Tentative Ruling:

1/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

Notice to quit was served upon the Debtor on November 30, 2017. The lease matured or was rejected by operation of law on December 4, 2017.

This Motion has been filed to allow the Movant to proceed with an unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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Charles Harris

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Movant also requests annulment of the stay. The notice to quit was served upon the Debtor on November 30, 2017; the Petition was filed on November 22, 2017. As evidenced by the "Certificate of Notice of Meeting of Creditors" [Doc. No. 7], Notice of the Petition was mailed to the Movant, among other creditors listed on the Master List of Creditors [Doc. No. 1], via first class mail on November 24, 2017. Thus, it would appear that the Movant was served with notice of the Petition prior to serving the notice to quit upon the Debtor. Furthermore, the Movant has not attached a supplemental declaration to the Motion stating the grounds for the requested annulment of the stay. Therefore, the Court does not find that annulment is appropriate and Movant's request for annulment is DENIED.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

REVISED SUBMISSION PROCEDURE

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Charles Harris

Represented By
Daniel King

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:17-23715 Steve S. Sommer

Chapter 7

#8.00 HearingRE: [17] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: State Court Action KC 065554 . (Miller, Edward)

Docket 17

Tentative Ruling:

1/18/2018

The Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against Debtor or estate property. The stay is annulled retroactive to the Petition Date. All other relief is denied.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 17]
- 2) Supplemental Declaration of Wells Fargo Bank, N.A. in Support of the Motion [Doc. No. 19]
- 3) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Steve Sommer (the "Debtor") filed a voluntary Chapter 11 petition on November 6, 2017 (the "Petition") [Doc. No. 1]. On December 28, 2017, Wells Fargo Bank, N.A. (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 17].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movant may

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proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum in an action against the Debtor in the Superior Court of California, County of Los Angeles, captioned *Wells Fargo Bank, N.A. v. Sommer et al.*, Case No. KC065554 (the "State Court Action"). The State Court Action was filed on February 1, 2013. The State Court Action asserts claims for: (1) Judicial Foreclosure Deed of Trust; (2) Appointment of Receiver, Temporary Restraining Order, Preliminary Injunction; and (3) Recovery of Personal Property.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The claims in the State Court Action arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum. The State Court Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.

The Motion also requests annulment of the stay based on the Movant's postpetition actions against the Debtor. The Movant states that pursuant to the terms of a Stipulation for Entry of Judgment in Trust executed by the parties on May 27, 2014, the Movant was entitled to immediate relief from stay if the Debtor filed for bankruptcy protection.

The Movant filed the Supplemental Declaration of Wells Fargo Bank, N.A. in Support of the Motion (the "Supplemental Declaration") [Doc. No. 19] on January 5, 2018. The Supplemental Declaration clarifies that the Movant requests relief from stay specifically to return to the Superior Court and conclude the State Court Action against the Debtor. Supplemental Declaration at ¶ 5. The Movant will not proceed with collection of the judgment against the Debtor absent approval of the Court, and is not attempting to liquidate any personal or real property at this time. *Id.*

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

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Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. §§ 362(a)(1), (a)(6).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors

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appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing Movant to continue the intended state court complaint will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The Debtor's Opposition is overruled. The Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Steve S. Sommer

Represented By
Leslie A Cohen

Trustee(s):

Peter J Mastan (TR)

Pro Se

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2:17-25263 Jose Granados

Chapter 7

#1.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against an Individual. Sarah) Additional attachment(s) added on 12/15/2017 (Cowan, Sarah).

Docket 1

Tentative Ruling:

1/22/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

The Court will dismiss the involuntary petition based on the Petitioning Creditors' failure to file a proof of service of the summons and petition with the court. However, as a motion for relief from the automatic stay has been set for hearing on shortened notice on January 29, 2018, the Court will not enter the dismissal order until after the stay-relief motion has been heard. The Court will enter an appropriate order.

Party Information

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Debtor(s):

Jose Granados

Pro Se

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2:17-13943 Unity Courier Service, Inc.

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#2.00 Hearing re [181] Objection to Claim #26 by Claimant Pedro Polio Class. in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class

fr: 1-17-18

Docket 0

Tentative Ruling:

1/22/2018

For the reasons set forth below: (1) the Class Certification Motion is GRANTED; (2) the Objection to the Polio Claim is OVERRULED; and (3) the Objection to the Callejo Claim is SUSTAINED.

Pleadings Filed and Reviewed:

- 1) TBS Class Supplemental Objection to Claim #26 by Claimant Pedro Polio Class (the "Polio Objection") [Doc. No. 183]
 - a) Notices of Polio Objection [Doc. Nos. 181, 182]
 - b) Opposition to the Polio Objection (the "Polio Opposition") [Doc. No. 211]
 - c) Reply to the Polio Opposition [Doc. No. 218]
- 2) TBS Class Objection to Claim #31 by Claimant Tim Callejo (the "Callejo Objection") [Doc. No. 168]
 - a) Response to the Callejo Objection (the "Callejo Opposition") [Doc. No. 207]
 - i) Declaration of Melisa N. McKellar in Support of Response to the Callejo Objection [Doc. No. 206]
 - ii) Notice of Lodgment in Support of Response to the Callejo Objection [Doc. No. 205]

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- b) Reply to the Callejo Opposition [Doc. No. 210]
- 3) Creditor and Class Claimant Pedro Polio's Motion for Application of FRCP Rule 23 Class Certification (the "Class Certification Motion") [Doc. No. 212]
 - a) TBS Class Limited Opposition to Class Certification Motion [Doc. No. 217]
- 4) Order Consolidating Hearings on Allowability of Class 3(A) Claims [Doc. No. 213]
- 5) Statement of the Debtor and Debtor in Possession with Respect to Claim Objection Hearings [Doc. No. 209]

I. Facts and Summary of Pleadings

Unity Courier Service, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on March 31, 2017 (the "Petition") [Doc. No. 1]. Prior to filing the Petition, the Debtor was a named defendant in multiple class action lawsuits in the California Superior Court asserting claims for violations of various provisions of California's labor laws. **[Note 1]**. On May 9, 2017 the Court entered an Order Setting June 29, 2017 as the Last Day to File Proofs of Claim (the "Bar Date Order") [Doc. No. 66]. On June 22, 2017, Class Representative Pedro Polio on behalf of himself and the Unity Class **[Note 2]** filed Claim No. 26 in the amount of \$80,867,985.71 (the "Polio Claim"). On June 29, 2017, Angelea Brooks, Patrick Harris, and Gerald Nolan, individually and on behalf of the TBS Class **[Note 3]** filed Claim No. 28 in the amount of \$5,313,926.99 (the "TBS Claim"). Also on June 29, 2017, Tim Callejo filed Claim No. 31 in the amount of \$6,080,042.00; the Amended Claim No. 31 the amount of \$11,110,400.00 was filed on December 27, 2017 (together, the "Callejo Claim").

The "Debtor's First Amended Plan of Reorganization Dated December 13, 2017" (the "Plan") [Doc. No. 187] places claims filed on account of the Debtor's alleged wage and hour violations into Class 3(a) (the "Class 3(a) Claims"). The Class 3(a) Claims include the Polio Claim, the TBS Claim, and the Callejo Claim. The TBS Claimant has objected to the claims asserted by two other Class 3(a) Claimants. The Polio Claimant has filed a motion for entry of an order certifying his claim as a class claim (the "Class Certification Motion") [Doc. No. 212]. On January 5, 2018, the Court entered the "Order Consolidating Hearings on Allowability of Class 3(A) Claims" [Doc. No. 213]. The Consolidated Hearing Date is January 23, 2018 at 10:00 a.m.

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The Class Certification Motion

On January 3, 2018, creditor and class-claimant Polio individually and on behalf of the Unity Class filed the "Motion for Application of FRCP Rule 23 Class Certification" (the "Class Certification Motion") [Doc. No. 212]. The Class Certification Motion requests entry of an order certifying the Polio Claim as a class claim pursuant to FRCP 23, made applicable to bankruptcy proceedings pursuant to FRBP 7023 and 9014.

The Unity Class, *see* Note 2, was certified by the Superior Court of the State of California for the County of Alameda (the "Alameda Superior Court") on July 23, 2015. The Alameda Superior Court certified the following claims: (1) Failure to Pay Minimum Wage; (2) Overtime Compensation; (3) Failure to Provide Rest Periods or Pay One Hour of Additional Wages in Lieu Thereof; (4) Failure to Provide Meal Periods or Pay One Hour of Additional Wages in Lieu Thereof; (5) Failure to Timely Pay Wages Due at Termination; (6) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (7) Unfair and Unlawful Acts in Violation of Unfair Competition Law; and (8) Failure to Reimburse Expenses and/or Prohibited Cash Bond. "Declaration of Jasleen Ahuja" ("Ahuja Declaration") [Doc. No. 212] at ¶ 4, Exhibit B. The Class Certification Motion contends that sufficient cause exists for the Court to exercise its discretion to invoke FRBP 7023 and FRCP 23. The Class Certification Motion cites *In re Musicland Holding Corp*, 362 B.R. 644 (Bankr. S.D.N.Y. 2007) which set forth three factors to be considered in determining whether to invoke FRBP 7023: (1) whether the class was certified pre-petition; (2) whether the members of the putative class received notice of the claims bar date; and (3) whether class certification will adversely affect the administration of the estate. 362 B.R. at 654–55.

The Class Certification Motion contends that all three *Musicland* factors militate in favor of certifying the Unity Class. The first *Musicland* factor militates in favor of applying FRBP 7023 because the Unity Class was certified pre-petition by the Alameda Superior Court, and the Unity Class adequately satisfied the requirements under FRCP 23 of: (a) numerosity; (b) commonality; (c) typicality; and (d) adequate representation. The second *Musicland* factor also weighs in favor of certification of the Unity Class because the Debtor provided putative class members with notice of the Claims Bar Date. Lastly, the third *Musicland* factor favors certification because

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certification of the Unity Class will not adversely impact the administration of the Estate.

The Limited Opposition of TBS Class

On January 9, 2018, the TBS Class filed the "Limited Opposition to Class Certification Motion" [Doc. No. 217]. The TBS Class opposes the Class Certification Motion to the extent it seeks damages for a period beyond what was granted in the Alameda Superior Court's Certification Order, *i.e.* from the "time period beginning on March 1, 2008 and ending on the date of notice to the class." Doc. No. 217 at 2; *see also* Note 2.

The Polio Objection

On December 1, 2017, the TBS Class filed the "Supplemental Objection to Claim #26 by Claimant Pedro Polio Class" (the "Polio Objection") [Doc. No. 183]. The TBS Class objects to the Polio Claim on the basis that the Polio Claim fails to provide supporting evidence to substantiate the claim. Therefore, the TBS Class contends that the Polio Claim should be disallowed due to the Polio Class's failure to provide any supporting evidence. The Polio Objection contends that the Polio Class, between the Polio Claim itself and the meet and confer process, failed to substantiate its "conclusory claims with any itemization that would enable a neutral third party to examine the breakdown without complete reliance on the self-interested calculations [submitted by the Polio Class]." Doc. No. 183 at 4. The Polio Objection argues that "[s]upporting documentation should, at a minimum, itemize the names of employees, work dates, and the employee expenses that underlie the claim for penalties." *Id.* at 5. In contrast, the Polio Objection contends that the information provided in support of the Polio Claim is not sufficient to allow a neutral observer to ascertain "the dates involved, the people involved, the type of employees involved or the dollar amounts tied to any of these dates, people or types of employees." *Id.*

Polio Opposition

On January 3, 2018, the Polio Class filed the Opposition to the Polio Objection (the "Polio Opposition") [Doc. No. 211]. The Polio Opposition argues that sufficient information was submitted in support of the Polio Claim, that the Polio Objection fails to overcome the *prima facie* validity of the Polio Claim, and that FRBP does not

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require an explanation of calculations. The Polio Opposition points to the "Declaration of Teresa Allen" (the "Allen Declaration") [Doc. No. 86] filed concurrently with, and in support of the Polio Claim. The Allen Declaration was filed concurrently with (although not as an attachment to the claim) the Polio Claim on June 22, 2017. The Allen Declaration included the following attachments: a copy of the First Amended Consolidated Class Action Complaint; a copy of the Order Granting Class Certification; the Declaration of Kelsey Skey Regarding Administrator's Notification Procedure; a copy of the Financial Exposure Analysis grid; and a copy of the Notice of Stay of Proceedings. Doc. No. 211 at 3; *see also* Doc. No. 86, Exhibits D–E. The computations, as reflected in the Financial Exposure Analysis, included average workweek, average hourly rate, average hours per shift, average IRS mileage reimbursement rate, total number of class members, and additional information. *Id.* This information was derived from a randomized sampling of the acquired employee data for the Class period of March 1, 2008 to August 28, 2015. Ahuja Declaration at ¶ 8, Exhibit F. On July 25, 2017, the Polio Class provided the TBS Class the Financial Exposure Analysis of the Polio Claim valuation.

The Reply

On January 10, 2018, the TBS Class filed the Reply to the Polio Opposition [Doc. No. 218]. The Reply to the Polio Opposition restates the arguments set forth in the Polio Objection that the Polio Class failed to provide sufficient information to substantiate the Polio Claim even after the TBS Class continued to ask for an explanation of the computation.

The Callejo Objection

On November 20, 2017, the TBS Class filed the "Objection to Claim #31 by Claimant Tim Callejo" (the "Callejo Objection") [Doc. No. 168]. The Callejo Objection contends that the Callejo Claim—filed by Callejo as a representative on behalf of the Debtor's employees under the Private Attorney General Act, Cal. Lab. Code. § 2698 *et seq.* ("PAGA")—should be disallowed on the following grounds: (1) the Callejo Claim is unsubstantiated and/or premised on faulty assumptions, and Callejo did not submit a single document in support of the Callejo Claim; and (2) the Callejo Claim should be reduced by 75% because under PAGA, 75% of the claim belongs to the State of California. Doc. No. 168 at 2.

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Regarding the first contention, similar to its Polio Objection, the TBS Class argues that the Callejo Claim is not supported by any information to substantiate the claim; thus, the burden is on the Callejo Claimant to demonstrate the validity of its claim. *Id.* at 3–4. As to the second argument for disallowance, the TBS Class contends that the Callejo Claim should be reduced by 75% because pursuant to Cal. Lab. Code §§ 2668 (i) and (j), the State of California is entitled to 75% of any recover of civil penalties in an action by an aggrieved employee under PAGA. *Id.* at 5–7. The Callejo Objection argues that this reduction is critical under the circumstances in order to avoid giving Callejo, as a PAGA representative, disproportionate control over the Plan. *Id.* at 6.

The Callejo Response/Opposition

On December 27, 2017, Callejo filed the Response to the Callejo Objection (the "Callejo Opposition") [Doc. No. 207]. On the same date, Callejo filed the Amended Claim No. 31 in the amount of \$11,110,400.00, with supporting documents attached. The Callejo Opposition argues that the Callejo Objection fails because (1) a lack of documents is not a basis to disallow a claim, and (2) for the purposes of PAGA, a plaintiff stands in the shoes of the state and may continue to pursue PAGA penalties on behalf of the state even in bankruptcy. Doc. No. 207 at 1. The Callejo Opposition explains that the Callejo PAGA action is predicated upon the Debtor's failure to reimburse employees for necessary expenses incurred in using their vehicles pursuant to Cal. Lab. Code § 2802. Callejo contends that the Debtor's failure to reimburse its employees at the standard IRS Mileage Reimbursement rate constitutes a *per se* violation of Cal. Lab. Code § 2802. The Callejo Opposition contends that the documents filed in support of the Callejo Claim as amended on December 27, 2017 are sufficient to substantiate the Callejo Claim. Those documents purport to show that the Debtor failed to reimburse its employees for necessary expenses during the relevant period and they provide a basis for the calculation of the amount sought by Callejo Claim. Regarding the Callejo Objection's argument that the Callejo Claim should be reduced by 75%, the Callejo Opposition states that a PAGA representative may file a proof of claim on the state's behalf; however, the Callejo Opposition acknowledges that the Court may reduce the amount of a PAGA representative claim for Chapter 11 voting purposes. Doc. No. 207 at 8.

The Reply

On January 3, 2018, the TBS Class filed the Reply to the Callejo Opposition [Doc.

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No. 210]. The Reply to the Callejo Opposition contends that: (1) Callejo uses the wrong legal standard and provides no evidence of the Debtor's failure to reimburse; (2) the Callejo Claim fails to show a sufficient nexus between the Debtor's alleged failure to reimburse under Cal. Lab. Code § 2802 and the "civil penalties" requirement of PAGA; and (3) the Callejo Claim suffers from procedural defects including being untimely filed, claiming for a post-petition period, and failing to establish that PAGA's pre-filing requirements were satisfied.

II. Findings of Fact and Conclusions of Law

Polio Class Certification

Class proofs of claim are generally permitted in bankruptcy pursuant to § 501. *See In re Birthing Fisheries, Inc.*, 92 F.3d 939, 939–40 (9th Cir. 1996). Rule 7023 of the Federal Rules of Bankruptcy Procedure expressly provides that "Rule 23 [Fed. R. Civ. Proc.] applies in adversary proceedings." Bankruptcy Rule 9014, "which applies to contested matters, permits the bankruptcy court 'at any stage in a particular matter [to apply] one or more of the other rules of Part VII,' which would include Rule 7023, as it relates to class actions." *Reid v. White Motor Corp.*, 886 F.2d 1462, 1469 (6th Cir. 1989) (quoting *In re American Reserve*, 840 F.2d 487, 488 (7th Cir. 1988)). The proponent of a class claim in bankruptcy must "(1) make a motion to extend the application of Rule 23 to some contested matter; (2) satisfy the requirements of Rule 23; and (3) show that the benefits derived from the use of the class claim device are consistent with the goals of bankruptcy." *In re Motors Liquidation Co.*, 447 B.R. 150, 157 (Bankr. S.D.N.Y. 2011). Thus where, such as here, a motion for class certification has been duly made, "the claim can be asserted as a class claim if, but only if, "(1) the class claim proponent has shown compliance with the requirements of Civil Rule 23, and (2) after consideration of consistency with bankruptcy needs and concerns, the bankruptcy court directs that Rule 23 should apply." *Id.*

Fed. R. Civ. P. 23

Rule 23(a) requires a showing of: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. In seeking class certification, a putative class representative must establish that the proposed class meets each of the prerequisites of Rule 23(a). *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

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Here, the Court finds that the Polio Class has made the requisite showing under Rule 23. Importantly, while the standards for certification under the California Code of Civil Procedure differ from the standard set forth in Rule 23, the California rule for class certification does mirror the federal rule in certain respects. The California rule requires the plaintiff to show ascertainability, numerosity, and community of interest. The numerosity and community of interest requirements are similar to the federal requirements of numerosity and commonality; thus, this Court is guided by the findings of the Alameda Superior Court that the Unity Class was sufficiently numerous and shared a community of interest. *See* Doc. No. 212, Exhibit B. In addition to the findings of the Alameda Superior Court, the arguments in the Class Certification Motion also support the finding that the Unity Class satisfies the requirements of Rule 23.

First, the class is sufficiently numerous that joinder would be impracticable. Fed. R. Civ. P. 23(a)(1). The Unity Class is estimated to have 341 Class Members, a number which surpasses the threshold of this requirement. *See Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d. Cir. 1995) ("Numerosity is presumed at a level of 40 members."). Second, the Court finds that the requirement of commonality is met, *see* Fed. R. Civ. P. 23(a)(2) (the case must involve "questions of law or fact common to the class"), because all Class Members were subject to the same policies, *i.e.* common timekeeping policies and common tasks that are or are not recorded based on those policies; thus, a single issue of law or fact is common to the class. Third, the Court finds that the Class Representative, Pedro Polio, satisfies the typicality requirement—that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Here, Polio asserts claims that the Debtor violated multiple provisions of the Cal. Lab. Code, such as failure to pay overtime, mandatory break violations, and failure to reimburse necessary expenses. The Court finds that these claims are "reasonably co-extensive with those of absent class members," *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010), to satisfy the typicality requirement. Fourth, the Court finds that Polio meets the final requirement that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy of representation is generally presumed, "[a]bsent contrary evidence from the party opposing class certification . . ." *Madison Assocs. v. Baldante (In re Madison Assocs.)*, 183 B.R. 206, 217 (Bankr. C.D. Cal. 1995) (citing *Hohmann v. Packard Instrument Co.*, 399 F.2d 711, 714 (7th Cir. 1968)). Here, the TBS Class has not disputed that Polio is an

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adequate representative of the class. Furthermore, the Alameda Superior Court determined that "the interests of the Unity Class would best be served by appointing . . . Pedro Polio" as class representative. *See* Doc. No. 212, Exhibit B.

Bankruptcy Considerations

The Bankruptcy Code and Rules give no express guidance for the court's exercise of discretion to apply Rule 23; however, "a pervasive theme [among the cases considering this issue] is avoiding undue delay in the administration of the case." *In re Motors Liquidation*, 447 B.R. at 157. Thus the proponent of a class claim must "show that the benefits from the use of the class claim device are consistent with the goals of bankruptcy." *Id.*

Here, the Court finds that certification of the Unity Class under Rule 23 is consistent with the needs and concerns of bankruptcy. The Debtor intends a quick resolution of the case and has already proposed a Plan; thus, failure to certify the Unity Class would very likely result in undue delay to the administration of the case. Furthermore, certification of the Unity Class is not opposed by any of the other Class 3(A) Claimants.

Class Period

The TBS Class only opposes the Class Certification Motion to the extent it seeks damages for a period beyond what was granted in the Alameda Superior Court's Certification Order. The Alameda Superior Court certified the Unity Class for the "time period beginning on March 1, 2008 and ending on the date of notice to the class." Doc. No. 212, Exhibit B. The Class Certification Motion does not state when the class period ended (or should end), *i.e.* the date of notice to the class. However, the Polio Opposition to the TBS Class's Polio Objection defines the class period as "March 1, 2008 to August 28, 2015." Doc. No. 211 at 3; Ahuja Declaration at ¶ 8, Exhibit F. Given the absence of any evidence to the contrary, the Court finds that the Class Period is March 1, 2008 to August 28, 2015. Such period is consistent with the calculation amount claimed by the Polio Claimants, which is discussed in more detail below.

The Claim Objections

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A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. The "'basic federal rule' in bankruptcy is that state law governs the substance of claims." *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner v. United States*, 440 U.S. 48, 57 (1979)).

The Polio Objection

The initial burden is on the TBS Class to produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Lundell*, 223 F.3d at 1039. The Court finds that the TBS Class has not carried its burden to overcome the *prima facie* validity of the Polio Claim.

The TBS Class's objection to the Polio Claim is premised on the argument that Polio failed to provide sufficient documents or other evidence to substantiate the claimed amount. The initial Polio Objection stated that Polio "attached no documents to the Proof of Claim to substantiate the claim or to explain the unavailability of such documents." Doc. No. 183 at 4. This argument is unpersuasive because in Chapter 11 cases, the plain text of Bankruptcy Rule 3001 only requires supporting information to be filed for "claims based on a writing." Fed. R. Bankr. P. 3001(c). For other claims, the Rule only requires "a written statement setting forth the creditor's claim" and that the proof of claim "conform substantially to the appropriate Official Form." Fed. R.

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Bankr. P. 3001(a). As one bankruptcy treatise notes, "where the basis of the claim is statutory, such as in the case of a claim for taxes . . . there is no requirement of documentation." Bankr. Proc. Manual § 3001:4 (2017 ed.). Additionally, the TBS Class's argument in this regard fails to account for the Allen Declaration [Doc. No. 86] which was filed concurrently with the Polio Claim.

The case cited by the TBS Class, *In re Kirkland*, 572 F.3d 838 (10th Cir. 2009), supports the Court's interpretation of Rule 3001. In *Kirkland*, the claim at issue was based on a credit card debt. 572 F.3d at 839. The Debtor objected to the claim on the grounds that the creditor failed to submit any documents in support of the claim. *Id.* at 840. The bankruptcy court sustained the objection, and the Tenth Circuit affirmed the ruling of the bankruptcy court. In so holding, the Tenth Circuit discussed the requirements of Rule 3001(a) and then proceeded to discuss the requirements of Official Form 10 which requires a claimant to "[a]ttach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, [etc.]." *Id.* Thus, the claim in *Kirkland* clearly was within the category of claims based on a writing which require additional information to be submitted in support of the claim. Such is not the case here, and the TBS Class's reliance on *Kirkland* is misplaced.

The TBS Class further argues that to the extent the Polio Class did provide documents in support of the Polio Claim—the documents attached to the Allen Declaration and/or the documents filed in support of the Polio Opposition to the TBS Class's Polio Objection—such documents are insufficient for a neutral third-party to ascertain the validity of the claimed amount. As previously discussed, this argument fails because there is no requirement in either the Bankruptcy Rules or the Code that information submitted in support of a proof of claim should be detailed enough for a third-party to ascertain the validity of the claimed amount.

The TBS Class's Polio Objection is **OVERRULED**. The Polio Claim is allowed in the amount of \$80,867,985.71.

The Callejo Objection

The initial burden is on the TBS Class to produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Lundell*, 223 F.3d at 1039. For the reasons set forth below, the

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Court finds that the TBS Class carried its burden to overcome the *prima facie* validity of the Callejo Claim, and that Callejo failed to "prove the validity of the claim by a preponderance of the evidence." *Id.* Specifically, Callejo fails to submit evidence of the Debtor's failure to reimburse expenses under Cal. Lab. Code § 2802.

In the initial Callejo Objection, the TBS Class set forth two arguments for disallowance or reduction of the Callejo Claim: (1) the Callejo Claim is unsubstantiated and/or premised on faulty assumptions, and Callejo did not submit a single document in support of the Callejo Claim; and (2) the Callejo Claim should be reduced by 75% because under PAGA, 75% of the claim belongs to the State of California. The Callejo Opposition argues that the Callejo Objection fails because (1) a lack of documents is not a basis to disallow a claim, and (2) for the purposes of PAGA, a plaintiff stands in the shoes of the state and may continue to pursue PAGA penalties on behalf of the state even in bankruptcy. The Callejo Opposition also contained some evidence, in addition to that which was submitted with the Amended Callejo Claim, regarding the Debtor's alleged violations of Cal. Lab. Code § 2802 and the calculation of PAGA penalties based on those violations. In the Reply to the Callejo Opposition, the TBS Class argued, among other things, that: (1) Callejo uses the wrong legal standard and provides no evidence of the Debtor's failure to reimburse; and (2) the Callejo Claim fails to show a sufficient nexus between the Debtor's alleged failure to reimburse under Cal. Lab. Code § 2802 and the "civil penalties" requirement of PAGA.

The "'basic federal rule' in bankruptcy is that state law governs the substance of claims." *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner v. United States*, 440 U.S. 48, 57 (1979)). Cal. Lab. Code § 2802 requires an employer to indemnify its employees for expenses they necessarily incur in performing employment tasks. This duty includes full reimbursement for automobile expenses that are actually and necessarily incurred in performing employment tasks. *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 567 (2007). One method that an employer may use for automobile expense reimbursement is the mileage reimbursement method. *Id.* at 569. When an employer uses this method, the employee keeps a record of the number of miles driven to perform employment tasks. *Id.* This information is submitted by the employee to the employer, "who then multiplies the work-required miles driven by a predetermined amount that approximates the per-mile cost of owning and operating an automobile." *Id.* If an employer uses the mileage reimbursement method, "the employee must be permitted to challenge the resulting

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reimbursement payment." *Id.* Section 2802 permits the "use of the IRS mileage rate to calculate automobile expense reimbursement under the mileage reimbursement method." *Id.* The mileage rate may also be set by agreement of the parties; however, "any agreement made by the employee is null and void insofar as it waives the employee's right to full expense reimbursement under section 2802." *Id.* at 569–70. "If the employee can show that the reimbursement amount that the employer has paid is less than the actual expenses that the employee has necessarily incurred for work-related automobile use . . . the employer must make up the difference." *Id.* at 569.

To have a claim under § 2802, which is the only basis asserted by Callejo for his PAGA claim, Callejo must show that the reimbursement amount that the Debtor paid in any given period was less than the actual expenses that Callejo or other Unity employees necessarily incurred for work-related vehicle use. Callejo has made no such showing. The core premise of Callejo's PAGA claim for violations of § 2802 is that because the Debtor's mileage reimbursement rate is less than the IRS reimbursement rate, the Debtor bears the burden of proving that the selected rate is reasonable, and that the failure to use the IRS rate under the circumstances renders the Debtor's reimbursement rate *per se* unreasonable. To support this assertion, Callejo relies upon various opinions of the Division of Labor Standards Enforcement (DLSE) that were cited by the California Supreme Court in *Gattuso*. Callejo, however, misreads the *Gattuso* opinion, and such misreading is fatal to Callejo's argument.

The Court notes that Callejo has provided little to no evidence to support Callejo's representations regarding the Debtor's reimbursement policy, and the admissibility of the evidence that is provided is questionable. That said, even assuming Callejo could establish that the Debtor's reimbursement policy did, in fact, incorporate the mileage rates set forth by Callejo, his claim fails for other independent reasons. First, Callejo's reliance on the opinions of the DLSE is misplaced. The Court in *Gattuso* stated, in pertinent part, that it reviewed "the relevant DLSE policy statements and DLSE advice and opinion letters as evidence of DLSE's interpretation of sections 2802 and 2804, recognizing that its interpretation is entitled to no deference but also that this court may adopt the DLSE's interpretation if we independently determine that it is correct." 42 Cal. 4th at 563. Callejo has not cited, and the Court's independent research has not found, any portion of either the *Gattuso* opinion or any other opinion where the California Supreme Court "independently determined" that the DLSE's interpretation of § 2802 was correct or such interpretation would be binding in future cases. Callejo relies upon various statements of the DLSE to support his claims that: if "an employer

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selects a rate that is less than the IRS rate, *the employer bears the burden* of proving that the rate selected is reasonable," Doc. No. 207 at 4; and that because the Debtor's alleged rate is below the IRS rate, "it is *per se* unreasonable." Such assertions, however, directly contradict the holding in *Gattuso* where the court instead determined that: (1) the mileage rate may be set by agreement of the parties, *Gattuso*, 42 Cal. 4th at 569; and (2) if the employee challenges the reimbursement amount, the employer is required to reimburse the employee only if the employee "can show that the reimbursement amount that the employer has paid is less than the actual expenses that the employee has necessarily incurred for work-related automobile use . . . ," *id.* Callejo's claim fails because Callejo has not submitted any evidence that the reimbursements paid by the Debtor during the subject periods were "less than the actual expenses that the employee has necessarily incurred for work-related automobile use" *Id.* Indeed, the evidence submitted by Callejo merely shows that the Debtor did in fact pay reimbursements to employees. There is no evidence, however, that these reimbursements did not meet the standards of § 2802 as that section was interpreted by the California Supreme Court in *Gattuso*. The substance of Callejo's claim is governed by state law, *Raleigh*, 530 U.S. at 20. As such, in determining whether Callejo has a claim under state law, this Court is bound by the California Supreme Court's interpretation of § 2802 in *Gattuso*.

The Court finds that Callejo has not provided the evidence required to prove that the Debtor violated § 2802; therefore, there is no basis for Callejo's PAGA claim. The TBS Class's objection to the Callejo Claim is SUSTAINED. The Callejo Claim shall be disallowed in its entirety.

The parties shall lodge conforming orders within seven (7) days of the hearing as follows:

- (1) the Polio Class shall lodge the order GRANTING the Class Certification Motion;
- (2) the Polio Class shall lodge the order OVERRULING the Objection to the Polio Claim;
- (3) the TBS Class shall lodge the order SUSTAINING the Objection to the Callejo Claim.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Between November 14, 2011 and May 6, 2014, the Superior Court of the State of California, County of Alameda ordered the coordination of the following three actions: *Brooks et al. v. Trans-Box Systems, Inc. et al.*, Case No. RG08401461 (the "TBS Class"); *Polio v. Unity Courier Services, Inc.*, Case No. CGC-11-511533, Superior Court of the State of California, County of San Francisco (the "Unity Class"); and *Callejo v. Unity Courier Services, Inc.*, Case No. 37-2013-00047522, Superior Court of the State of California, County of San Diego (the "Callejo Action"). See "Declaration of Jasleen Ahuja" ("Ahuja Declaration") [Doc. No. 212], Exhibit A. The TBS Class was brought against all defendants, whereas the Unity Class and Callejo Action were brought only against Unity Courier Service, Inc.

Note 2: On July 23, 2015, the Superior Court of the State of California for the County of Alameda (the "Superior Court") entered the "Order Granting Class Certification (Unity Class)" in the Unity Courier Service Wage and Hour Cases and Coordinated Actions, Case No. JCCP 4691. Ahuja Declaration [Doc. No. 212], Exhibit B. The Unity Class, as certified in the Superior Court, is comprised of "All persons employed by Unity Courier Service in the State of California as non-exempt employees for any part of the time period beginning on March 1, 2008 and ending on the date of notice to the class." *Id.* Pedro Polio was appointed as class representative. *Id.*

For the purposes of this tentative ruling, "Unity Class" and "Polio Class" may be used interchangeably.

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Note 3: The TBS Class consists of former employees of Trans-Box Systems, a company purchased by the Debtor. "Reply to the Polio Opposition" [Doc. No. 218], at 2. The Debtor was ultimately found liable for unpaid wages during the period from February 16, 2008 to February 29, 2008. *Id.* The TBS Class's claims were liquidated in a Corrected Judgment entered by the Superior Court on March 11, 2016 for over \$4.7 million. *Id.* The amount of the TBS Claim includes statutory interest. *Id.*

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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2:17-13943 Unity Courier Service, Inc.

Chapter 11

#3.00 Hearing re [182] Second Objection to Claim #26 by Claimant Pedro Polio Class. in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class.

fr: 1-17-18

Docket 0

Tentative Ruling:

1/22/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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Chapter 11

#4.00 Hearing re [183] Supplemental Objection to Claim #26 by Claimant Pedro Polio Class.
in the amount of \$ 82,867,985.71 Filed by Creditor TBS Class.

fr: 1-17-18

Docket 0

Tentative Ruling:

1/22/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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Chapter 11

#5.00 Hearing re [167] and [168] objection to claim no. 31

fr: 1-10-18

Docket 0

Tentative Ruling:

1/22/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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2:17-13943 Unity Courier Service, Inc.

Chapter 11

#6.00 HearingRE: [212] Motion/ Creditor and Class Claimant Pedro Polio's Motion for Application of FRCP Rule 23 Class Certification;

Docket 212

Tentative Ruling:

1/22/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#100.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr, 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED 2-6-18 AT 11:00 A.M.**

Tentative Ruling:

12/11/2017

This status conference is CONTINUED to January 23, 2018, at 11:00 a.m., to take place concurrently with Defendant's motion to set aside default. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

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Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC et

#101.00 Hearing
RE: [18] Defendant's Motion to Set Aside Default [Federal Rule of Bankruptcy
Procedure 55(c)] -

Docket 18

***** VACATED *** REASON: CONTINUED 2-6-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Soundside Holdings, LLC

Represented By
J Scott Bovitz

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 24, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

- #1.00** Hearing
RE: [259] Motion For Summary Judgment Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent; Memorandum of Points and Authorities in Support Thereof

fr. 11-7-17

Docket 259

Tentative Ruling:

For the reasons set forth below, the Court will transmit to the District Court a Report and Recommendation, recommending that the District Court enter judgment in favor of the Trustee as to the second, third, and sixth claims for relief for avoidance and recovery of fraudulent transfers made with actual intent.

Pleadings Filed and Reviewed:

- 1) Motion to Strike:
 - a) Chapter 7 Trustee's Notice of Motion and Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motion for Summary Adjudication Regarding the Second, Third, and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made With Actual Intent [Doc. No. 316]
 - b) Opposition to Chapter 7 Trustee's Notice of Motion and Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motions for Summary Adjudication [Doc. No. 324]
 - i) Notice of Supplemental Marked Deposition Transcripts in Support of Defendants' Opposition to Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa [Doc. No. 325]
 - c) Chapter 7 Trustee's Reply Brief in Support of Motion to Strike and Exclude

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Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motion for Summary Adjudication Regarding Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 327]

- i) Notice of Supplemental Transcript Markings Re: Reply in Support of Motion to Strike [Doc. No. 328]
- 2) Motions for Summary Adjudication:
 - a) Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or in the Alternative, for Equitable Subordination of Claims and Proofs of Claim [Doc. No. 258]
 - b) Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 259]
- 3) Declarations and Evidence Filed in Support of Motions for Summary Adjudication:
 - a) Declaration of Jason M. Rund, Chapter 7 Trustee, in Support of Chapter 7 Trustee's [Motions for Summary Adjudications] (the "Rund Decl.") [Doc. No. 260]
 - b) Declaration of Thomas P. Jeremiassen, CPA/CFF, CIRA Regarding Expert Report in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] (the "Jeremiassen Decl.") [Doc. No. 261]
 - c) Declaration of Corey R. Weber in in Support of [Motions for Summary Adjudication] (the "Weber Decl.") [Doc. No. 262]
 - i) Notice of Errata Re Exhibits to Declaration of Corey R. Weber in Support of [Motions for Summary Adjudication] [contains corrections regarding the testimony that is and is not being offered] [Doc. No. 280]
 - d) Request for Judicial Notice in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] [Doc. No. 263]
 - i) Notice of Errata Re: Request for Judicial Notice [sets forth correct hearing time] [Doc. No. 272]
 - ii) Notice of Errata Re: Request for Judicial Notice [contains corrections regarding the captions and filing dates of certain exhibits] [Doc. No. 284]
 - e) Trustee's Notice of Filing of Discovery Documents Re [Motions for Summary Adjudication] [Doc. No. 264]
 - f) Separate Statement [of Uncontroverted Facts] in Support of Chapter 7

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- Trustee's Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or, in the Alternative, for Equitable Subordination of Claims and Proofs of Claim [Doc. No. 265]
- i) Notice of Errata Re Separate Statements [Doc. No. 285]
 - g) Separate Statement [of Uncontroverted Facts] in Support of Chapter 7 Trustee's Motion for Summary Adjudication Regarding the Second, Third, and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 266]
 - h) Chapter 7 Trustee's Designation of Expert Witness Thomas P. Jeremiassen, CPA/CFF, CIRA [Doc. No. 267]
 - i) Notice of Lodging of Transcripts and Designation of Testimony Offered by the Chapter 7 Trustee Pursuant to Local Bankruptcy Rule 7030-1(b) in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] [Doc. No. 276]
- 4) Defendants' Combined Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 300]
- a) Defendants' Combined Statement of Genuine Issues in Opposition to Motions for Summary Adjudication [Doc. No. 301]
 - b) Evidentiary Objections to Declarations of Allen Sumian, Corey R. Weber and Thomas P. Jeremiassen [Doc. No. 302]
 - c) Declaration of J. Michael Issa in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 303]
 - d) Declaration of John C. Kirkland in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 304]
 - e) Declaration of Poshow Ann Kirkland in Opposition to Plaintiff's Motions for Summary Judgment [Doc. No. 305]
 - f) Declaration of Jerrold S. Pressman in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 306]
 - g) Declaration of Ruben J. Moreno in Opposition to Motions for Summary Adjudication [Doc. No. 307]
 - h) Notice of Intent to Offer Deposition Evidence at Hearing and Declaration of Lewis R. Landau in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 308]
 - i) Proof of Service of Doc Nos. 300-308 [Doc. No. 309]
 - j) Notice of Lodgment of Deposition Transcript of Thomas P. Jeremiassen [Doc. No. 322]
- 5) Trustee's Evidentiary Objections to Declarations Submitted in Support of

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Defendants' Opposition:

- a) Evidentiary Objections to Declaration of Poshow Ann Kirkland in Opposition to Motions for Summary Adjudication [Doc. No. 310]
- b) Evidentiary Objections to Declaration of Ruben J. Moreno in Opposition to Motions for Summary Adjudication [Doc. No. 311]
- c) Evidentiary Objections to Declaration of John C. Kirkland in Opposition to Motions for Summary Adjudication [Doc. No. 312]
- d) Evidentiary Objections to Declaration of Jerrold S. Pressman in Opposition to Motions for Summary Adjudication [Doc. No. 313]
- 6) Trustee's Responses to Evidentiary Objections to Declarations of Allen Sumian, Corey R. Weber, and Thomas P. Jeremiassen [Doc. No. 314]

I. Background

On December 7, 2010, creditors commenced an involuntary petition against EPD Investment Co., LLC ("EPD"). The Court entered an Order for Relief on February 9, 2011. On February 1, 2012, Jerrold S. Pressman ("Pressman") filed a voluntary Chapter 7 petition. On June 4, 2012, the bankruptcy cases of EPD and Pressman (collectively, the "Debtors") were substantively consolidated.

Pursuant to the operative Fourth Amended Complaint (the "Complaint") [Doc. No. 234] against John C. Kirkland and Poshow Ann Kirkland as Trustee of the Bright Conscience Trust Dated September 9, 2009 (the "BC Trust"), the Chapter 7 Trustee (the "Trustee") seeks to (1) disallow or equitably subordinate proofs of claim filed by the BC Trust and (2) avoid allegedly fraudulent transfers from the Debtors to Mr. Kirkland and the BC Trust.

Summary of the Complaint's Allegations

The allegations of the Complaint are as follows: Between the 1970s and June 27, 2003, EPD Investment Co. was an unincorporated sole proprietorship run by Pressman. Complaint at ¶12. On June 27, 2003, EPD was formed as a California limited liability company to provide corporate protection and to satisfy Mr. Pressman's goal of retirement. *Id.* Upon EPD's formation in 2003, the EPD sole proprietorship's assets and liabilities were transferred from Mr. Pressman to EPD. *Id.* At all times, the members and managers of EPD were Mr. Pressman and his son, Keith Pressman ("Keith"). *Id.*

EPD operated as a Ponzi scheme since its formation in 2003. *Id.* at ¶24. Between 2003 and mid-2009, EPD repaid existing creditors by using funds from new creditors.

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Id. EPD was balance sheet insolvent from at least December 2003, according to its tax returns, and has never been profitable. *Id.* at ¶¶20–21. Many of EPD's creditors mistakenly believed that EPD owned substantial real property assets in Tennessee, Mississippi, and elsewhere, when in fact EPD owned no real property. *Id.* at ¶16. Instead, EPD owned promissory notes secured by Mr. Pressman's assets, and it was Mr. Pressman who held an ownership interest in entities owning property in Tennessee, Mississippi, and elsewhere. *Id.*

In mid-2009, EPD could not pay creditors because the companies Mr. Pressman partially owned lacked sufficient operating cash flow, and because EPD was no longer receiving cash infusions from new investors. *Id.* at ¶25.

Mr. Kirkland was outside counsel for the Mr. Pressman, EPD, and other business entities owned by the Mr. Pressman. *Id.* at ¶28. Mr. Kirkland invested and/or loaned in excess of \$150,000 of his personal funds to EPD (Mr. Kirkland's "EPD Interests"). *Id.* at ¶29. In September 2009, after EPD had ceased making payments to most creditors, Mr. Kirkland assigned his EPD Interests to the BC Trust (his family trust), and/or to his wife Poshow Ann Kirkland as Trustee of the BC Trust, through a Notice of Assignment. The Notice of Assignment provides: "Notice is hereby given that all rights of John C. Kirkland under all such Loan Documents have been sold, transferred, and assigned to the Bright Conscience Trust Dated September 9, 2009." *Id.*

The BC Trust took the assignment subject to all claims and defenses of Mr. Kirkland, and did not take the assignment in good faith or for adequate consideration. *Id.* On September 11, 2009, the BC Trust filed and/or recorded a UCC-1 financing statement as to all assets of the Debtors. *Id.* On May 5, 2010, the BC Trust filed and/or recorded an amendment to the UCC-1 financing statement, which provided that "[t]his amendment is to clarify and confirm that the prior grant of security did not include the stock of North Hills Industrial Park, Inc., a California S-Corporation." *Id.*

Mr. Kirkland was aware that EPD operated as a Ponzi scheme. In 2005, Mr. Kirkland drafted letters to the California Franchise Tax Board which stated, among other things, that EPD's liabilities exceeded its assets, that EPD had negative cash flow, and that EPD required additional investment just to break even. *Id.* at ¶30(b)(i). Despite knowing that EPD operated as a Ponzi scheme, Mr. Kirkland took actions for the benefit of the BC Trust and to the detriment of EPD's other creditors, including:

- 1) Arranging for Mr. Pressman, through EPD, to make monthly mortgage payments on the house in which Mr. Kirkland and his spouse resided, even though Mr. Kirkland knew that EPD was insolvent and operated as a Ponzi

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scheme. *Id.* at ¶30d.

- 2) Defending suits brought against EPD by its creditors absent a good-faith basis, while at the same time benefitting from payments made by EPD to his mortgage lender. *Id.* at ¶30e.
- 3) Orchestrating transfers which he knew were fraudulent under the Bankruptcy Code, for the purpose of staving off litigation by EPD's unpaid creditors. *Id.* at ¶30f.
- 4) Representing Plush Lounge, an entity that received significant transfers from EPD, and owed those sums to EPD, in litigation that severely depleted the assets of Plush Lounge, while simultaneously representing adverse party EPD. *Id.* at ¶30m.
- 5) Filing false and misleading pleadings in EPD's involuntary bankruptcy proceeding, contesting that EPD owed funds to creditors.
- 6) Contesting the EPD involuntary bankruptcy proceeding without a good-faith basis to do so, seeking to convert the proceeding to Chapter 11 without a good-faith basis to do so, and advising EPD and Mr. Pressman not to cooperate with the Trustee.

First Claim for Relief: Disallowance of Proofs of Claim, or, in the Alternative, Equitable Subordination of Proofs of Claim Against the BC Trust and Mr. Kirkland

On December 12, 2011, the BC Trust filed three proofs of claim in the bankruptcy case, all in the amount of \$2.672 million. *Id.* at ¶39. On February 15, 2013, the BC Trust filed a proof of claim in Mr. Pressman's bankruptcy case—which has now been substantively consolidated with the EPD case—in the amount of \$3.529 million. *Id.* All Proofs of Claim are secured claims, and were executed by Poshow Ann Kirkland as Trustee of the BC Trust. *Id.*

The BC Trust is the assignee of Mr. Kirkland's EPD Interests and the BC Trust's Proofs of Claim are based on the assignment of Mr. Kirkland's EPD Interests. *Id.* at ¶ 40. The BC Trust did not separately invest or loan funds to the Debtors; its rights are based solely on the assignment of Mr. Kirkland's EPD Interests, which assignment was orchestrated by Mr. Kirkland while he was counsel for Mr. Pressman and EPD. *Id.*

Mr. Kirkland engaged in inequitable conduct in his representation of EPD, as set forth above. The BC Trust, as Mr. Kirkland's assignee, stands in his shoes and took the assignment of the EPD Interests subject to Mr. Kirkland's actions. Accordingly, the BC Trust's claims should be disallowed or equitably subordinated. *Id.* at ¶42–47.

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Second through Sixth Claims for Relief: Avoidance and Recovery of Intentional and Constructive Fraudulent Transfers

Prior to the filing of the petition, the Debtors made transfers to the BC Trust evidenced by the liens in favor of the BC Trust. The transfer to the BC Trust is avoidable as actually fraudulent pursuant to §544 (applying California Civil Code §§ 3439.04(a) and 3439.07) and §548(a)(1)(A). The transfer is avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04 (b), 3439.05, and 3439.07) because it was made without the Debtors receiving reasonably equivalent value at a time when the Debtors were (1) insolvent or (2) were engaged in a business or transaction for which any property remaining was an unreasonably small capital or (3) intended to incur debts beyond their ability to pay. For the same reasons, the transfer is avoidable as constructively fraudulent pursuant to §548(a)(1)(B).

Prior to the filing of the petition, the Debtors made transfers for the benefit of Mr. Kirkland and the BC Trust by issuing checks to a Union Bank account. Those transfers are avoidable as intentionally fraudulent pursuant to §544 (applying California Civil Code §§3439.04(a) and 3439.07) and §548(a)(1)(A). Those transfers are avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04(b), 3439.05, and 3439.07) and §548(a)(1)(B).

All the avoidable transfers are recoverable pursuant to §550(a)(1).

Summary of the Trustee's Motion for Summary Adjudication and Motion to Strike, the Defendants' Oppositions Thereto, and the Trustee's Supporting Reply

The Trustee moves for summary adjudication on his claims to avoid the transfers as actually fraudulent pursuant to §§544 and 548(a)(1)(A), and to recover the value of the avoided transfers. [Note 1] The Trustee does not seek summary adjudication with respect to his claims to avoid the transfers as constructively fraudulent.

The Trustee asserts that the testimony of his expert witness, Thomas Jeremiassen, establishes that EPD operated as a Ponzi scheme between 2003 and 2010, and that the Debtors' actual fraudulent intent is established as a matter of law under the Ninth Circuit's Ponzi scheme presumption, which holds that transfers made by entities operating as Ponzi schemes are deemed to be actually fraudulent. In the alternative, the Trustee argues that the Debtors' actual fraudulent intent is shown by the presence of multiple badges of fraud, including that (1) Mr. Kirkland was on inquiry notice as

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to the Debtors' insolvency and Ponzi operations; and that (2) Mr. Kirkland facilitated the Debtors' fraudulent and improper conduct.

The Trustee moves to exclude the report of Defendants' expert, J. Michael Issa, on the grounds that Mr. Issa's report is not based upon sufficient facts and data, and does not correctly apply the Ninth Circuit's standard for determining whether an enterprise qualifies as a Ponzi scheme. Defendants maintain that Mr. Issa's report does not contain material errors of the type necessary to justify the harsh remedy of exclusion, and assert that the Trustee's attacks upon Mr. Issa's report go to the weight of the evidence, not its admissibility.

In Opposition to the Trustee's Motion for Summary Adjudication, Defendants assert that Mr. Issa's report—which concludes that EPD did not operate as a Ponzi scheme—creates a genuine issue of material fact for trial. In addition, Defendants assert that (1) the Trustee's claims under §544 are barred by the statute of limitations; (2) that the BC Trust acquired Mr. Kirkland's EPD Interests for value since the BC Trust provides for Mr. and Mrs. Kirkland's children, thereby satisfying the Kirklands' statutory obligation to care for their children; and (3) that judgment cannot be entered against Mr. Kirkland because he has not filed a proof of claim and does not consent to the Bankruptcy Court's jurisdiction.

In Reply to the Defendants' Opposition, the Trustee argues that (1) the §544 claims are not barred by the statute of limitations per the holding of *Bank of Am. et al. v. Rund (In re EPD Inv. Co.), LLC*, 523 B.R. 680, 692 (B.A.P. 9th Cir. 2015); (2) that there is no statutory authority for Defendants' theory that the BC Trust provided value sufficient to constitute a defense to an avoidance action by facilitating the Kirkland's obligation to care for their children; and (3) that the District Court has already ruled that Mr. Kirkland is subject to the Bankruptcy Court's jurisdiction.

II. Findings and Conclusions

Defendants have not consented to entry of final judgment by the Bankruptcy Court.

Absent consent of all the parties, the Bankruptcy Court lacks constitutional authority to enter final judgment in a fraudulent conveyance action. *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012). Accordingly, the Bankruptcy Court will transmit the findings set forth herein as a Report and Recommendation to the District Court.

Summary adjudication is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of

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law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

The Court Excludes Mr. Issa's Expert Report

Federal Rule of Evidence ("FRE") 702 provides:

- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - b) the testimony is based on sufficient facts or data;
 - c) the testimony is the product of reliable principles and methods; and
 - d) the expert has reliably applied the principles and methods to the facts of the case.

The Trustee does not dispute that Mr. Issa is qualified to offer expert testimony as to whether EPD was a Ponzi scheme, and the Court, having reviewed Mr. Issa's qualifications, is satisfied that he possesses the requisite knowledge and skill to offer such testimony. Mr. Issa is a CPA with over 30 years' experience in turnarounds, workouts, bankruptcy, and litigation support who has testified dozens of times in bankruptcy and civil litigation. He has served in various fiduciary capacities in restructuring proceedings, including as a Chapter 11 Trustee, a Liquidating Trustee, a Chief Restructuring Officer, and a Receiver.

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At issue is (1) whether Mr. Issa's testimony is based on sufficient facts or data, (2) whether Mr. Issa's testimony is the product of reliable principles and methods, and (3) whether Mr. Issa has reliably applied those principles and methods to the facts of the case. The Court finds that none of these requirements have been satisfied.

Mr. Issa's Testimony is Not Based on Sufficient Facts or Data

Where an expert arbitrarily declines to review probative materials, exclusion of that expert's testimony is appropriate. *See In re LLS America, LLC*, No. 09-06194-PCW11, 2013 WL 2896887, at *4 (Bankr. E.D. Wash. June 12, 2013) (excluding the testimony of an expert who failed to review the financial information that other experts in the same case relied upon). An expert's testimony may not be based solely upon studies that the expert "cherry-picked" in order to support her conclusion, *Bextra and Celebrex Mktg. Sales Practices and Prod. Liab. Litig.*, 524 F.Supp.2d 1166, 1176 (N.D.Cal.2007), or be based upon a statistical "convenience sample" that is "easy to take but may suffer from serious bias," *In re Countrywide Fin. Corp. Mortg.-Backed Sec. Litig.*, 984 F. Supp. 2d 1021, 1040 (C.D. Cal. 2013). The principle underlying these cases is that a witness is qualified to opine as an expert only after having thoroughly reviewed all relevant information.

Mr. Issa's testimony is not based on sufficient facts or data. First, in assessing EPD's financial position, Mr. Issa relied only upon EPD's unaudited financial statements and chose to disregard EPD's tax returns, which differed materially from the unaudited financial statements. Mr. Issa had no plausible explanation for the decision to base his analysis exclusively upon the unaudited financial statements. To the contrary, Mr. Issa testified that the principal reason he did not rely upon EPD's tax returns was because he did not have the ability to obtain answers to his questions about the tax returns:

Question (by the Trustee's counsel): So why would you assume that unaudited financial statements were true and correct but documents submitted to the IRS not make any type of assumption as to?

Answer: The answer is, in part, we had the ability to get questions answered about EPD's financial statements and not about the tax returns.

Question: Why weren't you able to get questions answered about the tax returns?

Answer: Mr. Jonavic didn't seem interested in talking about the tax returns.

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Question: And did you ask Mr. Pressman about the tax returns?

Answer: We talked briefly about the tax returns.

Question: What did you ask?

Answer: It was a subset of a more generic conversation about the numbers.

And Mr. Pressman is not a CPA, so...

Question: What did he tell you in regard to the tax returns?

Answer: He said that Ted Jonavic had done them.

Question: Anything else?

Answer: I don't recall him having a lot more to say about the tax returns

Issa Deposition Transcript [Doc. No. 328] at 32:18–33:16.

Second, Mr. Issa opined that EPD entered into legitimate equipment leases subsequent to 2003, even though Mr. Pressman was not able to provide Mr. Issa copies of those leases. **[Note 2]** Mr. Issa's deposition testimony on this issue was as follows:

Question (by Trustee's counsel): Have you ever seen a lease that EPD was involved in at any point from 2003 or after?

Answer: No, I haven't.

Question: Did you request that?

Answer: I have.

Question: And was it provided?

Answer: It hasn't been provided yet.

Question: And was there an explanation as to why it wasn't provided?

Answer: The gist of it was, "We have to go find the stuff. It's been years. It's in storage somewhere; I can't put my hands on, but I'll get around to it," something like that.

Question: How long ago was that explanation given?

Answer: A month.

Question: And nothing has been forthcoming since that point?

Answer: I haven't seen anything since then.

Question: Who told you that?

Answer: I recall Mr. Pressman saying that.

Question: Do you know why he would be able to provide information as of 1999 but not for after 1999?

Answer: I don't know one way or the other.

Issa Deposition Transcript [Doc. No. 328] at 44:1–45:1.

Defendants assert that Mr. Issa's failure to review the post-2003 leases is

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immaterial because Mr. Issa relied upon deposition testimony regarding the leases offered by Theodore P. Jonavic, Mr. Pressman's CPA. This contention is unavailing, because Mr. Issa's deposition testimony establishes that he conducted only a cursory review of Mr. Jonavic's deposition testimony prior to preparing his expert report:

Question (by Trustee's counsel): Had you read the Jonavic deposition prior to signing your expert report?

Answer: I had seen it, yes.

Question: You had reviewed it?

Answer: Yes, I haven't scoured it, but I looked at it.

Question: And did you assume that the Jonavic deposition was true and correct in preparing your expert report and signing it?

Answer: I didn't think about it one way or the other until I saw the deposition transcript on Mr. Jeremiassen.

Question: So does the Jonavic deposition transcript change any of your assumptions or conclusions or analyses in your expert report?

Answer: It does not.

Issa Deposition Transcript [Doc. No. 328] at 38:13–39:18.

In a declaration submitted in opposition to the Trustee's Motion for Summary Adjudication, Mr. Issa states that, in his opinion, Mr. Jonavic's deposition testimony with respect to the leases "has considerable weight, particularly given that he had no discernable reason to give false testimony." Doc. No. 303 at ¶18. This later testimony contradicts Mr. Issa's statement during his deposition that he did not consider whether Mr. Jonavic's deposition was accurate until he saw Mr. Jeremiassen's deposition transcript ("I didn't think about it one way or the other until I saw the deposition transcript of Mr. Jeremiassen"). (Mr. Jeremiassen's deposition was not taken until December 15, 2017, well after Mr. Issa submitted his expert report on October 5, 2017.)

"The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.' This sham affidavit rule prevents 'a party who has been examined at length on deposition from 'rais[ing] an issue of fact simply by submitting an affidavit contradicting his own prior testimony,' which 'would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.'" *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012) (internal citations omitted). Because Mr. Issa's declaration testimony in opposition to the Motion for Summary Adjudication contradicts his prior deposition testimony, the later declaration testimony falls within the sham affidavit rule and

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therefore cannot retroactively validate the conclusions in Mr. Issa's expert report with respect to the validity of EPD's post-2003 leases.

Third, Mr. Issa opines that Mr. Pressman's equity in various real estate projects would have been sufficient to make EPD's investors whole, if sufficient funds to complete those real estate projects had been available. However, in reaching this conclusion, Mr. Issa did not review the balance sheets or operating agreements for the companies engaged in those real estate projects. According to Mr. Issa's deposition testimony:

Question (by Trustee's counsel): Well, you haven't seen the balance sheets for any of those companies, have you?

Answer: We haven't seen the balance sheets....

Question: You haven't seen the operating agreements for those companies, have you?

Answer: No.

Issa Deposition Transcript [Doc. No. 316] at 149:13–150:16.

Fourth, Mr. Issa conducted only a partial forensic examination of EPD's books and records. As Mr. Issa stated at his deposition:

Question (by Trustee's counsel): So if some financial information was listed, did you actually check that financial information against the EPD bank statements, checks, wire transfers, anything else?

Answer: Yes.

Question: And you confirmed they were accurate?

Answer: We checked some items back to the books. We checked some items back to the bank statement. We didn't do a 100 percent forensic examination of every item between 2003 and 2010.

Question: Why not?

Answer: There is only so many hours in the day and only so much money in a case to work on something like that.

Issa Deposition Transcript [Doc. No. 316] at 25:2–15.

While checking only a sampling of transactions might be sufficient under certain circumstances, the Court finds that the partial forensic accounting was not adequate here, given that Mr. Issa chose to disregard EPD's tax returns (which contained information materially different from EPD's financial statements), and did not review other critical information, such as EPD's post-2003 leases. The decision to conduct only a partial forensic accounting is particularly troubling given Mr. Issa's acknowledgment that in certain cases it was not possible to reconcile the financial

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statements:

Question (by Trustee's counsel): Did you test any of the information in the financial statement?

Answer: Sure.

Question: And what was the result of the testing?

Answer: The testing in some cases tied out approximately, and in some cases it was hard to get it to reconcile.

Issa Deposition Transcript [Doc. No. 316] at 160:11–17.

Mr. Issa's Testimony is Not the Product of Reliable Principles and Methods, and Mr. Issa Has Not Reliably Applied the Principles and Methods to the Facts of the Case

Mr. Issa opines that EPD was not a Ponzi scheme because it loaned substantial funds to legitimate third-party real estate businesses and was repaid a portion of those funds. Mr. Issa relies upon a definition of a Ponzi scheme that is not consistent with controlling Ninth Circuit authority. Consequently, Mr. Issa's testimony must be excluded for failing to apply reliable principles and methods to the facts of the case.

"A Ponzi scheme is an arrangement whereby an enterprise makes payments to investors from the proceeds of a later investment rather than from profits of the underlying business venture, as the investors expected. The fraud consists of transferring proceeds received from the new investors to previous investors, thereby giving other investors the impression that a legitimate profit making business opportunity exists, where in fact no such opportunity exists." *In re Agric. Research & Tech. Grp., Inc.*, 916 F.2d 528, 531 (9th Cir. 1990).

There is no support within *Agricultural Research* for Mr. Issa's contention that an enterprise cannot qualify as a Ponzi scheme if it engages in some legitimate business operations. In *In re Bonham*, 251 B.R. 113 (Bankr. D. Ala. 2000), the court faced precisely this issue. The *Bonham* debtors operated an airline travel business whose unprofitable operations were sustained only by continuous infusions of investor cash. *Bonham*, 251 B.R. at 116–17. The debtor's expert asserted that the business was not a Ponzi scheme based on the existence of the underlying income-producing airline ticket business. *Id.* at 130. The court rejected this assertion and excluded the testimony of the debtor's expert. The court stated that "most Ponzi schemes have at least a semblance, if not a somewhat substantial, operating 'front.'" *Id.* at 136.

Further, Mr. Issa acknowledged that EPD paid prior investors using funds raised from new investors:

Question (by Trustee's counsel): In your opinion, did EPD use money

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coming in from investors to pay other investors?

Answer: It appears that some of that went on.

Question: During what period of time?

Answer: Well, the time of Mr. Jeremiassen's report is 2003 to 2010. So he speaks to that in his report and in some of his exhibits, particularly Exhibit 4.

Question: So it's your understanding that EPD did use money from investors to pay other investors, is that right?

Answer: It appears that may be so.

Issa Deposition Transcript [Doc. No. 316] at 58:1-59:3.

The Supreme Court has held that a court may exclude an expert report where "there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997). Such an analytical gap is present here. Mr. Issa has acknowledged that EPD paid prior investors using funds from new investors. Such behavior is the hallmark of a Ponzi scheme. Further, Mr. Issa's view that an entity which engages in some legitimate business operations cannot constitute a Ponzi scheme is not consistent with controlling Ninth Circuit precedent.

The Motion for Summary Adjudication is Granted

There is No Genuine Dispute that EPD Operated as a Ponzi Scheme

As noted above, a "Ponzi scheme is an arrangement whereby an enterprise makes payments to investors from the proceeds of a later investment rather than from profits of the underlying business venture, as the investors expected." *Agricultural Research*, 916 F.2d 531. The report of the Trustee's expert, Thomas P. Jeremiassen (the "Jeremiassen Report") establishes that EPD operated as a Ponzi scheme. First, the Jeremiassen Report demonstrates that EPD did not have sufficient funds to pay investors absent fresh deposits from new investors:

[A] majority of the sources of EPD cash was from new loans from Investors. Similarly, a majority of the uses of EPD cash was payments to Investors or to third parties for the benefit of Investors relating to those new loans as well as loans that were outstanding [T]he only way for EPD to meet its interest obligations on the notes [owed to Investors], as well as its obligations to repay principal, was to obtain additional loans from Investors.

Jeremiassen Report [Doc. No. 267] at 4 and 11.

Second, the Jeremiassen Report establishes that EPD's business of loaning funds to entities engaging in real estate projects (the "Related Entities") was never

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profitable:

[M]ore cash was disbursed to the Related Entities, or to other entities for the benefit of the Related Entities, than was received. During the Seven Year Period [between 2003 and 2010], a total of approximately 2,700 cash transactions took place with the Related Entities. This equates to an average of more than one transaction per day during that period. It appears that EPD was used as a sort of "cash flow" tool for these entities. At all times during the Seven Year Period, the cumulative amounts disbursed to the entities was greater than the cumulative amounts received from the entities. According to EPD's QuickBooks, the collective amounts owed to EPD from these entities at the end of each year from 2003 to 2010 ranged from approximately \$19.8 million to approximately \$28.7 million.

Id. at 8.

The declarations submitted by Mr. Kirkland and Mr. Pressman do not create a genuine dispute as to the issue of whether EPD operated as a Ponzi scheme. Mr. Kirkland's declaration contains conclusory assertions that EPD was never a Ponzi scheme. "A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact." *F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), *as amended* (Apr. 11, 1997). Mr. Kirkland's declaration contains no specific facts showing that EPD did not operate as a Ponzi scheme. Further, Mr. Kirkland is not an accountant and thus is not qualified to opine as to whether EPD operated as Ponzi scheme.

Mr. Pressman's declaration similarly contains conclusory assertions that EPD was not a Ponzi scheme. Mr. Pressman is not an accountant and is not qualified to opine as to whether EPD operated as a Ponzi scheme. His statements are so vague and lacking in specificity that they lack probative value. His testimony that EPD generated over \$50 million in cash from operations between 2004 and 2009 contradicts EPD's tax returns, which show that EPD had net losses. Mr. Pressman verified the tax returns.

Mr. Pressman's declaration contains a chart which states that EPD generated substantial cash from operations between 2004 and 2009. Mr. Pressman does not identify how or when the chart was generated. Consequently, the chart lacks proper foundation and is inadmissible. The Court finds that the chart was created to support Mr. Pressman's conclusory assertion that EPD generated substantial cash flows. The chart is supported only by Mr. Pressman's statements, which in turn are supported only by the chart. Such circular assertions do not create a genuine dispute as to an

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issue of material fact.

The chart is further undercut by Mr. Pressman's deposition testimony that he could not be certain that EPD's records were accurate:

Question (by Trustee's counsel): Any reason to think that the QuickBooks records for EPD are not accurate?

Answer: They could be not accurate, but they should be accurate.

Pressman Deposition Transcript at 228–29 and 319–34.

Mr. Pressman testifies that "EPD was a legitimate, ongoing, sustainable, revenue-producing, business operation." That testimony is inadmissible under *Yeager v. Bowlin*, which holds that "a party cannot create an issue of fact by an affidavit contradicting ... prior ... testimony." 693 F.3d 1076, 1080 (9th Cir. 2012). Mr. Pressman signed EPD's bankruptcy schedules under penalty of perjury. Those schedules stated that EPD had \$70 million in liabilities and almost no realizable assets in 2010. The \$32 million in purported assets that EPD did schedule consisted of promissory notes from Mr. Pressman and related entities that he owned and controlled. Mr. Pressman's personal bankruptcy, in which Mr. Pressman scheduled \$27,000 in assets and over \$144 million in liabilities, demonstrates that the purported \$32 million in assets scheduled in EPD's bankruptcy had no realizable value.

Mr. Pressman testifies that EPD was not a Ponzi scheme based on the fact that EPD's predecessor entity, EPD Investment Co., engaged in profitable operations prior to 2003. That testimony is not relevant. This action is directed at EPD, not its predecessor entity, and pertains only to EPD's activities subsequent to 2003. The fact that Mr. Pressman engaged in successful business enterprises prior to 2003 is not relevant to whether EPD operated as a Ponzi scheme from 2003 onward.

As additional evidence that EPD operated as a Ponzi scheme, the Trustee asserts that the leases EPD entered into subsequent to 2003 were fraudulent. Defendants dispute this contention and maintain that the post-2003 leases were legitimate. The Court finds that, regardless of whether the post-2003 leases were legitimate, there is ample evidence that EPD was a Ponzi scheme. Therefore, the Court makes no findings with respect to EPD conducted a legitimate leasing business.

The Transfers Were Actually Fraudulent Pursuant to the Ponzi Presumption

Section 548(a)(1)(A) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily made such transfer ... with actual intent to hinder, delay, or defraud any entity to

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which the debtor was or became, on or after the date that such transfer was made ... indebted."

Section 544 permits the Trustee to avoid transfers that are voidable under applicable state law. Cal. Civ. Code §3439.04(a) is substantially identical to §548(a)(1)(A).

In the Ninth Circuit, a debtor's actual intent to engage in a fraudulent transfer is established where the Trustee demonstrates that the debtor operated as a Ponzi scheme:

We allow 'a finding of fraudulent intent under section 548(a)(1) ... on the basis of circumstantial evidence.' Furthermore, 'the mere existence of a Ponzi scheme' is sufficient to establish actual intent under § 548(a)(1) or a state's equivalent to that section.

Barclay v. Mackenzie (In re AFI Holding, Inc.), 525 F.3d 700, 704 (9th Cir. 2008) (internal citations omitted).

Having established that the Debtors operated as a Ponzi scheme, the Trustee is entitled to judgment that the transfers at issue were actually fraudulent pursuant to § 548(a)(1) and §544, applying Cal. Civ. Code §3439.04(a).

The Transfers Were Actually Fraudulent Because Badges of Fraud are Present

Because "it is often impracticable, on direct evidence, to demonstrate an actual intent to hinder, delay or defraud creditors," courts "frequently infer fraudulent intent from the circumstances surrounding the transfer, taking particular note of certain recognized indicia or badges of fraud." *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 34 F.3d 800, 805 (9th Cir. 1994). Those badges of fraud include "(1) actual or threatened litigation against the debtor; (2) a purported transfer of all or substantially all of the debtor's property; (3) insolvency or other unmanageable indebtedness on the part of the debtor; (4) a special relationship between the debtor and the transferee; and, after the transfer, (5) retention by the debtor of the property involved in the putative transfer." *Id.*

Here, there is no genuine dispute as to facts establishing the presence of multiple badges of fraud. First, Mr. Kirkland qualifies as an insider of EPD. Mr. Kirkland was EPD's agent for service of process and served as outside counsel for companies partially owned or controlled by Mr. Pressman, including Plush Lounge Las Vegas LLC, SC Club LP, and Broadway Entertainment Marketing Inc. Even in situations where Mr. Kirkland did not formally represent EPD, he controlled EPD's legal advice and actions. For example, on March 21, 2006, Christopher Austin, an associate at

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Greenberg Traurig, the law firm at which Mr. Kirkland was then a partner, sent an e-mail to Mr. Kirkland stating:

I note that EPD Investment Company, LLC is the secured party on the UCC-1 filing for the inventory at Plush Lounge. I assume EPD is another company owned/controlled by Jerry and that we are counsel for EPD. Can you confirm the relationship? I'm in the process of preparing the letter demanding the delivery/return of the remaining items identified on the UCC-1 that we were unable to recover because Marriott kicked us out, and it seems to me that the demand should come from the secured party EPD as well as (or perhaps exclusive of) Plush Lounge Las Vegas, LLC (the identified Debtor). Your thoughts?

Doc. No. 262 at Ex. 16 (records produced by Greenberg Traurig LLP).

Mr. Kirkland responded: "Please make the demand on behalf of Plush. I'll have a different lawyer make the demand on behalf of EPD." *Id.*

Second, litigation against the Debtors had been threatened at the time of the recordation of the UCC-1 financing statement in favor of the BC Trust. Third, the financing statement was recorded during a time when EPD was experiencing serious cash flow issues. Fourth, the transfers consisted of substantially all of EPD's remaining assets.

The Trustee is Entitled to Recover the Avoided Fraudulent Transfers Pursuant to § 550(a) and Cal. Civ. Code §3439.08(b)

Section 550(a) provides that that the Trustee is entitled to recover an avoided transfer, or the value thereof, from "the initial transferee of such transfer or the entity for whose benefit such transfer was made" or from "any immediate or mediate transferee of such initial transferee." With respect to the Trustee's avoidance action under §544, Cal. Civ. Code §3439.08(b) contains a comparable provision.

The BC Trust qualifies as the initial transferee of the UCC-1 financing statement that created the security interest in favor of the BC Trust. Mr. Kirkland qualifies as the initial transferee of the mortgage payments made by EPD for his benefit. Accordingly, the Trustee is entitled to recover the transfers from the BC Trust and from Mr. Kirkland.

Defendants' Arguments in Opposition to the Motion for Summary Adjudication Lack Merit

None of the arguments presented by Defendants in opposition to the Trustee's

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Motion for Summary Adjudication have merit. First, Defendants contend that the Trustee's §544 claim is time-barred. The Order for Relief in the Debtors' bankruptcy case was entered on February 9, 2011 *nunc pro tunc* to December 7, 2010. Bankr. Doc. No. 29. The Trustee filed the Complaint on October 31, 2012. The Trustee's Complaint was filed timely pursuant to §546(a). *See Bank of Am. et al. v. Rund (In re EPD Inv. Co.), LLC*, 523 B.R. 680, 692 (B.A.P. 9th Cir. 2015) ("Accordingly, we hold that so long as a state-law fraudulent transfer claim exists on the petition date (or the date the order for relief is entered), *i.e.*, the state's applicable repose period governing the action has not yet expired on the petition date (or the order for relief date), the trustee may bring the avoidance action under § 544(b), provided it is filed within the limitations period in § 546(a). The 'reach back' period is established on the petition date (or the order for relief date) and encompasses all transfers within the relevant period provided by state law.").

Second, Mr. Kirkland argues that the Court lacks subject matter jurisdiction over him, because he has not filed a proof of claim, can no longer file a proof of claim as the claims bar date has passed, and does not consent to the Court's jurisdiction. Mr. Kirkland has already presented these arguments to the District Court, which has rejected them:

According to Defendant [Mr. Kirkland], the Court should immediately withdraw the reference because the bankruptcy court lacks jurisdiction to enter a final judgment in fraudulent conveyance claims against non-creditor defendants. (MTW 11.) The Ninth Circuit has held that "bankruptcy courts have statutory authority to hear and enter proposed findings of fact and conclusions of law in a fraudulent conveyance proceeding asserted by a bankruptcy trustee against a noncreditor, subject to de novo review by a federal district court." *In re Bellingham*, 702 F.3d at 566. "Such cases remain in the core, and the [28 U.S.C.] § 157(b)(1) power to 'hear and determine' them authorizes the bankruptcy courts to issue proposed findings of fact and conclusions of law." *Id.* at 565–66; *see also Field v. Wells Fargo Bank*, No. 12–510 SOM/BMK, 2012 WL 6651886 (D.Haw. Dec.20, 2012) (finding no reason to withdraw the reference because the bankruptcy court retained power to hear the case).

Here, the Trustee seeks to avoid fraudulent conveyances between Debtors and Defendant. Even if Defendant has not filed a claim and has transferred all of his interests to BC Trust, he is considered a noncreditor under *Bellingham*. Thus, the case is properly before the bankruptcy court which can hear the case

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and enter proposed findings of fact and conclusions of law.

In re EPD Inv. Co. LLC, No. ADV 2:12-AP-02424-ER, 2013 WL 5352953, at *4–5 (C.D. Cal. Sept. 24, 2013).

Third, Defendants assert that the BC Trust has a defense to the Trustee's avoidance claims because the BC Trust qualifies as a holder in due course that took for value and in good faith under Cal. Comm. Code §3302(a). According to Defendants, the BC Trust took for value because the beneficiaries of the BC Trust are Mr. and Mrs. Kirkland's children, and Mr. and Mrs. Kirkland are required by to support their children pursuant to Cal. Fam. Code §4053(b) and (d).

Defendants do not contest that no money or property of any kind was provided by the BC Trust to Mr. Kirkland in exchange for Mr. Kirkland's assignment of his EPD Interests to the BC Trust. Defendants instead rely upon the novel proposition that the Kirkland's obligation to support their children constitutes "value" within the meaning of Cal. Comm. Code §3302(a). Defendants do not cite any authority for this proposition, and the Court finds that it lacks merit. The Kirkland's independent statutory obligation to provide for their children cannot serve as a mechanism to enable Defendants to circumvent the Bankruptcy Code's fraudulent transfer provisions. Such a result would make it far too easy for debtors to avoid obligations to their creditors.

III. Conclusion

Based upon the foregoing, the Court will transmit to the District Court a Report and Recommendation, recommending that the District Court enter final judgment in favor of the Trustee as to the second, third, and sixth claims for relief for avoidance and recovery of fraudulent transfers made with actual intent.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

The Trustee has filed a separate motion seeking summary adjudication with respect to the Complaint's claims under §502. Transmission of a Report and Recommendation with respect to the §502 motion is not necessary. The BC Trust has filed a proof of claim, so the Court has constitutional authority to enter final judgment with respect to the §502 claims.

Note 2

Mr. Issa did review leases entered into by EPD Investment Co., the unincorporated sole proprietorship operated by Pressman from the 1970s to June 2003 that was the predecessor to EPD. The leases that Mr. Issa reviewed were entered into by EPD Investment Co. in 1995 and had all terminated by 2002 or earlier. Those leases are not relevant to this litigation, which pertains to EPD's activities from 2003 and onward.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

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Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#2.00 Hearing
RE: [258] Motion For Summary Judgment Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or, in the Alternative, for Equitable Subordination of Claims and Proofs of Claim; Memorandum of Points and Authorities in Support Thereof

fr. 11-7-17

Docket 258

Tentative Ruling:

1/23/2018

For the reasons set forth below, the Motion is GRANTED in part and DENIED in part.

Pleadings Filed and Reviewed:

- 1) Motion to Strike:
 - a) Chapter 7 Trustee's Notice of Motion and Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motion for Summary Adjudication Regarding the Second, Third, and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made With Actual Intent [Doc. No. 316]
 - b) Opposition to Chapter 7 Trustee's Notice of Motion and Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motions for Summary Adjudication [Doc. No. 324]
 - i) Notice of Supplemental Marked Deposition Transcripts in Support of Defendants' Opposition to Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa [Doc. No. 325]

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- c) Chapter 7 Trustee's Reply Brief in Support of Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motion for Summary Adjudication Regarding Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 327]
 - i) Notice of Supplemental Transcript Markings Re: Reply in Support of Motion to Strike [Doc. No. 328]
- 2) Motions for Summary Adjudication:
 - a) Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or in the Alternative, for Equitable Subordination of Claims and Proofs of Claim [Doc. No. 258]
 - b) Chapter 7 Trustee's Notice of Motion and Motion for Summary Adjudication Regarding the Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 259]
- 3) Declarations and Evidence Filed in Support of Motions for Summary Adjudication:
 - a) Declaration of Jason M. Rund, Chapter 7 Trustee, in Support of Chapter 7 Trustee's [Motions for Summary Adjudications] (the "Rund Decl.") [Doc. No. 260]
 - b) Declaration of Thomas P. Jeremiassen, CPA/CFF, CIRA Regarding Expert Report in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] (the "Jeremiassen Decl.") [Doc. No. 261]
 - c) Declaration of Corey R. Weber in in Support of [Motions for Summary Adjudication] (the "Weber Decl.") [Doc. No. 262]
 - i) Notice of Errata Re Exhibits to Declaration of Corey R. Weber in Support of [Motions for Summary Adjudication] [contains corrections regarding the testimony that is and is not being offered] [Doc. No. 280]
 - d) Request for Judicial Notice in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] [Doc. No. 263]
 - i) Notice of Errata Re: Request for Judicial Notice [sets forth correct hearing time] [Doc. No. 272]
 - ii) Notice of Errata Re: Request for Judicial Notice [contains corrections regarding the captions and filing dates of certain exhibits] [Doc. No. 284]
 - e) Trustee's Notice of Filing of Discovery Documents Re [Motions for Summary Adjudication] [Doc. No. 264]

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- f) Separate Statement [of Uncontroverted Facts] in Support of Chapter 7 Trustee's Motion for Summary Adjudication Regarding the Trustee's First Claim for Relief for Disallowance of Claims, or, in the Alternative, for Equitable Subordination of Claims and Proofs of Claim [Doc. No. 265]
 - i) Notice of Errata Re Separate Statements [Doc. No. 285]
- g) Separate Statement [of Uncontroverted Facts] in Support of Chapter 7 Trustee's Motion for Summary Adjudication Regarding the Second, Third, and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent [Doc. No. 266]
- h) Chapter 7 Trustee's Designation of Expert Witness Thomas P. Jeremiassen, CPA/CFF, CIRA [Doc. No. 267]
- i) Notice of Lodging of Transcripts and Designation of Testimony Offered by the Chapter 7 Trustee Pursuant to Local Bankruptcy Rule 7030-1(b) in Support of Chapter 7 Trustee's [Motions for Summary Adjudication] [Doc. No. 276]
- 4) Defendants' Combined Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 300]
 - a) Defendants' Combined Statement of Genuine Issues in Opposition to Motions for Summary Adjudication [Doc. No. 301]
 - b) Evidentiary Objections to Declarations of Allen Sumian, Corey R. Weber and Thomas P. Jeremiassen [Doc. No. 302]
 - c) Declaration of J. Michael Issa in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 303]
 - d) Declaration of John C. Kirkland in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 304]
 - e) Declaration of Jerrold S. Pressman in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 306]
 - f) Declaration of Ruben J. Moreno in Opposition to Motions for Summary Adjudication [Doc. No. 307]
 - g) Notice of Intent to Offer Deposition Evidence at Hearing and Declaration of Lewis R. Landau in Opposition to Plaintiff's Motions for Summary Adjudication [Doc. No. 308]
- 5) Trustee's Evidentiary Objections to Declarations Submitted in Support of Defendants' Opposition:
 - a) Evidentiary Objections to Declaration of Poshow Ann Kirkland in Opposition to Motions for Summary Adjudication [Doc. No. 310]
 - b) Evidentiary Objections to Declaration of Ruben J. Moreno in Opposition to

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- Motions for Summary Adjudication [Doc. No. 311]
- c) Evidentiary Objections to Declaration of John C. Kirkland in Opposition to Motions for Summary Adjudication [Doc. No. 312]
 - d) Evidentiary Objections to Declaration of Jerrold S. Pressman in Opposition to Motions for Summary Adjudication [Doc. No. 313]
- 6) Trustee's Responses to Evidentiary Objections to Declarations of Allen Sumian, Corey R. Weber, and Thomas P. Jeremiassen [Doc. No. 314]

I. Background

On December 7, 2010, creditors commenced an involuntary petition against EPD Investment Co., LLC ("EPD"). The Court entered an Order for Relief on February 9, 2011. On February 1, 2012, Jerrold S. Pressman ("Pressman") filed a voluntary Chapter 7 petition. On June 4, 2012, the bankruptcy cases of EPD and Pressman (collectively, the "Debtors") were substantively consolidated.

Pursuant to the operative Fourth Amended Complaint (the "Complaint") [Doc. No. 234] against John C. Kirkland and Poshow Ann Kirkland as Trustee of the Bright Conscience Trust Dated September 9, 2009 (the "BC Trust"), the Chapter 7 Trustee (the "Trustee") seeks to (1) disallow or equitably subordinate proofs of claim filed by the BC Trust and (2) avoid allegedly fraudulent transfers from the Debtors to Mr. Kirkland and the BC Trust.

Summary of the Complaint's Allegations

The allegations of the Complaint are as follows: Between the 1970s and June 27, 2003, EPD Investment Co. was an unincorporated sole proprietorship run by Pressman. Complaint at ¶12. On June 27, 2003, EPD was formed as a California limited liability company to provide corporate protection and to satisfy Mr. Pressman's goal of retirement. *Id.* Upon EPD's formation in 2003, the EPD sole proprietorship's assets and liabilities were transferred from Mr. Pressman to EPD. *Id.* At all times, the members and managers of EPD were Mr. Pressman and his son, Keith Pressman ("Keith"). *Id.*

EPD operated as a Ponzi scheme since its formation in 2003. *Id.* at ¶24. Between 2003 and mid-2009, EPD repaid existing creditors by using funds from new creditors. *Id.* EPD was balance sheet insolvent from at least December 2003, according to its tax returns, and has never been profitable. *Id.* at ¶¶20–21. Many of EPD's creditors mistakenly believed that EPD owned substantial real property assets in Tennessee, Mississippi, and elsewhere, when in fact EPD owned no real property. *Id.* at ¶16.

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Instead, EPD owned promissory notes secured by Mr. Pressman's assets, and it was Mr. Pressman who held an ownership interest in entities owning property in Tennessee, Mississippi, and elsewhere. *Id.*

In mid-2009, EPD could not pay creditors because the companies Mr. Pressman partially owned lacked sufficient operating cash flow, and because EPD was no longer receiving cash infusions from new investors. *Id.* at ¶25.

Mr. Kirkland was outside counsel for the Mr. Pressman, EPD, and other business entities owned by the Mr. Pressman. *Id.* at ¶28. Mr. Kirkland invested and/or loaned in excess of \$150,000 of his personal funds to EPD (Mr. Kirkland's "EPD Interests"). *Id.* at ¶29. In September 2009, after EPD had ceased making payments to most creditors, Mr. Kirkland assigned his EPD Interests to the BC Trust (his family trust), and/or to his wife Poshow Ann Kirkland as Trustee of the BC Trust, through a Notice of Assignment. The Notice of Assignment provides: "Notice is hereby given that all rights of John C. Kirkland under all such Loan Documents have been sold, transferred, and assigned to the Bright Conscience Trust Dated September 9, 2009." *Id.*

The BC Trust took the assignment subject to all claims and defenses of Mr. Kirkland, and did not take the assignment in good faith or for adequate consideration. *Id.* On September 11, 2009, the BC Trust filed and/or recorded a UCC-1 financing statement as to all assets of the Debtors. *Id.* On May 5, 2010, the BC Trust filed and/or recorded an amendment to the UCC-1 financing statement, which provided that "[t]his amendment is to clarify and confirm that the prior grant of security did not include the stock of North Hills Industrial Park, Inc., a California S-Corporation." *Id.*

Mr. Kirkland was aware that EPD operated as a Ponzi scheme. In 2005, Mr. Kirkland drafted letters to the California Franchise Tax Board which stated, among other things, that EPD's liabilities exceeded its assets, that EPD had negative cash flow, and that EPD required additional investment just to break even. *Id.* at ¶30(b)(i). Despite knowing that EPD operated as a Ponzi scheme, Mr. Kirkland took actions for the benefit of the BC Trust and to the detriment of EPD's other creditors, including:

- 1) Arranging for Mr. Pressman, through EPD, to make monthly mortgage payments on the house in which Mr. Kirkland and his spouse resided, even though Mr. Kirkland knew that EPD was insolvent and operated as a Ponzi scheme. *Id.* at ¶30d.
- 2) Defending suits brought against EPD by its creditors absent a good-faith basis, while at the same time benefitting from payments made by EPD to his mortgage lender. *Id.* at ¶30e.

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- 3) Orchestrating transfers which he knew were fraudulent under the Bankruptcy Code, for the purpose of staving off litigation by EPD's unpaid creditors. *Id.* at ¶30f.
- 4) Representing Plush Lounge, an entity that received significant transfers from EPD, and owed those sums to EPD, in litigation that severely depleted the assets of Plush Lounge, while simultaneously representing adverse party EPD. *Id.* at ¶30m.
- 5) Filing false and misleading pleadings in EPD's involuntary bankruptcy proceeding, contesting that EPD owed funds to creditors.
- 6) Contesting the EPD involuntary bankruptcy proceeding without a good-faith basis to do so, seeking to convert the proceeding to Chapter 11 without a good-faith basis to do so, and advising EPD and Mr. Pressman not to cooperate with the Trustee.

First Claim for Relief: Disallowance of Proofs of Claim, or, in the Alternative, Equitable Subordination of Proofs of Claim Against the BC Trust and Mr. Kirkland

On December 12, 2011, the BC Trust filed three proofs of claim in the bankruptcy case, all in the amount of \$2.672 million. *Id.* at ¶39. On February 15, 2013, the BC Trust filed a proof of claim in Mr. Pressman's bankruptcy case—which has now been substantively consolidated with the EPD case—in the amount of \$3.529 million. *Id.* All Proofs of Claim are secured claims, and were executed by Poshow Ann Kirkland as Trustee of the BC Trust. *Id.*

The BC Trust is the assignee of Mr. Kirkland's EPD Interests and the BC Trust's Proofs of Claim are based on the assignment of Mr. Kirkland's EPD Interests. *Id.* at ¶40. The BC Trust did not separately invest or loan funds to the Debtors; its rights are based solely on the assignment of Mr. Kirkland's EPD Interests, which assignment was orchestrated by Mr. Kirkland while he was counsel for Mr. Pressman and EPD. *Id.*

Mr. Kirkland engaged in inequitable conduct in his representation of EPD, as set forth above. The BC Trust, as Mr. Kirkland's assignee, stands in his shoes and took the assignment of the EPD Interests subject to Mr. Kirkland's actions. Accordingly, the BC Trust's claims should be disallowed or equitably subordinated. *Id.* at ¶42–47.

Second through Sixth Claims for Relief: Avoidance and Recovery of Intentional and Constructive Fraudulent Transfers

Prior to the filing of the petition, the Debtors made transfers to the BC Trust

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evidenced by the liens in favor of the BC Trust. The transfer to the BC Trust is avoidable as actually fraudulent pursuant to §544 (applying California Civil Code §§ 3439.04(a) and 3439.07) and §548(a)(1)(A). The transfer is avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04 (b), 3439.05, and 3439.07) because it was made without the Debtors receiving reasonably equivalent value at a time when the Debtors were (1) insolvent or (2) were engaged in a business or transaction for which any property remaining was an unreasonably small capital or (3) intended to incur debts beyond their ability to pay. For the same reasons, the transfer is avoidable as constructively fraudulent pursuant to §548(a)(1)(B).

Prior to the filing of the petition, the Debtors made transfers for the benefit of Mr. Kirkland and the BC Trust by issuing checks to a Union Bank account. Those transfers are avoidable as intentionally fraudulent pursuant to §544 (applying California Civil Code §§3439.04(a) and 3439.07) and §548(a)(1)(A). Those transfers are avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04(b), 3439.05, and 3439.07) and §548(a)(1)(B).

All the avoidable transfers are recoverable pursuant to §550(a)(1).

Summary of the Trustee's Motion for Summary Adjudication, the Defendants' Oppositions Thereto, and the Trustee's Supporting Reply

The Trustee moves to disallow the proofs of claim filed by the Bright Conscience Trust (the "BC Trust") on the grounds that the BC Trust has not established the claim's *prima facie* validity. The Trustee next argues that even if the claim is valid, any security interest held by the BC Trust could extend to only a small portion of the proceeds collected by the Trustee. The Trustee asserts that the BC Trust's pre-petition security interest cannot extend, as a matter of law, to amounts recovered by the Trustee through the exercise of his avoidance powers. The Trustee further asserts that the interest rate claimed by the BC Trust is usurious in California and is therefore unenforceable.

In the alternative, the Trustee asserts that the BC Trust's claim should be equitably subordinated. The Trustee asserts that the BC Trust took the assignment of Mr. Kirkland's EPD Interests subject to all rights and liabilities of Mr. Kirkland. The Trustee maintains that Mr. Kirkland engaged in inequitable conduct in connection with his representation of EPD. On this basis, the Trustee maintains that equitable subordination of the BC Trust's claim is appropriate.

In Opposition, Defendants contend that (1) the BC Trust's claim cannot be

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equitably subordinated because the Trustee has already recovered damages on account of the conduct giving rise to the claim for equitable subordination; (2) that any claims for inequitable conduct against Mr. Kirkland have been released in connection with the Trustee's settlement of claims against law firms at which Mr. Kirkland worked; (3) that the Trustee cannot reach the assets of the BC Trust because it is an irrevocable trust; (4) that genuine issues exist as to the amount of interest to which the BC Trust is entitled to receive on account of its claim; and (5) that the Trustee is barred from asserting that the BC Trust's lien cannot extend to assets of the estate collected by the Trustee, because the Trustee failed to adequately plead these issues in the Complaint.

In Reply to Defendants' Opposition, the Trustee asserts that Defendants raise only legal arguments and have failed to show any genuine dispute as to an issue of material fact that precludes the entry of summary adjudication. The Trustee rejects the Defendants' contention that the claims for inequitable conduct against Mr. Kirkland have been released, contending that Mr. Kirkland selectively quotes the release provisions of the settlement agreements out of context. The Trustee maintains that the irrevocability of the BC Trust does not defeat his claim for equitable subordination, because the equitable subordination claim does not seek to reach the assets of the BC Trust but rather to subordinate the claim to the claims of other creditors.

II. Findings and Conclusions

At the outset, the Court notes that certain of the issues relevant to this matter are addressed in the Court's ruling issued in connection with the Trustee's Motion for Summary Adjudication as to the second, third, and sixth claims for relief. To the extent those issues are not restated herein, they are incorporated by reference.

Summary adjudication is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by

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the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

Validity of the Proofs of Claim

Mr. Kirkland invested in EPD in late 2007. In September 2009, Mr. Kirkland assigned his claims against the Debtors to the BC Trust. The BC Trust did not separately invest in or loan money to the Debtors, and did not pay Mr. Kirkland anything in exchange for the assignment.

On December 12, 2011, Poshow Kirkland filed Proofs of Claim Nos. 171, 235, and 236 on behalf of the BC Trust. Claim 171, 235, and 236 each list an amount owed of \$2,672,000, as purportedly secured claims. On February 15, 2013, Poshow Kirkland filed Proof of Claim No. 13 in the consolidated case of Mr. Pressman. Claim 13 lists an amount owed of \$3,529,000, as a secured claim. Claim 13 is the same as Claims 171, 235, and 236, but includes additional interest.

Ms. Kirkland has not amended any of the claims to include documentation or an itemization of claimed interest.

There is no dispute that the four claims are duplicative. The Court will disallow the duplicative proofs of claim and focus its analysis on whether the BC Trust is entitled to a single claim on account of the assignment of Mr. Kirkland's EPD Interests.

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An

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objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

The claim itself does not contain documentation substantiating the amounts claimed, and Ms. Kirkland's deposition testimony showed that she possessed only a rudimentary understanding of the basis for the claim:

Question (by Trustee's counsel): Have you seen this document before?

Answer (in English): Yes. I wrote this form and I signed it. I saw this one.

Question: That's your signature at the bottom?

Answer (in English): Yes.

Question: And is that your handwriting—

Answer (in English): Yes.

Question: —in Sections 1 through 7?

Answer (in English): Yes.

Question: How did you arrive at the amount \$2,672,000?

Answer (in English): I find out from Jerry's office; someone told me.

Question: You called up and someone gave you the amount?

Answer (in English): I don't recall. I just—someone tell me to write this number, Jerry's office, somebody there.

Question: You don't recall who?

Answer: I don't recall who.

Question: And did you base that amount off of anything else?

Answer (in English): No. I know I have to file at that time. So I just find out the number and I wrote it there. Somebody from EPD's office tell me that's the amount they owed us, owed my kids' trust.

Poshow Kirkland Deposition Transcript [Doc. No. 262, Ex. 12] at 40:14–41:12.

As this litigation has progressed, Mr. Kirkland has supplied some additional evidence with respect to funds that he loaned to EPD (Mr. Kirkland subsequently assigned EPD's alleged obligation to him to the BC Trust). However, the evidence supplied is insufficient to substantiate the BC Trust's contention that it is owed \$2,672,000 on account of amounts loaned by Mr. Kirkland.

In support of the BC Trust's claim, Defendants point to the declaration of Ruben J. Moreno, who worked as an account manager for EPD. Mr. Moreno contends that

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Mr. Kirkland loaned EPD \$2,071,608.23 between September 2007 and October 2009. According to Mr. Moreno, the total balance owed the BC Trust, including interest, was \$2,927,376.20 as of December 2010. Mr. Moreno asserts that, based on a default interest rate of 24%, the BC Trust is owed \$14,381,715.78 as of December 2017. Mr. Kirkland also testifies as to the amounts that he loaned EPD between September 2007 and October 2009.

The Court finds that the testimony of Mr. Moreno and Mr. Kirkland is insufficient to create a genuine dispute as to the issue of how much Mr. Kirkland loaned EPD. Mr. Moreno's testimony cannot create a genuine issue because it contradicts his deposition testimony. "The general rule in the Ninth Circuit is that a party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.' This sham affidavit rule prevents 'a party who has been examined at length on deposition from 'rais[ing] an issue of fact simply by submitting an affidavit contradicting his own prior testimony,' which 'would greatly diminish the utility of summary judgment as a procedure for screening out sham issues of fact.'" *Yeager v. Bowlin*, 693 F.3d 1076, 1080 (9th Cir. 2012) (internal citations omitted).

At his deposition, Mr. Moreno stated that he had never heard of the BC Trust and that he did not know whether the BC Trust had ever invested funds with EPD. Mr. Moreno did recall that Mr. Kirkland had invested funds with EPD, but he did not know how much Mr. Kirkland had invested. Mr. Moreno further testified that he had sent Mr. Kirkland an accounting of the funds that Mr. Kirkland had invested with EPD. However, Mr. Moreno testified that he obtained this information from Mr. Pressman:

Question (by Trustee's counsel): Have you ever communicated with John Kirkland?

Answer: Yes.

Question: About what?

Answer: He called me about a month ago to ask me for some information.

Question: What kind of information?

Answer: He wanted a listing of what he had deposited into EPD, I believe.

Question: Anything else?

Answer: That was it pretty much. It was pretty quick.

Question: Did you speak with him by phone?

Answer: Yes, only by phone.

Question: And when you received that call, you didn't still work for EPD or Mr. Pressman, did you?

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Answer: No, I did not.

Question: What did you tell him?

Answer: I told him he would have to talk to Jerrold Pressman.

Question: Did you provide anything to Mr. Kirkland?

Answer: And then Jerrold asked me to provide him with the information.

Question: Did you send information to Mr. Kirkland?

Answer: I believe I did.

Question: By e-mail?

Answer: I think so. I don't remember or I could have faxed it over. Whatever he asked me to do after he talked to Jerry.

Question: So your understanding is Kirkland then talked to Jerry Pressman and Jerry Pressman instructed you to send something to Mr. Kirkland?

Answer: Yes.

Question: So whatever it was, you didn't generate it, it was something Mr. Pressman gave to you?

Answer: Yes.

Question: Do you know what it was?

Answer: It was a list of deposits.

Question: And that came from Mr. Pressman?

Answer: Yes.

Question: Do you know how Mr. Pressman got it?

Answer: Probably on the computer. It was probably on the computer somewhere. I might have given him the list on the computer, now that I'm thinking about it because I don't know where he would have got it at.

Question: Other than that one call and e-mail or fax to Mr. Kirkland, have you communicated with Mr. Kirkland any other time since the bankruptcy case started?

Answer: No.

Moreno Deposition Transcript 37–39.

Mr. Moreno's declaration testimony paints is fundamentally inconsistent with his deposition testimony. In his declaration filed in support of Defendants' Opposition to the Trustee's Motion for Summary Adjudication, Mr. Moreno states:

Attached hereto as Exhibit A is a true and correct copy of the EPD account statements for John Kirkland. These statements come from the electronic accounting files of EPD prepared over the years and maintained under my supervision. The entries were input by myself and other accounting personnel

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at EPD at or near the time of each event.

Moreno Decl. [Doc. No. 307] at ¶2.

The declaration testimony implies that Mr. Moreno had the ability to independently obtain information regarding EPD's accounts. By contrast, the deposition testimony shows that Mr. Moreno was able to determine how much Mr. Kirkland had loaned EPD only after consulting with Mr. Pressman. In this respect, Mr. Moreno's deposition testimony is materially inconsistent with his declaration testimony. As noted previously, a party cannot create an issue of fact by submitting declaration testimony inconsistent with that party's deposition testimony. Mr. Moreno's deposition testimony shows that he lacked personal knowledge of the amount that Mr. Kirkland loaned EPD—Mr. Moreno had to obtain the information from Mr. Pressman. The Court finds that the inconsistent declaration testimony, in which Mr. Moreno asserts that he does have personal knowledge of the amounts loaned by Mr. Kirkland, is inadmissible as a result of its inconsistency with the deposition testimony. Consequently, Mr. Moreno's declaration testimony cannot create a genuine dispute regarding the issue of how much Mr. Kirkland loaned to EPD.

Mr. Kirkland also submits declaration testimony asserting that he loaned EPD \$2,071,608.23 between September 2007 and October 2009. However, Mr. Kirkland does not provide any evidence substantiating the alleged loans. He does not provide any information regarding the methods of transfer or the originating or receiving bank account. He does not attach copies of checks or wire transfers. Mr. Kirkland's conclusory statements do not create a genuine issue of material fact. *See F.T.C. v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1171 (9th Cir. 1997), *as amended* (Apr. 11, 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.").

Based on the report of the Trustee's expert witness Thomas Jeremiassen, the Court finds that there is no genuine dispute that Mr. Kirkland's net investment with EPD was no more than \$1,116,755.41. *See* Doc. No. 267 at 26. This consists of a total of \$1,205,466.23 that EPD received from Mr. Kirkland, less \$104,852.82 in mortgage payments that EPD made on Mr. Kirkland's home.

The Trustee argues that \$600,000 of the funds transmitted by Mr. Kirkland to EPD should not be deemed to be an investment, because those funds were booked to a revenue account entitled "Consulting & Professional Fees." However, Mr. Kirkland testifies that he had no knowledge of how EPD booked the funds that he transmitted. Accordingly, the Court cannot find, in the context of a summary judgment, that there

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is no genuine dispute as to the characterization of the \$600,000 in funds.

As set forth in greater detail below, the Court finds that although the BC Trust holds an allowed claim in the amount of \$1,116,755.41 on account of funds that Mr. Kirkland loaned to EPD, the BC Trust's security interest cannot attach to the vast majority of the proceeds that have been collected by the Trustee. Further, the Court finds that to the extent the BC Trust's claim does attach to proceeds held by the estate, the Trustee is entitled to prevail upon his claim for equitable subordination.

BC Trust's Claim Does Not Extend to Proceeds Held by the Estate in Connection with (1) Settlements Reached in Avoidance Actions Brought by the Trustee, (2) Settlements with John Kirkland's Former Law Firms, and (3) a Settlement with Mr. Geringer

The primary sources of the funds held by the estate are as follows (amounts listed below exceed the estate's cash on hand because fees have already been paid to professionals):

- 1) Settlements of the Trustee's avoidance claims, in the amount of \$3,811,650.83.
- 2) Settlements with two of Mr. Kirkland's prior law firms, in the aggregate amount of \$1,250,000.00.
- 3) A settlement with Robert Geringer, whereby Mr. Geringer paid the estate \$3,615,817.85, representing the amount that Mr. Geringer paid Mr. Pressman for stock in North Hills Industrial Park, Inc.
- 4) Proceeds from the sale of stock in Ice Skating Enterprises, Inc., in the net amount of \$54,588.83.
- 5) Proceeds in the amount of \$50,000 in connection with Mr. Pressman's stock ownership in Sidecreek Development, Inc.

As a matter of law, even if BC Trust held a security interest, it could not extend to the proceeds collected by the Trustee through the settlements set forth in ¶¶1-3.

1. Funds Recovered in Connection with the Settlement of the Trustee's Avoidance Claims

As a matter of law, the funds collected by the Trustee in connection with the settlement of avoidance actions are not subject to any lien asserted by BCT. In *McGoldrick v. Juice Farms, Inc. (In re Ludford Fruit Prod., Inc.)*, 99 B.R. 18, 24-25 (Bankr. C.D. Cal. 1989), the court rejected a creditor's contention that it held a

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security interest in the recoveries obtained by the Trustee through the exercise of his avoidance powers:

Juice Farms contends that since its security interest included both collateral that existed at the time the Security Agreement was executed and that Debtor acquired later, the preference actions and resulting recoveries obtained by Trustee for the benefit of Debtor's bankruptcy estate are collateral subject to Juice Farm's pre-petition security interest. Although simple and internally consistent, this analysis does not take into account 11 U.S.C. § 552 and therefore is incomplete.

Section 552(a) provides:

(a) Except as provided in subsection (b) of this section, property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.

Neither the preference actions nor the resulting recoveries in this case came into being until after Debtor filed its Chapter 11 petition. Therefore, Section 552(a) prevents Juice Farms' pre-petition security interest from attaching to the preference actions or the preference recoveries.

An exception to Section 552(a) is contained in Section 552(b) of the Bankruptcy Code. Section 552(b) provides:

(b) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, *if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, rents, or profits of such property, then such security interest extends to such proceeds, products, offspring, rents, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.* (Emphasis added.)

Simply stated, Section 552(b) provides that if a pre-petition security interest encumbers proceeds of pre-petition collateral, the post-petition proceeds of pre-petition collateral will be subject to the creditor's pre-petition security interest.

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Juice Farms has failed to cite any persuasive authority that provides that the “general intangibles” at issue here—the bankruptcy estate's right to recover preferences under 11 U.S.C. § 547—are the proceeds of Juice Farms’ pre-petition collateral. Logically, it is difficult to understand how an avoidance power action that springs into being with the commencement of a bankruptcy case could be the proceed of *any* form of collateral.

California Commercial Code § 9306(1) defines “proceeds” to mean “whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds.” The bankruptcy estate’s right to sue under 11 U.S.C. § 547 is not received by the bankruptcy estate in exchange for the transfer of any property. Rather, it is a special power Congress grants to the fiduciary in charge of a bankruptcy estate, trustee or debtor in possession, to implement the equal distribution of assets among the various classes of claims in the estate.

To conclude that preference actions are the proceeds of collateral held pursuant to a pre-petition security interest would not only violate logic but also the policy behind the avoidance powers. *See In re Integrated Testing Products Corp.*, 69 B.R. 901, 904–05 (D.N.J.1987). My conclusion is also buttressed by the language of California Commercial Code § 9306(4) which lists the types of proceeds in which a secured party has a perfected security interest in the event of an insolvency proceeding. Avoidance power choses in action are not listed there. Therefore, by its own terms, the exception set forth in subsection (b) of Section 552 does not allow Juice Farm’s pre-petition security interest to attach to this estate's § 547 actions.

Ludford Fruit, 99 B.R. at 24–25.

The BC Trust cites *In re Figearo*, 79 B.R. 914, 918 (Bankr. D. Nev. 1987) for the proposition that proceeds collected in connection with the Trustee’s avoiding powers may be subject to a creditor’s security interest. The Court declines to follow *Figearo*, which is contrary to *Ludford Fruit*. The leading treatise, *Collier on Bankruptcy*, is consistent with *Ludford Fruit*:

Some courts have ruled that, where the creditor has an independent right to recover the property in question, the creditor may claim an interest in that same property if and when it is recovered by the trustee pursuant to an avoiding power under the Bankruptcy Code. Under this reasoning, monies recovered as the result of a fraudulent transfer action sometimes are found to be "proceeds" of the creditor’s independent right to follow such monies when they are traceable into the hands of the transferee.

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Other courts have distinguished these rulings when the avoidance action arises under the preference statute. According to these courts, preference recoveries are not "proceeds" of the creditor's collateral within the meaning of section 552(b)(1), because the right to recover a preference, unlike a chose in action for fraudulent transfer, occurs only in bankruptcy and is vested, with few exceptions, in a trustee.

Once a bankruptcy case commences, however, because all recoveries under the avoiding powers are property of the estate, administered almost exclusively by the trustee for the benefit of the estate as a whole rather than for any creditor individually, it is difficult to see how such recoveries can be other than "after-acquired property" within the meaning of section 552(a), rather than proceeds of prepetition collateral under section 552(b)(1). This is true for fraudulent transfers as well as preferences, and no persuasive distinction seems possible along these lines. Prebankruptcy state law preferences exist, and may be asserted postbankruptcy under section 544(b) of the Bankruptcy Code. And the assertion by a trustee of state fraudulent transfer law under section 544(b) allows for an expanded recovery under the rule of *Moore v. Bay*, as well as section 550, underscoring the fact that the recoveries that are property of the estate under section 541(a)(3) are peculiarly postpetition in nature. Indeed, a creditor may not sue to recover a state law fraudulent transfer once a case in bankruptcy is commenced, because this would be taking a chose in action from the estate, thereby violating the automatic stay. On the whole, therefore, the more persuasively reasoned opinions do not permit secured creditors to share in recoveries obtained by bankruptcy trustees or estate representatives pursuant to the avoiding powers, even where such creditors may have independent, traceable rights to those funds.

5-552 *Collier on Bankruptcy* ¶ 552.02 (16th ed. 2017).

The Court further notes that *Figearo* is contrary to the weight of authority and has not been followed by more recent cases. See, e.g., *Official Committee of Unsecured Creditors v. UMB Bank, NA et al. (In re Residential Capital, LLC)*, 497 B.R. 403, 414 (Bankr. S.D.N.Y. 2013) (declining to follow *Figearo*; holding that the Trustee's avoidance power claims "must be considered after-acquired property belonging to the estate"; and holding that "because the Debtor does not own the right to pursue a fraudulent transfer action in bankruptcy (since that action belongs to the trustee post-petition under section 554(b)), the Debtor could not have encumbered or assigned that right prepetition").

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2. Funds Recovered through Settlements With Mr. Kirkland's Former Law Firms

Funds recovered by the Trustee in connection with the settlement of the Trustee's claims against two of Mr. Kirkland's former law firms cannot be subject to any security interest of the BC Trust. The Trustee asserted claims against Luce Forward Hamilton & Scripps LLP ("Luce Forward") for the avoidance and recovery of transfers pursuant to §§544, 547, 548, and 550, as well as claims for professional negligence, legal malpractice, and breach of fiduciary duty. The Trustee settled those claims for a payment of \$750,000.

As discussed above, claims based upon the Trustee's avoiding powers are not subject to a prepetition creditor's lien, pursuant to §552(a). The Trustee's claims against Luce Forward for professional negligence and legal malpractice arose from Mr. Kirkland's misconduct while he was employed at Luce Forward. The BC Trust, as Mr. Kirkland's assignee, does not hold a security interest in the proceeds of a settlement that resulted from Mr. Kirkland's misconduct.

The Trustee asserted claims against Greenberg Traurig LLP and Greenberg Traurig PA ("Greenberg Traurig") for the avoidance and recovery of transfers pursuant to §§544, 547, 548, and 550, as well as claims for professional negligence, legal malpractice, and breach of fiduciary duty. The Trustee settled those claims for a payment of \$500,000. Similar to the settlement with Luce Forward, the settlement with Greenberg Traurig arose in connection with Mr. Kirkland's misconduct while he was employed at Greenberg Traurig. The settlement with Greenberg Traurig, like the settlement with Luce Forward, is not subject to a prepetition creditor's lien.

3. Funds Recovered through the Settlement With Robert Geringer

The Trustee recovered \$3,615,817.85 in connection with a settlement with Robert Geringer. The settlement was based on payments made by Mr. Geringer for the purchase of stock in NHIP.

The BC Trust points to a UCC financing statement recorded in September 2009 in support of its contention that it holds a security interest in NHIP's stock, and therefore a security interest in the proceeds of the settlement with Mr. Geringer. The BC Trust ignores the fact that an amended UCC-3 financing statement was subsequently recorded that provides: "This amendment is to clarify and confirm that the prior grant of security did not include the stock of North Hills Industrial Park, Inc., [NHIP] a California S-Corporation."

Lisa Underkoffler, Mr. Kirkland's secretary, filed the amended UCC-3 on May 5,

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2010. Doc. No. 262 at Ex. 18 (document produced by National Corporate Research, Ltd., establishing that the UCC-3 was filed by Ms. Underkoffler). Ms. Underkoffler testified that she would not have filed the UCC-3 absent Mr. Kirkland's authorization.

Mr. Kirkland states that he never consented to the filing of the amended financing statement, was never told about the amended financing statement, and contends that the amended financing statement was filed at a time when he was out of the country and had limited communication with his office. Doc. No. 304 at ¶28.

The Court finds that at the time Ms. Underkoffler filed the UCC-3, she was an agent of Mr. Kirkland acting within the scope of her authority. As a result, Mr. Kirkland is bound to Ms. Underkoffler's filing of the UCC-3. *See* Cal. Civ. Code § 2330; *Official Committee of Unsecured Creditors v. City Nat. Bank, N.A.*, 2011 WL 1832963, at *5 (N.D. Cal. 2011) ("It is well established that a principal is bound by the acts of an agent acting within the scope of the agent's authority."). Being bound by the acts of his agent Ms. Underkoffler, Mr. Kirkland cannot create a genuine dispute of material fact by testifying that he did not consent to the filing of the UCC-3.

The Trustee Has Not Demonstrated that He Is Entitled to Surcharge the BC Trust's Claim

The only proceeds as to which the BC Trust's alleged security interest could conceivably attach are the \$54,588.53 that the Trustee obtained from the sale of stock in Ice Skating Enterprises, Inc. and the \$50,000 that the Trustee obtained on account of Mr. Pressman's stock ownership interested in Sidecreek Development, Inc.

The Trustee asserts that he is entitled to surcharge the BC Trust's claim, and that such surcharge vastly exceeds the proceeds as to which the claim could be attach. The Trustee is correct that, pursuant to §506(c), he is entitled to "recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim" However, such a recovery would be limited to the costs incurred by the Trustee in selling the Ice Skating Enterprises stock and obtaining the distribution on account of Mr. Pressman's Sidecreek Development stock. The Trustee has not furnished any evidence of the amounts incurred to liquidate such property. Instead, the Trustee points only to the attorneys' fees accrued in liquidating all the assets of the estate.

The Trustee is Entitled to Prevail Upon His Equitable Subordination Claim

Ultimately, the fact that the BC Trust's claim can attach to a small portion of the

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proceeds collected by the Trustee is unavailing, as the Court finds that the Trustee is entitled to prevail upon his claim for equitable subordination.

Section 510(c) provides that “the court may under principles of equitable subordination, subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim.” The subordination of claims based on equitable considerations generally requires three findings: “(1) that the claimant engaged in some type of inequitable conduct, (2) that the misconduct injured creditors or conferred unfair advantage on the claimant, and (3) that subordination would not be inconsistent with the Bankruptcy Code.” *Henry v. Lehman Comm. Papers, Inc. (In re First All. Mortgage Co.)*, 471 F.3d 977, 1006 (9th Cir. 2006).

The BC Trust acquired Mr. Kirkland’s EPD Interests through an assignment, and therefore remains subject to the rights and liabilities of Mr. Kirkland, including any liability flowing from Mr. Kirkland’s inequitable acts prior to assignment. Here, there is no genuine dispute as to the facts establishing that Mr. Kirkland engaged in inequitable conduct sufficient to support equitable subordination.

Mr. Kirkland’s conduct was inequitable in significant part because of his status as an insider of EPD. Mr. Kirkland’s insider status is established by the fact that Mr. Kirkland was EPD’s agent for service of process and served as outside counsel for companies partially owned or controlled by Mr. Pressman, including Plush Lounge Las Vegas LLC, SC Club LP, and Broadway Entertainment Marketing Inc. Even in situations where Mr. Kirkland did not formally represent EPD, he controlled EPD’s legal advice and actions. For example, on March 21, 2006, Christopher Austin, an associate at Greenberg Traurig, the law firm at which Mr. Kirkland was then a partner, sent an e-mail to Mr. Kirkland stating:

I note that EPD Investment Company, LLC is the secured party on the UCC-1 filing for the inventory at Plush Lounge. I assume EPD is another company owned/controlled by Jerry and that we are counsel for EPD. Can you confirm the relationship? I'm in the process of preparing the letter demanding the delivery/return of the remaining items identified on the UCC-1 that we were unable to recover because Marriott kicked us out, and it seems to me that the demand should come from the secured party EPD as well as (or perhaps exclusive of) Plush Lounge Las Vegas, LLC (the identified Debtor). Your thoughts?

Doc. No. 262 at Ex. 16 (records produced by Greenberg Traurig LLP).

Mr. Kirkland responded: "Please make the demand on behalf of Plush. I'll have a different lawyer make the demand on behalf of EPD." *Id.*

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Mr. Kirkland's inequitable conduct consisted of facilitating the recordation of the UCC-1 financing statement in favor of the BC Trust, at the same time that EPD was experiencing serious cash flow problems and was not paying its other creditors. These actions inured to the detriment of EPD's other creditors but benefited the BC Trust in favor of Mr. Kirkland's children. The actions were undertaken at a time when EPD was experiencing serious cash flow issues. The recordation of the lien in favor of the BC Trust consisted of substantially all of EPD's remaining assets.

Because the Court finds that the Trustee is entitled to prevail upon his claim for equitable subordination, the Court does not rule upon the amount of interest, if any, to which EPD is entitled. Such a determination is unnecessary given that EPD's claim will be subordinated to all other claims.

Defendants' Arguments in Opposition to the Motion Lack Merit

Defendants assert various arguments in opposition to the Motion for Summary Adjudication, all of which lack merit.

First, Defendants argue that the Trustee's claims against Mr. Kirkland have been released in connection with settlements entered into between the Trustee and Mr. Kirkland's former law firms. Defendants selectively quote portions of the release provisions out of context. The releases preserved the Trustee's claims against Mr. Kirkland; only the claims against the law firms were released.

Second, Defendants argue that the Trustee may not obtain equitable subordination because he has already recovered amounts in settlements from Mr. Kirkland's prior law firms. The Trustee's settlements with those prior firms were based on avoidance actions and claims for malpractice and breach of fiduciary duty. The instant claims for equitable subordination are not duplicative of claims previously asserted. Defendants' argument lacks merit.

Third, the Trustee's disallowance and equitable subordination claims are not time-barred. Defendants claim that a statute of limitations was somehow triggered based on the date that Mr. Kirkland ceased employment with the law firm Luce Forward. Defendants' position is contrary to the Bankruptcy Code, which permits the Trustee to object to proofs of claim, and provides for the equitable subordination of claims. None of these provisions are subject to a statute of limitations.

Fourth, Defendants assert that the BC Trust has a defense to the Trustee's avoidance claims because the BC Trust qualifies as a holder in due course that took for value and in good faith under Cal. Comm. Code §3302(a). According to Defendants, the BC Trust took for value because the beneficiaries of the BC Trust are

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Mr. and Mrs. Kirkland's children, and Mr. and Mrs. Kirkland are required by to support their children pursuant to Cal. Fam. Code §4053(b) and (d).

Defendants do not contest that no money or property of any kind was provided by the BC Trust to Mr. Kirkland in exchange for Mr. Kirkland's assignment of his EPD Interests to the BC Trust. Defendants instead rely upon the novel proposition that the Kirkland's obligation to support their children constitutes "value" within the meaning of Cal. Comm. Code §3302(a). Defendants do not cite any authority for this proposition, and the Court finds that it lacks merit. The Kirkland's independent statutory obligation to provide for their children cannot serve as a mechanism to enable Defendants to circumvent the Bankruptcy Code's fraudulent transfer provisions. Such a result would make it far too easy for debtors to avoid obligations to their creditors.

III. Conclusion

Based upon the foregoing, the Court finds that the Trustee is entitled to judgment in his favor on his equitable subordination claim. The Court will not enter final judgment at this time pursuant to Civil Rule 54, because judgment as to the Trustee's other claims for relief will be entered by the District Court. In the event the District Court adopts the Court's Report and Recommendation with respect to the Trustee's second, third, and sixth claims for relief, the Court will at that time enter final judgment on the equitable subordination claim.

The Trustee should be prepared to advise the Court whether he wishes to proceed with the fourth and fifth claims which were not addressed in either Motion for Summary Adjudication.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By

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Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

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Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#2.10 HearingRE: [316] Motion to strike Chapter 7 Trustee's Notice of Motion and Motion to Strike and Exclude Declaration and Expert Report of J. Michael Issa Filed in Opposition to Motion for Summary Adjudication Regarding the Second, Third and Sixth Claims for Relief for Avoidance and Recovery of Fraudulent Transfers Made with Actual Intent; Declaration of Corey R. Weber

Docket 316

Tentative Ruling:

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

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Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:12-22639 Claire Levine

Chapter 7

#3.00 Status Hearing re [414] Status Conference On Consummation Of Amended Settlement Agreement

fr: 3-21-17; 5-23-17; 9-6-17; 1-10-18

Docket 0

Tentative Ruling:

1/23/2018

See Cal. No. 3.1, below, incorporated in full by reference.

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

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2:12-22639 Claire Levine

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#3.10 HearingRE: [516] Motion to Approve Compromise Under Rule 9019 and/or Enforce Settlement with Trinity Financial Services, LLC; Declarations of Jerry Goldstein, Claire Levine and Howard M. Ehrenberg

Docket 516

Tentative Ruling:

1/23/2018

Pleadings Filed and Reviewed:

- 1) Motion for Approval of Compromise with Trinity Financial Services Pursuant to FRBP (the "Motion") [Doc. No. 516]
 - a) Notice of Hearing [Doc. No. 517]
 - b) Corrected Notice of Hearing [Doc. No. 521]
- 2) Chapter 7 Trustee's Joinder in Motion for Approval of Compromise [Doc. No. 532]
- 3) Joinder to, and Response in Support of, Motion for Approval of Compromise with Trinity Financial Services, LLC Under Fed. R. Bankr. P. 9019 [Doc. No. 539]
- 4) Opposition to Motion for Approval of Compromise With Trinity Financial Services and/or Motion to Enforce Settlement (the "Opposition") [Doc. No. 540]
- 5) Reply to the Opposition of Trinity Financial Services, LLC to the Motion to Approve the Compromise Under Rule 9019 (the "Reply") [Doc. No. 549]
- 6) Supplemental Reply to the Opposition of Trinity Financial Services, LLC to the Motion to Approve the Compromise Under Rule 9019 [Doc. No. 552]
- 7) Supplemental Declaration of Don A Madden, III in Support of Opposition to Motion for Approval of Compromise with Trinity Financial Services and/or Motion to Enforce Settlement [Doc. No. 553]
- 8) Response and Joinder to the Status Report Re: Consummation of Settlement Re: Sale of B-101 Unit in Maui, Hawaii [Doc. No. 550]
- 9) Status Report Re Consummation of Amendment to Binding Settlement Re: Sale of B-101 Unit in Maui, Hawaii [Doc. No. 541]

I. Facts and Summary of Pleadings

The instant motion is captioned as a motion to approve a compromise pursuant to

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Bankruptcy Rule 9019, but is in fact more properly characterized as a motion to compel Trinity Financial Services ("Trinity") to perform under an agreement which Movant alleges it previously reached with Trinity. Movant contends that e-mail correspondence it exchanged with Trinity constitutes an enforceable agreement pursuant to which Trinity is required to accept a payoff of \$50,000 in exchange for a release of its lien. Trinity asserts that the e-mails were nothing more than preliminary negotiations; that no formal agreement was ever memorialized; that Movant falsely represented their financial position during the negotiations; and that had Trinity been aware of the actual details regarding the short-sale contemplated by the global settlement agreement, it would never have agreed to release its lien for a payoff of only \$50,000. Trinity takes the position that it is owed approximately \$650,000, and maintains that the global settlement agreement allows Movant and entities affiliated with Movant to obtain more than its fair share of the value from the Maui Property. The Motion is joined by the Chapter 7 Trustee and by unsecured creditor Peter Rudinskas.

Movant and unsecured creditor Mr. Rudinskas conducted a Rule 2004 examination of Trinity on Thursday, January 18, 2018. Declarations filed subsequent to the Rule 2004 examination illustrate that Movant and Trinity have not made any progress toward resolving their dispute regarding the terms under which Trinity's lien can be released.

II. Findings and Conclusions

Although captioned as a motion under Bankruptcy Rule 9019, in reality the relief sought by Movant is an injunction requiring specific performance by Trinity under an alleged enforceable contract. The Court finds that Movant has failed to establish that an enforceable contract existed. The parties exchanged e-mails but no formal agreement was memorialized. The Court finds that the e-mails can fairly be construed as negotiations towards a settlement but that the e-mails do not qualify as an enforceable contract.

Further, the Court finds that even if an enforceable contract did exist, Movant has failed to show that it is entitled to injunctive relief. To obtain injunctive relief, Movant would be required to show irreparable harm. *See generally Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Movant has not made such a showing. While Movant may suffer money damages if it is unable to consummate the global settlement agreement, money damages do not constitute irreparable harm. As the Ninth Circuit has held, "economic injury alone does not support a finding of

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irreparable harm, because such injury can be remedied by a damage award.” *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).

On September 5, 2017, the Court entered an order advising the parties to the global settlement agreement they would have one final opportunity to complete the short sale contemplated thereunder. The Court has stated that if the short sale is not completed by January 24, 2018, it would proceed with the adjudication of the Debtor’s objection to Gerald Goldstein’s proof of claim.

Consistent with its previous order, the Court hereby sets trial on the Debtor’s objection to Mr. Goldstein’s proof of claim commencing on **7/30/2018 at 9:00 a.m. through 8/2/2018**. The Court notes that the claim objection has been brought by way of motion, rather than a formal adversary proceeding. However, the claim objection is sufficiently complex that the Court finds it necessary to adjudicate the objection by way of a trial rather than under the procedures applicable to a contested matter.

The following dates will apply:

- 1) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 2) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel’s responsibility to check the Judge’s self-calendaring dates, posted on the Court’s website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 3) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 4) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court’s Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section

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4, for information about LOU.

The Court will issue separate orders informing the parties of the procedures that apply to the trial (i.e., the deadlines for the submission of witness lists and pretrial briefs).

The Court notes that the setting of these deadlines does not preclude Movants from continuing to attempt to effectuate the global settlement agreement. In the Court's view, completion of the global settlement would inure to the benefit of all parties.

The Court will enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

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2:14-20310 Juana Valdez

Chapter 7

#4.00 Show Cause Hearing
RE: Order Requiring Debtor To Appear And Show Cause Why Settlement Agreement Should Not Be Enforced re [84] Declaration re: Declaration of Wesley H. Avery re Breach of Settlement Agreement, and Request for Entry of Subsequent Order as Provided for in Settlement Agreement upon Breach Thereof

fr. 8-30-17; 11-29-17; 12-13-17

Docket 84

Tentative Ruling:

1/23/2018

The Chapter 7 Trustee has submitted a declaration advising the Court that the Debtor has made the final payment under the Settlement Agreement. The Court will enter an order discharging the Order to Show Cause. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph Caceres

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2:15-11885 Sung Hyun Chung

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#5.00 Hearing
RE: [132] and [133] Motion to Dismiss Debtor

Docket 132

Tentative Ruling:

1/23/2018

For the reasons set forth below, Motion DENIED.

Pleadings Filed and Reviewed:

- 1) Amended Motion to Dismiss Debtor (the "Motion") [Doc. No. 133]
- 2) Trustee's Opposition to the Motion (the "Opposition") [Doc. No. 139]
- 3) Order Approving Chapter 7 Trustee's Motion for Order: (1) Authorizing sale of estate's right, title, and interest in alcoholic beverage control license; (2) Approving overbid procedure; and (3) Authorizing escrow to remit taxes due to the State Board of Equalization if any (the "Sale Order") [Doc. No. 71]

I. Facts and Summary of Pleadings

Sung Chung (the "Debtor") filed a voluntary Chapter 7 petition on February 9, 2015 (the "Petition") [Doc. No. 1]. Elissa D. Miller was appointed as Chapter 7 Trustee of the Estate (the "Trustee") on March 20, 2015 [Doc. No. 17]. This is, in effect, the Debtor's third attempt to dismiss or convert the case. *See* Doc. Nos. 48 & 126. The Court denied the Debtor's first Motion to Dismiss [Doc. No. 48] pursuant to the Order entered on November 12, 2015 [Doc. No. 85]. On September 24, 2015, the Court entered the "Order Approving Chapter 7 Trustee's Motion for Order: (1) Authorizing sale of estate's right, title, and interest in alcoholic beverage control license; (2) Approving overbid procedure; and (3) Authorizing escrow to remit taxes due to the State Board of Equalization if any" (the "Sale Order") [Doc. No. 71]. The Sale Order related to a previously undisclosed Liquor License that was discovered by

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the Trustee post-petition. *See* Doc. Nos. 58, 71. Pursuant to the Sale Order, the Liquor License was sold for a total amount of \$65,000. Doc. No. 71. On March 23, 2016, the Trustee filed the "Complaint Seeking Denial of Discharge Pursuant to § 727" [Doc. No. 104], thus commencing an adversary proceeding against the Debtor, Case No. 2:16-ap-01152-TD. On April 20, 2017, the Court entered the "Judgment of Nondischargeability" [Doc. No. 106], which denied the Debtor discharge pursuant to §§ 727(a)(2)(B), 727 (a)(3), 727(a)(4)(A) and (a)(4)(D), and 727(a)(5). Then, on October 4, 2017, the Debtor filed the "Motion to Convert Case from Chapter 7 to 13" [Doc. No. 126], which the Debtor withdrew after the Trustee filed its Opposition to the Motion to Convert [Doc. No. 127], *see* Doc. No. 130.

The Motion

On December 13, 2017, the Debtor filed the "Amended Motion to Dismiss Debtor" (the "Motion") [Doc. No. 133]. The Debtor did not attach a proof of service to the Motion. The Motion requests dismissal for the following reasons: (1) so that the Debtor may "re-evaluate" his financial circumstances, Motion at 3–4; and (2) based on the Trustee's failure to expedite administration of the Estate, *id.* at 4.

The Trustee's Opposition

On January 3, 2018, the Trustee filed the Opposition to the Motion [Doc. No. 139]. The Opposition contends that the Debtor has not shown the requisite "cause" for dismissal, and that dismissal would not be in the best interest of creditors—particularly the IRS whose secured claim will be paid in full upon closing of the case. Opposition at 7–8. Additionally, the Trustee notes that the Debtor's failure to serve the Motion on all interested parties is, in itself, reason to deny the Motion. The Trustee also requests that the Court issue an Order to Show Cause re sanctions pursuant to FRBP 9011(c)(1)(B). If the Court is not inclined to issue an OSC, the Trustee reserves the right to pursue the remedy by separate motion.

II. Findings of Fact and Conclusions of Law

Section 707(a)(1) provides that the "court may dismiss a case under this chapter only after notice and a hearing and only for cause." In *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008), the court observed that the "term 'for cause' is defined in the Bankruptcy Code only by way of a list of three

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examples—unreasonable delay prejudicial to creditors, nonpayment of filing fees, and not filing schedules—that is plainly incomplete." The *Hickman* court explained that courts should examine the totality of the circumstances in determining whether "cause" under §707(a) is present. *Id.* at 840. A "case will not be dismissed on the motion of a debtor if such dismissal would cause 'some plain legal prejudice' to a creditor." *Id.* Legal prejudice exists if dismissal will result in a decreased distribution to creditors. *See, e.g., Leach v. Internal Revenue Service (In re Leach)*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991) (upholding denial of debtor's motion to dismiss, because dismissal would prejudice the Internal Revenue Service by permitting the debtor to refile at a later date when tax liabilities would be dischargeable).

Here, the Debtor has failed to demonstrate sufficient cause exists to warrant dismissal. The Court finds that dismissal would not be in the best interest of creditors or of the Estate, especially in light of the time the Trustee has spent investigating the Debtor's assets. Furthermore, the Trustee is currently pursuing case closing procedures.

The Court also notes that the Debtor did not comply with the notice requirements of § 707(a) or FRBP 2002(a)(4). The Debtor's failure to comply with the requisite notice procedures is an additional, independent ground for denying the Motion.

In the event the Trustee wishes to pursue sanctions pursuant to FRBP 9011(c) (1)(B), the Trustee may do so by a separate and appropriately noticed motion.

III. Conclusion

In conclusion, the Court DENIES the Debtor's Motion in its entirety.

The Trustee shall lodge a conforming order within seven (7) days of the hearing on the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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2:17-20979 Mary Joyce Mitchell

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#6.00 Show Cause Hearing re [15] Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

Tentative Ruling:

1/23/2018

The case is dismissed based on the Debtor's failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$135.

Pleadings Filed and Reviewed:

- 1) Order Approving Payment of Filing Fee in Installments (the "Fee Installment Order") [Doc. No. 7]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 15]
 - a) Notice of OSC [Doc. No. 20]
 - b) Notice to Creditors [of Rescheduled Hearing] [Doc. Nos. 17]

Mary Joyce Mitchell (the "Debtor") filed a voluntary Chapter 7 petition on September 7, 2017 (the "Petition") [Doc. No. 1]. On September 8, 2017, the Court entered the "Order Denying Application to Proceed in Forma Pauperis and Notice for Payment of Filing Fees in Installments" (the "Fee Installment Order") [Doc. No. 7]. The Fee Installment Order required the Debtor to pay the first installment of \$20 with the Petition, and to subsequently pay \$105 per month commencing on October 9, 2017, with the final installment to be paid on December 8, 2017.

The Debtor paid the first installment of \$20, but has failed to pay the remaining installments. Therefore, on November 16, 2017, the Court entered the "Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed" (the "OSC") [Doc. No. 15]. As of the date of this tentative ruling, the Debtor has not responded to the OSC. The Debtor's failure to pay the fee installments as well as her

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CONT... Mary Joyce Mitchell

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failure to respond to the Court's OSC constitute "cause" for dismissal of the Debtor's case.

The Debtor's case is DISMISSED. The Court will enter the Order.

Party Information

Debtor(s):

Mary Joyce Mitchell

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:17-22789 Lucinda Velma Newcomb

Chapter 7

#7.00 Show Cause Hearing re [14] Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments

Docket 0

Tentative Ruling:

1/23/2018

The case is dismissed based on the Debtor's failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$135.

Pleadings Filed and Reviewed:

- 1) Order Approving Payment of Filing Fee in Installments (the "Fee Installment Order") [Doc. No. 9]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 14]
 - a) Notice of OSC [Doc. No. 16]

Lucinda Velma Newcomb (the "Debtor") filed a voluntary Chapter 7 petition on October 18, 2017 (the "Petition") [Doc. No. 1]. On October 18, 2017, the Court entered the "Order Granting Application to Pay Filing Fees in Installments" (the "Fee Installment Order") [Doc. No. 9]. The Fee Installment Order required the Debtor to pay installments of \$83.75 per month commencing on November 20, 2017, with the final installment to be paid on February 20, 2018.

The Debtor has not paid any of the installments pursuant to the Fee Installment Order. Therefore, on November 21, 2017, the Court entered the "Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed" (the "OSC") [Doc. No. 14]. As of the date of this tentative ruling, the Debtor has not responded to the OSC. The Debtor's failure to pay the fee installments as well as her failure to respond to the Court's OSC constitute "cause" for dismissal of the Debtor's case.

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CONT... Lucinda Velma Newcomb

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The Debtor's case is DISMISSED. The Court will enter the Order.

Party Information

Debtor(s):

Lucinda Velma Newcomb	Pro Se
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Trustee(s):

Heide Kurtz (TR)	Pro Se
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2:16-10799 BBeautiful, LLC, a California limited liability co

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Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#8.00

Hearing re: amount of Plaintiff BBeautiful's damages re Show Cause
Hearing re: [52] and [96] Appear And Show Cause Why Its Answer Should Not
Be Stricken And Why Its Default Should Not Be Entered

fr. 11-8-17; 12-13-17

Docket 52

***** VACATED *** REASON: CONTINUED 1-31-18 AT 10:00 A.M.**

Tentative Ruling:

11/6/2017

For the reasons set forth below, the Court will strike TrueERP's Answer and enter its default. A hearing to determine the amount of BBeautiful's damages will take place on December 13, 2017, at 10:00 a.m.

Pleadings Filed and Reviewed:

- 1) Order (1) Requiring TrueERP, Inc. to Appear and Show Cause Why its Answer Should Not be Stricken and Why its Default Should Not Be Entered and (2) Vacating Pretrial Conference Set for October 17, 2017, at 11:00 a.m. (the "Order to Show Cause") [Doc. No. 96]
 - a) Certificate of Notice [Doc. No. 99]
- 2) Order Granting Miller Miller Menthe, LLP's Motion to Withdraw as Counsel for TrueERP, Inc. [Doc. No. 95]
 - a) Final Ruling Granting Motion to Withdraw [Doc. No. 92]
 - b) Declaration of Jonathan Gerber [Re: Service of Court's Tentative Ruling Upon TrueERP, Inc.] [Doc. No. 94]
- 3) No response from TrueERP is on file

I. Facts and Summary of Pleadings

On August 31, 2016, BBeautiful LLC dba Chrislie Formulations ("BBeautiful") filed a "Complaint for: (1) Breach of Contract; and (2) Fraud" (the "Complaint") [Doc.

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CONT... BBeautiful, LLC, a California limited liability co Chapter 11

No. 1] against TrueERP, Inc. ("TrueERP"). The Complaint alleges that TrueERP supplied defective enterprise resource planning software to BBeautiful which caused BBeautiful to lose millions of dollars in sales. The Complaint seeks actual damages of not less than \$10 million, as well as unspecified punitive damages.

On September 19, 2017, the Court conducted a hearing on the motion of Miller Miller Menthe, LLP ("MMM") to withdraw from representing TrueERP, Inc. The Court granted MMM's motion and ordered TrueERP to retain new counsel:

As a corporation, TrueERP cannot appear without an attorney. TrueERP must retain new counsel and file its Second Amended Counterclaim by the deadline previously set—October 3, 2017. If TrueERP does not retain new counsel and/or fails to meet this deadline, the Court will issue an order requiring TrueERP to show cause why its Answer should not be stricken and default should not be entered against it.

Final Ruling Granting Counsel's Motion to Withdraw [Doc. No. 92] at 3.

As ordered by the Court, MMM served the Final Ruling Granting Counsel's Motion to Withdraw upon TrueERP. *See* Declaration of Jonathan Gerber [Doc. No. 94]. The Court issued the instant Order to Show Cause after TrueERP failed to retain new counsel and failed to file its Second Amended Counterclaim by the October 3 deadline. The Order to Show Cause was served on TrueERP at the address listed on the 2017 Statement of Information that is on file with the California Secretary of State.

TrueERP has not responded to the Order to Show Cause.

II. Findings and Conclusions

The Court will strike TrueERP's Answer and enter its default. TrueERP has failed to file its Second Amended Counterclaim by the deadline ordered by the Court; has failed to retain new counsel by the deadline ordered by the Court; and has failed to file any response to the Order to Show Cause.

"[A] corporation may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). This requirement is reiterated in Local Bankruptcy Rule ("LBR") 9011-2 (a). In *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993), the Ninth Circuit held that it "was perfectly appropriate" for the District Court to enter default judgment against a corporation which was ordered to retain counsel but failed to do so. The court reached the same result in *Employee Painters' Tr. v. Ethan Enterprises, Inc.*, 480 F.3d 993, 998 (9th Cir. 2007), holding that entry of default

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judgment against a corporation is "a permissible sanction for failure to comply with local rules requiring representation by counsel."

Here, TrueERP has twice been warned that if it failed to retain new counsel, default could be entered against it. The Court advised TrueERP of this possibility in its Final Ruling Granting Counsel's Motion to Withdraw [Doc. No. 92], and reiterated the warning in the Order to Show Cause. Notwithstanding these warnings TrueERP has failed to retain counsel. In fact, TrueERP failed to file any response whatsoever to the Order to Show Cause.

The *High Country* and *Employee Painters* courts held that a corporation's failure to retain counsel is by itself sufficient to support entry of default. However, the Court notes that the five-factor test that courts within the Ninth Circuit use to assess the appropriateness of a terminating sanction provides further support for the Court's decision to enter default against TrueERP. Under that test, when imposing case-dispositive sanctions, the Court considers the following factors:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the party who has litigated diligently;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills, 482 F.3d 1091, 1096 (9th Cir. 2007).

There are three sub-parts to the fifth factor, the availability of less drastic sanctions: "whether the court has considered lesser sanctions, whether it tried them, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions." *Id.* The application of these factors is not mechanical; instead, the factors provide the Court "with a way to think about what to do, not a set of conditions precedent for sanctions or a script that the [Court] must follow." *Id.* Finally, terminating sanctions may not be imposed unless the "noncompliance involved willfulness, fault, or bad faith" *R & R Sails, Inc. v. Ins. Co. of Pennsylvania*, 673 F.3d 1240, 1247 (9th Cir. 2012).

Factors One and Two: The Public's Interest in Expeditious Resolution of the Litigation and the Court's Need to Manage its Docket

These factors weigh in favor of entering TrueERP's default. The Court has repeatedly advised TrueERP that it must retain counsel, yet TrueERP has failed to do so. TrueERP cannot appear without counsel. TrueERP's failure to retain counsel has

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already delayed this litigation. Absent entry of default judgment, TrueERP would be rewarded for its dilatory tactics.

Factor Three: The Risk of Prejudice to the Party Who Has Litigated Diligently

This factor weighs in favor of entering TrueERP's default. Entry of judgment against TrueERP will not prejudice BBeautiful, the party who has litigated diligently.

Factor Four: The Public Policy Favoring Disposition of Cases on Their Merits

This is the only factor that does not weigh in favor of entering TrueERP's default. Under the circumstances, the public policy favoring disposition of cases on their merits does not counterbalance the other factors that all weigh in favor of entering default.

Factor Five: The Availability of Less Drastic Sanctions

This factor weighs in favor of entering TrueERP's default. As discussed, the Court has repeatedly warned TrueERP that it must retain counsel. Notwithstanding these warnings, TrueERP has failed to retain counsel and has failed even to respond to the Order to Show Cause. The Court cannot allow TrueERP's failure to retain counsel to indefinitely delay the resolution of these proceedings. The Court further notes that this is not the first time that TrueERP has taken a cavalier attitude toward the discharge of its responsibilities in this litigation. On October 17, 2016, default was entered against TrueERP after it failed to respond to the Complaint. Doc. No. 16. That default was subsequently set aside after TrueERP belatedly retained counsel and filed its Answer. Doc. No. 36. TrueERP's past irresponsible behavior, combined with its failure to heed the Court's warnings regarding the necessity of retaining counsel, convinces the Court that less drastic sanctions would not remediate TrueERP's dilatory conduct.

The Court Will Conduct a Hearing to Establish the Amount of BBeautiful's Damages on December 13, 2017, at 10:00 a.m.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir. 1992). Entry of default does not establish damages unless the plaintiff's claim for damages "is for a sum certain or a sum that can be made certain by computation." Civil Rule 55(b). A claim is not for a sum certain unless "no doubt remains as to the amount to which a plaintiff is entitled as a result of the defendant's default." *Franchise Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d

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922, 929 (9th Cir. 2004). Here, BBeautiful seeks damages for the harm to its business caused by TrueERP's defective software, as well as punitive damages. BBeautiful's claim for damages is not for a sum certain, so the Court is required to conduct a hearing to determine damages. That hearing will take place on December 13, 2017, at 10:00 a.m. BBeautiful must file and serve evidence establishing the amount of its damages by no later than November 22, 2017.

III. Conclusion

Based on the foregoing, the Court will strike TrueERP's Answer and enter its default. A hearing on the amount of BBeautiful's damages will take place on December 13, 2017, at 10:00 a.m. BBeautiful shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael S Fox
Thomas Fleming
Matteo J Rosselli
Maxwell M Blecher
Daniel J McCarthy

Defendant(s):

Trueerp, INC

Pro Se

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Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher

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2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#8.10 Hearing
RE: [110] Motion for Default Judgment And Application For Entry of Default Judgment By The Court Against Defendant TrueERP, Inc.; Memorandum of Points and Authorities (Comer, Kirk)

Docket 110

***** VACATED *** REASON: CONTINUED 1-31-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael S Fox
Thomas Fleming
Matteo J Rosselli
Maxwell M Blecher
Daniel J McCarthy

Defendant(s):

Trueerp, INC

Pro Se

Plaintiff(s):

BBeautiful, LLC

Represented By
Howard K Alperin
Kirk Stephen Comer

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#9.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

fr. 9-19-17

Docket 1

***** VACATED *** REASON: CORRECT STATUS CONFERENCE
DATE IS 2-21-18 AT 10:00 AM**

Tentative Ruling:

Tentative:

In view of Plaintiff's upcoming motion seeking to authorize service by publication and Plaintiff's intent to file a motion for summary judgment, and pursuant to Plaintiff's request, the dates previously set by the Court are extended by four months, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/1/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next

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Liberty Asset Management Corporation

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closest date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The Court's courtroom deputy will contact counsel 2–3 weeks prior and advise counsel which day of the week the matter will be tried. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

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CONT... Liberty Asset Management Corporation

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Sandford Frey

Defendant(s):

Steven Tsang	Pro Se
Hieu Tai Tran	Pro Se
Benjamin Kirk	Pro Se
Lucy Gao Seh	Pro Se
Sunshine Valley, LLC	Pro Se
California International Bank, N.A.	Pro Se
All Persons Unknown Claiming	Pro Se
DOES 1 through 10, inclusive	Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#10.00 Hearing RE: [4] interim use of cash collateral

fr. 3-1-17; 3-30-17; 6-21-17; 9-20-17

Docket 4

Tentative Ruling:

1/23/2018

For the reasons set forth below, the Debtor is authorized to use cash collateral through and including May 31, 2018, in accordance with the Budget, subject to the conditions discussed herein. A hearing on whether the Debtor may use cash collateral subsequent to May 31, 2018, will take place on May 16, 2018, at 10:00 a.m.

Pleadings Filed and Reviewed:

- 1) Debtor's Submission of Further Evidence and Status Report in Support of Continued Use of Cash Collateral Through May 31, 2018 [Bankr. Doc. No. 189]
 - a) Declaration of Bette Hiramatsu [Bankr. Doc. No. 189]
 - b) Declaration of Matthew Alderson [Bankr. Doc. No. 189]
- 2) Orders on Payment of Interim Fees
 - a) Order Granting Application for Payment of Interim Fees And/Or Expenses [Bankr. Doc. No. 120]
 - b) Order Granting Application for Payment of Interim Fees And/Or Expenses [Bankr. Doc. No. 121]

I. Facts and Summary of Pleadings

Radiology Support Devices, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on February 21, 2017. The Debtor manufactures and sells specialized anthropomorphic mannequins (known as "phantoms") designed for medical testing, teaching, training, radiography, oncology, and health physics. Among other things, the phantoms are used to test and calibrate x-ray equipment.

The Debtor's Motion for Authorization to Use Cash Collateral Through January

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**CONT... Radiology Support Devices, Inc.
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The Debtor seeks authorization to use cash collateral through May 31, 2018. Consistent with the Court's previous cash collateral orders, the Debtor seeks authorization to exceed the amounts set forth in its cash collateral budget (the "Budget") by 15%, except that if the Debtor's revenues increase above projections, the Debtor seeks authorization to increase expenditures in proportion to the increase in revenues. The Budget also includes compensation to Mr. Alderson of \$2,885.00 per week (in the previous cash collateral motion, the Debtor also requested that Mr. Alderson be paid \$2,885.00 per week, which the Court allowed, *see* June Cash Collateral Order [Bankr. Doc. No. 82]). The Budget additionally provides for (1) monthly adequate protection payments of \$1,820.45 to Wells Fargo Bank; (2) a \$11,235.00 one-time cost for a new compressor; and (3) payment of administrative professional fees, pursuant to the Court's Orders "Granting Application for Payment of Interim Fees And/Or Expenses" [Bankr. Doc. Nos. 120 & 121], respectively.

The "Declaration of Bette Hiramatsu" ("Hiramatsu Decl.") [Bankr. Doc. No. 189] details the Debtor's actual post-petition sales, expenses, gross profit, and net income covering the period of the petition date through December 31, 2017. The report shows the following:

1. Net Sales/Revenue: \$1,638,739.00
2. Costs of Goods Sold: \$188,313.00
3. Total Operating Expenses: \$983,005.00
4. Non-Operating Expenses: \$100,617.00

Thus, for the post-petition period through December 31, 2017, the Debtor had a net income of \$367,071.00. Motion at 6. The Debtor projected collections of \$255,325.00, and thus exceeded its net income projection for this period. *Id.* The Debtor has also: eliminated its entire order backlog; filed motions to disallow the claims of Chawalit Krautim, Daniel Krautim, and Michael Kohrman and prevailed, which paves the way for the Debtor's Chapter 11 Plan which provides 100% payment to all creditors; and successfully negotiated consensual Plan treatment of the IRS claim.

Regarding the continued use of cash collateral, the Debtor states that the Secured Creditors are adequately protected by Debtor's continued operations and replacement

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CONT... Radiology Support Devices, Inc.

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liens. Motion at 8. Additionally, the Debtor anticipates having an ending cash balance of \$230,486.00 by the end of May 2018. *Id.* There will not be any diminution in value of the Secured Creditor's collateral during the budget period. *Id.* The Debtor also states that it will continue to provide as additional adequate protection a replacement lien on the Debtor's accounts and will continue to make the requisite adequate protection payments to Wells Fargo Bank.

II. Findings and Conclusions

The Debtor is Authorized to Use Cash Collateral Through January 31, 2018 in Accordance with the Budget

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of §363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of §363—that is, that the secured creditor's interest in the cash collateral is adequately protected. *See* §363(c)(2)(B) and (e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Debtor is authorized to use cash collateral through and including May 31, 2018, in accordance with the proposed Budget. The Debtor has made significant progress in resolving the production issues that prevented it from reducing its order backlog. The Debtor's sales during the previous three months have been significantly higher than projected, and expenses were lower than projected. To the extent that Wells Fargo is entitled to adequate protection, such adequate protection is provided by

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(a) monthly cash payments to Wells Fargo in the amount of \$1,820.45, (b) the Debtor's generation of additional accounts receivable through its continued sales, and (c) the granting to Wells Fargo of a replacement lien to the extent of any post-petition diminution in the value of Wells Fargo's pre-petition collateral as a result of the Debtor's use of cash collateral. To the extent that Citibank, N.A. ("Citibank") and Clay Lorinsky ("Lorinsky") are entitled to adequate protection, such adequate protection is provided by (a) the Debtor's generation of additional accounts receivable through its continued sales and (b) the granting to those creditors of a replacement lien to the extent of any post-petition diminution in the value of their pre-petition collateral as a result of the Debtor's use of cash collateral. The replacement liens granted to the Secured Creditors shall have the same validity, extent, and priority as the pre-petition interests held by each respective Secured Creditor as of the petition date.

On a monthly basis, the Debtor may exceed the expenditure for any Budget line-item by up to 15%, provided that any such excess line-item expenditure is completely offset by a corresponding reduction in expenditures on account of other line-items, such that the total monthly expenditures remain at or below the Budget's projections.

The Debtor is authorized to continue payment of administrative professional fees, pursuant to the Court's Orders "Granting Application for Payment of Interim Fees And/Or Expenses" [Bankr. Doc. Nos. 120 & 121].

A hearing on whether the Debtor may use cash collateral subsequent to May 31, 2018 will take place on May 16, 2018, at 10:00 a.m. By no later than January 31, 2018, the Debtor shall provide notice of the continued hearing to (1) all secured creditors with an interest in the cash collateral, (2) the twenty largest unsecured creditors, and (3) the United States Trustee. The Debtor shall file a proof of service indicating that notice was provided as set forth above by no later than February 7, 2018. By no later than May 2, 2018, the Debtor shall submit further evidence in support of the continued use of cash collateral. That evidence must include information on the Debtor's sales, expenses, collections on accounts receivable, order backlog amount, and profit margin, and must also discuss the extent to which the Debtor's performance varied from the Budget projections. Any response to the Debtors' additional evidence is due by May 9, 2018.

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III. Conclusion

For the reasons set forth above, the Debtor is authorized to use cash collateral through and including May 31, 2018, in accordance with the Budget. A hearing on whether the Debtor may use cash collateral subsequent to May 31, 2018, will take place on May 16, 2018, at 10:00 a.m.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

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11:00 AM

2:13-11518 Aida Fuentes

Chapter 7

#100.00 Hearing
RE: [95] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payments of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding That Purchaser Is Good Faith Purchaser under 11 U.S.C. § 363(m); Memorandum of Points and Authorities; Declarations of David M. Goodrich and Joe Timko; and Request for Judicial Notice, with Proof of Service. (Hessling, Robert)

Docket 95

***** VACATED *** REASON: CONTINUED 1-31-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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Hearing Room 1568

11:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#101.00 Hearing
RE: [32] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendant, David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes, to Dismiss with Prejudice First Amended Complaint to the Extent That Plaintiff Alleges a Claim, and Seeks an Adjudication and Relief, Re Equitable Interest in Real Property Based on Alleged Use of Community Funds; Memorandum of Points and Authorities; and Request for Judicial Notice, with Proof of Service

Docket 32

***** VACATED *** REASON: CONTINUED 1-31-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Represented By
Robert A Hessling

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

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Wednesday, January 24, 2018

Hearing Room 1568

11:00 AM

2:17-16360 Michael McNulty

Chapter 11

#102.00 HearingRE: [76] Motion for approval of chapter 11 disclosure statement

Docket 76

Tentative Ruling:

1/23/2018

For the reasons set forth below, the Court SUSTAINS the Objection of the United States, and DENIES the Debtor's Motion for Approval of the Disclosure Statement. The Court finds that the Disclosure Statement does not contain adequate information. The deadline for the Debtor to file an Amended Disclosure Statement is **April 24, 2018**, by which date the Debtor shall have filed sufficient information with the IRS for the amount of the IRS's tax claim to be made certain.

Pleadings Filed and Reviewed:

- 1) Motion for Approval of Chapter 11 Disclosure Statement (the "Motion") [Doc. No. 76]
 - a) Disclosure Statement in Support of Plan of Reorganization (the "Disclosure Statement") [Doc. No. 74]
- 2) Chapter 11 Plan of Reorganization (the "Plan") [Doc. No. 75]
- 3) Objection of the United States to the Disclosure Statement (the "Objection") [Doc. No. 83]

I. Facts and Summary of Pleadings

Chapter 11 Debtor and Debtor in Possession Michael McNulty (the "Debtor") filed the Motion for Approval of Chapter 11 Disclosure Statement (the "Motion") [Doc. No. 76] on December 12, 2017. The Motion seeks approval of the Debtor's Disclosure Statement in Support of Plan of Reorganization (the "Disclosure Statement") [Doc. No. 74]. The Debtor's Chapter 11 Plan of Reorganization (the "Plan") [Doc. No. 75] was filed concurrently with the Disclosure Statement.

The Disclosure Statement

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The Disclosure Statement includes the following information:

- (1) Unclassified Claims including administrative priority and tax claims: these claims include (i) professional fees and costs; (ii) United States Trustee's fees; and (iii) postpetition domestic support obligations. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later. Holders of priority tax claims are entitled to priority under § 507(a)(8), and such claims shall be paid over five years from the date of the entry of the order for relief with 4% interest.
- (2) Administrative Claim—Class 1: the Debtor's attorney's fees and costs are estimated in the amount of \$6,000. On the Effective Date of the Plan the Debtor proposes to pay such fees from his earnings in the amount of \$6,000, subject to Court approval of the Administrative fees.
- (3) Claim of Specialized Loan Servicing—Class 5(b): Specialized Loan Servicing is the first lienholder on the Debtor's real property and has a secured claim for \$605,336.63. The Debtor proposes to pay the principal balance in the amount of \$432,420.74 over a period of 30 years with 5% interest. The Debtor also proposes to pay the arrears in the amount of \$172,915.89 on the Effective Date of the Plan.
- (4) Tax Claim of the Franchise Tax Board—Class 5(c): the Franchise Tax Board ("FTB") has a secured claim in the amount of \$11,332.16, an unsecured priority claim in the amount of \$14,744.62, and a general unsecured claim in the amount of \$4,233.90. The Debtor proposes payment of the secured claim over 4 years at 4% interest in monthly payments of \$456.00. The Debtor proposes payment of the unsecured priority claim over 4 years at 4% interest in monthly payments of \$333.00. The general unsecured claim will be paid pro rata with other general unsecured claims.
- (5) Tax Claim of the IRS: the IRS has an unsecured priority claim in the amount of \$21,957.09, and an unsecured general claim in the amount of \$2,457.53. The Debtor proposes payment of the unsecured priority claim over 4 years at 4% interest in monthly payments of \$496.00. The general

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unsecured claim will be paid pro rata with other general unsecured claims.

- (6) Claim of Los Angeles County Treasurer: the Los Angeles County Treasurer and Tax Collector has a secured claim in the amount of \$6,130.12. The Debtor proposes payment of the secured claim over 5 years at 18% interest in monthly payments of \$156.00.
- (7) Disposable Income: the Debtor has proposed a 1% plan whereby his unsecured claims will be paid in full over 5 years in quarterly payments of \$20.46 beginning on the Effective Date of the Plan.

The Plan will be funded through (a) \$6,100.00 of cash available on the date of the Plan Confirmation hearing, and (b) additional cash projected disposable income, which is projected to be \$14.52 per month for the 5 years following confirmation. The Disclosure Statement further provides that upon completion of all payments under the Plan, the Debtor shall receive a discharge of all preconfirmation debts, unless the Court orders otherwise. The Effective Date of the Plan is 14 days following the date of entry of the order confirming the Plan.

Opposition

On January 10, 2018, the United States filed the "Objection of the United States to the Disclosure Statement" (the "Objection") [Doc. No. 83]. The United States opposes the Disclosure Statement and contends that the Disclosure Statement does not contain adequate information as follows: (1) the Disclosure Statement and Plan fail to properly treat the IRS's priority tax claim; (2) the Disclosure Statement and Plan fail to adequately provide for administrative tax claims; (3) the Disclosure Statement sets forth a Plan that proposes discharge of Administrative Taxes without properly providing for them; (4) the Disclosure Statement and Plan fail to provide the applicable interest rate for tax claims; and (5) the Disclosure Statement does not adequately describe a feasible Chapter 11 Plan.

The recurring issue raised in the Objection is based on the fact that the IRS has, due to the Debtor's failure to file tax returns for various tax periods, been forced to estimate the priority tax liabilities due by the Debtor for these same variable tax periods. Thus the actual priority tax claim of the IRS remains unknown, and the IRS cannot determine whether the Debtor's Plan and/or Disclosure Statement propose to

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pay the IRS's priority tax claim in full. This issue with regards to the Debtor's failure to file the aforementioned tax returns not only limits the IRS's ability to determine whether the Disclosure Statement and/or Plan adequately provide for the IRS's priority tax claim, but also administrative tax claims. The IRS also objects on the grounds that the Disclosure Statement and Plan propose to discharge administrative taxes without properly providing for them and that the Plan fails to provide the applicable interest rate for tax claims. Lastly, the IRS contends that the absence of the aforementioned tax returns puts the IRS in a position where it cannot determine the feasibility of the Plan.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce

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financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement does not satisfy many of the relevant *Metrocraft* factors, including: (2) a description of the available assets and their value; (4) the source of information stated in the disclosure statement; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (10) the future management of the debtor; (11) the Chapter 11 Plan or a summary thereof; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; (15) information relevant to the risks posed to creditors under the Plan; and (18) tax attributes of the debtor.

Notably, the Disclosure Statement and Plan are based, in part, on the IRS's estimated claim because the Debtor has not filed the required tax information for the IRS to determine the Debtor's actual tax liabilities.

For the reasons set forth above, the Court SUSTAINS the Objection of the United States, and DENIES the Debtor's Motion for Approval of the Disclosure Statement. The Court finds that the Disclosure Statement does not contain adequate information. The deadline for the Debtor to file an Amended Disclosure Statement is **April 24, 2018**, by which date the Debtor shall have filed sufficient information with the IRS for the amount of the IRS's tax claim to be made certain. Hearing on the disclosure state (if filed) will be **May 22, 2018 at 10:00 a.m.** If no disclosure

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CONT... Michael McNulty

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statement is filed, or if it is not approved at the continued hearing, the court will consider whether to dismiss or convert this case to chapter 7.

The IRS shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17

Docket 0

*** VACATED *** REASON: CONTINUED 3-26-18 AT 9:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

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Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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9:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01058 Goodrich v. Eska, Inc., a California corporation, d/b/a Event

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01058. Complaint by David M. Goodrich against Eska, Inc., a California corporation, d/b/a Event Spice Wear. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-25-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-4-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Eska, Inc., a California corporation,

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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9:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01065 Goodrich v. Have Fashion, Inc., a California corporation

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01065. Complaint by David M. Goodrich against Have Fashion, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR.9-25-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-4-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Have Fashion, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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Hearing Room 1568

9:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01117 Goodrich v. Must Have Inc., a California corporation, d/b/a Da

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01117. Complaint by David M. Goodrich against Must Have Inc., a California corporation, d/b/a Danbee. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr: 9-25-17

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 6-5-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Must Have Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01401 Yoo v. Gardner

#5.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01401. Complaint by Timothy J Yoo against Tamara Nicole Gardner. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Yoo (TR), Timothy)

FR. 5-30-17; 6-26-17; 9-25-17; 11-27-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo

Defendant(s):

Tamara Nicole Gardner

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Timothy J Yoo

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01478 Yoo v. Del Real et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01478. Complaint by Timothy J. Yoo against Luz Angelica Del Real, Sergio Arellano, Tamara Nicole Gardner. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)) (Pagay, Carmela)

fr: 6-26-17; 9-25-17; 11-27-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo

Defendant(s):

Luz Angelica Del Real

Pro Se

Sergio Arellano

Pro Se

Tamara Nicole Gardner

Pro Se

Plaintiff(s):

Timothy J. Yoo

Represented By
Carmela Pagay

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:16-24324 Kelley Anne West

Chapter 7

Adv#: 2:17-01135 Smolens et al v. West

#7.00 Trial Date Set

RE: [9] Amended Complaint First Amended Complaint to Determine Dischargeability of Debts Under U.S.C. sections 523(a)(2) and 523(a)(b), and Denial of Discharge Under 11 U.S.C. sections 727(a)(2)(A), and 727(a)(4)(A) by Jasmin Yang on behalf of Kelly West Enterprises, LLC, Mark Presser, Presser Holdings, LLC, Ira Smolens against Kelley Anne West. (Attachments: # 1 Exhibit A (part 1 of 2) # 2 Exhibit A (Part 2 of 2) # 3 Exhibit B # 4 Exhibit C # 5 Exhibit D # 6 Exhibit E # 7 Exhibit F # 8 Exhibit G # 9 Exhibit H # 10 Exhibit I # 11 Exhibit J # 12 Exhibit K # 13 Exhibit L # 14 Exhibit M # 15 Exhibit N # 16 Exhibit O # 17 Exhibit P # 18 Exhibit Q # 19 Exhibit R # 20 Exhibit S # 21 Proof of Service) (Yang, Jasmin)

FR. 10-30-17

Docket 9

***** VACATED *** REASON: DISMISSED 12-4-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kelley Anne West

Represented By
Henry Glowa

Defendant(s):

Kelley Anne West

Pro Se

Plaintiff(s):

Ira Smolens

Represented By
Jasmin Yang

Mark Presser

Represented By
Jasmin Yang

Presser Holdings, LLC

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

CONT... Kelley Anne West

Chapter 7

Kelly West Enterprises, LLC

Jasmin Yang

Represented By
Jasmin Yang

Trustee(s):

Carolyn A Dye (TR)

Represented By
James A Dumas Jr
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

Adv#: 2:17-01163 RUND v. Kay et al

#8.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01163. Complaint by JASON M RUND against Paulina Kay, Paulina Kay. (Charge To Estate). Chapter 7 Trustee's Complaint Against Paulina Kay as an individual and as Trustee of the Christopher Kim Kay and Paulina Kay Trust Dated April 7, 2010 for Judgment: (1) Declaring That The Real Property Is Property Of The Bankruptcy Estate Per 11 U.S.C. Section 544; (2) Avoidance Of Transfer Per 11 U.S.C. Section 544; (3) Recovery Of Transfer Per 11 U.S.C. Section 550; (4) Quieting Title; (5) Declaration That Property Of The Bankruptcy Estate Is The Kay Trust Res Including 100% Of Certain Real Property; and (6) Declaration That The Kay Trust Was Dissolved Pre-Petition Nature of Suit: (91 (Declaratory judgment)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 10-30-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-21-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Paulina Kay as Trustee of the

Pro Se

Paulina Kay

Pro Se

Plaintiff(s):

JASON M RUND

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

CONT... Christopher Kim Kay

Chapter 7

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#9.00 Trial Date Set

RE: [158] Answer to Complaint First Amended-, Counterclaim by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, Roes 1 through 20, inclusive (Yan, James)

Docket 158

***** VACATED *** REASON: CONTINUED 2-26-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#10.00 Trial Date Set

RE: [1] Adversary case 2:16-ap-01343. Complaint by Crystal Waterfalls, LLC against Huesing Holdings LLC. (Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Landsberg, Ian)

FR. 4-24-17

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

Huesing Holdings LLC

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#11.00 Trial Date Set

RE: [11] **COUNTERCLAIM** by Huesing Holdings LLC against Crystal Waterfalls, LLC for Reformation of Deeds of Trust with Proof of Service

Docket 11

***** VACATED *** REASON: PER ORDER ENTERED 1-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

Huesing Holdings LLC

Represented By
Kyra E Andrassy

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co Chapter 11
Adv#: 2:16-01506 Bbeautiful, a California LLC v. Rieke-Arminak Corp.,a Delaware

#12.00 Trial Date Set RE: [77] Second Amended Complaint for Tortious Interference with Prospective Economic Advantage

Docket 0

***** VACATED *** REASON: DISMISSED 6-15-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

Defendant(s):

TriMas Corp., a Delaware

Represented By
Carla M Wirtschafter

Rieke Corp., an Indiana Corporation

Represented By
Carla M Wirtschafter

Arminak & Associates, LLC, a

Represented By
Carla M Wirtschafter

DOES 1 to 25

Pro Se

Rieke-Arminak Corp.,a Delaware

Represented By
Carla M Wirtschafter

Plaintiff(s):

Bbeautiful, a California LLC

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

9:00 AM

CONT...

BBeautiful, LLC, a California limited liability co

Michael S Fox

Thomas Fleming

Matteo J Rosselli

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

2:17-24754 Erwin Santiago Kahulugan

Chapter 7

#100.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 35 N Raymond Ave #209, Pasadena, CA 91103 . (Jafarnia, Merdaud)

Docket 10

Tentative Ruling:

1/25/2018

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See e.g. Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.)*, 22 B.R. 65, 66 (9th Cir. BAP 1982); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (9th Cir. BAP 1981).

The subject property has a value of \$455,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$1,359,929.02. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

Further, the Court finds that there are facts presented in the Motion sufficient for the court to find bad faith pursuant to § 362(d)(4). Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved: (1) the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

CONT... Erwin Santiago Kahulugan

Chapter 7

transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval; and (2) Multiple bankruptcy cases affecting the Property..

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Erwin Santiago Kahulugan

Represented By
Raymond J Bulaon

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#101.00 HearingRE: [1058] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Lead Case No. BC534466, Los Angeles County Superior Court with Proof of Service.

Docket 1058

Tentative Ruling:

1/25/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 1058]
 - a) Declaration of Itak K. Moradi in Support of Motion for Relief from the Automatic Stay (the "Moradi Decl.") [Doc. No. 1059]
 - b) Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay [Doc. No. 1060]
- 2) Response and Opposition of Debtor, Gardens Regional Hospital and Medical Center, Inc., to Motion for Relief from Automatic Stay (the "Opposition")
 - a) Errata [to] Response and Opposition of Debtor, Gardens Regional Hospital and Medical Center, Inc., to Motion for Relief from Automatic Stay [Doc. No. 1078]
- 3) Reply to Response and Opposition of Debtor to Motion for Relief from the Automatic Stay (the "Reply") [Doc. No. 1076]
 - a) Amended Proof of Service [Doc. No. 1077]

I. Facts and Summary of Pleadings

Fifty-six plaintiffs who have filed personal injury actions against the Debtor in the Los Angeles Superior Court (the "State Court") seek stay-relief pursuant to §362(d) (1). The Debtor opposes the Motion as to three plaintiffs who have not filed proofs of claim—James Boccia, Zettie Epps, and Penny Larkin. The Debtor notes that these plaintiffs are barred from filing a proof of claim because the claims bar date has

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

passed. The Debtor states that eighteen of the plaintiffs commenced actions in the State Court without seeking stay-relief, and seeks dismissal of those actions.

Movants object to the Debtor's Opposition as having been filed untimely. Movants assert that it is not relevant that James Boccia, Zettie Epps, and Penny Larkin did not file proofs of claim, because Movants are seeking stay-relief and are not at this time seeking any distribution from the estate. Finally, Movants request that the stay be retroactively annulled as to those Movants who filed actions without obtaining stay-relief.

II. Findings and Conclusions

The Court will consider the Debtor's Opposition notwithstanding the fact that it was filed three days late. Movants have not been prejudiced by the delay.

Debtor's request that the Motion be denied as to the plaintiffs who have not filed proofs of claim is denied. Regardless of whether those plaintiffs are barred from obtaining a distribution from the estate by virtue of having failed to timely file a proof of claim (an issue which the Court does not determine at this juncture), stay-relief is appropriate given the possibility that plaintiffs may be able to recover against any available insurance.

As to all Movants, the Motion is GRANTED pursuant to §362(d)(1). The State Court is best suited to adjudicate the personal injury claims which arise under non-bankruptcy law.

Movants did not request retroactive annulment in the Motion; this request was first made in Movants' Reply. As such, the request for retroactive annulment is not properly before the Court. *See* Local Bankruptcy Rule 9013-1(g)(4) ("New arguments or matters raised for the first time in reply documents will not be considered."). However, the Court will entertain the request for retroactive annulment, subject to the Debtor's ability to oppose the request at the hearing.

Subject to any such opposition, the Court is prepared to grant the request for retroactive annulment. "[T]he proper standard for determining 'cause' to annul the automatic stay retroactively is a 'balancing of the equities' test." *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24 (B.A.P. 9th Cir. 2003). In applying this test, the general trend has been to focus on two non-exclusive factors: "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *Id.* at 12.

Here, the record does not indicate whether Movants were aware of the bankruptcy petition. Nor has the Debtor engaged in unreasonable or inequitable conduct.

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Los Angeles
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Monday, January 29, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

However, the prejudice to Movants absent retroactive annulment outweighs any prejudice to the Debtor. If the Court did not grant retroactive annulment, the Debtor would still be required to defend against the thirty-eight actions that were not commenced in violation of the stay. The prejudice that the Debtor will suffer by being required to defend against the claims of an additional eighteen defendants in consolidated proceedings is less than the prejudice that the eighteen plaintiffs would suffer if they could not pursue their personal injury claims.

The automatic stay remains in effect with respect to the enforcement of any judgment against the Debtor or estate property. Movants are permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. Movants may not pursue any deficiency claim or any other claim against the Debtor or property of the estate. Because this Motion was opposed, Movants' request for waiver of the 14-day stay prescribed by Federal Rule of Bankruptcy Procedure 4001(a)(3) is DENIED.

Movants shall submit a conforming order, incorporating this tentative ruling by reference, within fourteen days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#102.00 HearingRE: [65] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2011 Ford Transit Conn, Vin # NM0LS7AN6BT059482) with Proof of Service. (Barasch, Adam)

Docket 65

Tentative Ruling:

1/25/2018

The hearing on the Motion is vacated. No appearances are required. This matter was settled pursuant to the "Stipulation for Adequate Protection" [Doc. No. 72], which was approved by the Court's "Order on Stipulation for Adequate Protection" [Doc. No. 74] entered on January 25, 2018.

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, January 29, 2018

Hearing Room 1568

10:00 AM

2:17-25263 Jose Granados

Chapter 7

#103.00 HearingRE: [5] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: RESIDENTIAL .

Docket 5

Tentative Ruling:

1/26/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on November 7, 2017. Judgment was entered in favor of the Movant in the unlawful detainer action on December 2, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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Los Angeles
Judge Ernest Robles, Presiding
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Monday, January 29, 2018

Hearing Room 1568

10:00 AM

CONT... Jose Granados

Chapter 7

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

Movant also requests annulment of the stay. However, it is not apparent from the record that any actions were taken post-petition in violation of the stay. Therefore, the Court does not find that annulment is necessary and Movant's request for annulment is DENIED.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Granados

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, January 31, 2018

Hearing Room 1568

10:00 AM

2:13-11518 Aida Fuentes

Chapter 7

#1.00 Hearing

RE: [95] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payments of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding That Purchaser Is Good Faith Purchaser under 11 U.S.C. § 363(m); Memorandum of Points and Authorities; Declarations of David M. Goodrich and Joe Timko; and Request for Judicial Notice, with Proof of Service. (Hessling, Robert)

Docket 95

Tentative Ruling:

1/30/2018

Tentative Ruling:

For the reasons set forth below, the Trustee's Motion to Dismiss Rudy's equitable claims is GRANTED, and the Court will proceed with the auction of the Property.

Key Sale Terms:

- 1) Proposed purchaser: Equity Saver Construction, Inc.
- 2) Property for Sale: 16335 East Elgenia Street, Covina, CA
- 3) Purchase price: \$360,000
- 4) Overbids: Initial overbid is \$365,000; subsequent overbids will be in increments of \$5,000

Pleadings Filed and Reviewed:

- 1) Second Sale Motion (filed in Case No. 2:13-bk-11518-ER):
 - a) Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payment of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding that Purchaser is Good Faith Purchaser Under 11 U.S.C. §363(m) (the "Second Sale Motion") [Doc. No. 95]

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 31, 2018

Hearing Room 1568

10:00 AM

CONT...

Aida Fuentes

Chapter 7

- i) Notice of [Sale Motion] [Doc. No. 96]
- ii) Order Continuing Hearing on Trustee's Sale Motion from January 24, 2018 at 11:00 a.m. to January 31, 2018 at 10:00 a.m. [Doc. No. 101]
 - (1) Notice of Continuance of Hearing Per Order Continuing Hearing on Trustee's Sale Motion from January 24, 2018 at 11:00 a.m. to January 31, 2018 at 10:00 a.m. [Doc. No. 103]
 - (2) Notice of Sale of Estate Property [Doc. No. 104]
- b) Plaintiff Rudy Fuentes' Opposition to Second Motion to Sell Residence (the "Opposition") [Doc. No. 100]
- c) Trustee's Reply to Opposition of Rudy E. Fuentes to [Sale Motion] (the "Reply") [Doc. No. 105]
- 2) Motion to Dismiss (filed in Adv. No. 2:17-ap-01475-ER):
 - a) First Amended Complaint For: (1) Declaratory Judgment to Determine the Validity and Value of Debtor's Possessory, Equitable, and Homestead Interest in Real Property; and (2) Injunctive Relief (the "Complaint") [Doc. No. 16]
 - b) Notice of Motion and Motion of Defendant, David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes, to Dismiss with Prejudice First Amended Complaint to the Extent that Plaintiff Alleges a Claim, and Seeks an Adjudication and Relief, Re Equitable Interest in Real Property Based Upon Alleged Use of Community Funds (the "Motion to Dismiss") [Doc. No. 32]
 - c) Opposition to Trustee Goodrich's Successive Motion to Dismiss (the "Opposition") [Doc. No. 34]
 - d) Reply of Defendant, David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes, to Dismiss with Prejudice First Amended Complaint to the Extent that Plaintiff Alleges a Claim, and Seeks an Adjudication and Relief, Re Equitable Interest in Real Property Based Upon Alleged Use of Community Funds (the "Reply") [Doc. No. 37]

I. Facts and Summary of Pleadings

Chapter 7 Trustee David M. Goodrich (the "Trustee") seeks authorization to sell his right, title, and interest in residential real property located at 16335 East Elgenia Street, Covina, CA (the "Property"), on an as-is basis, without any warranties or representations. The proposed buyer is Equity Saver Construction, Inc. (the "Buyer"), and the sale is subject to overbids.

The parties do not agree upon the proper characterization of the Court's prior rulings pertaining to this matter. To provide a clear record, the Court describes the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, January 31, 2018

Hearing Room 1568

10:00 AM

CONT... Aida Fuentes

Chapter 7

relevant facts as well as its prior rulings in detail below.

A. Prior Proceedings

In 2002, Aida Fuentes ("Aida") owned a house on East Elginia Street, Covina, California (the "Property"), as her sole and separate property. In July 2006, Aida married Rudy Eberto Fuentes ("Rudy"). [Note 1] On September 12, 2011, Aida recorded a grant deed conveying all of her right, title, and interest in the Property to Rudy as his sole and separate property.

Aida commenced a voluntary Chapter 7 petition on January 18, 2013. David M. Goodrich was appointed as the Trustee. [Note 2] On March 12, 2014, the Trustee Goodrich commenced an adversary proceeding against Rudy and Aida, seeking to avoid the September 2011 transfer of the Property as actually and constructively fraudulent. *See Goodrich v. Fuentes, et al.*, Adv. No. 2:14-ap-01159-ER. On April 30, 2015, the Court entered judgment in favor of Trustee Goodrich and against Rudy, and avoided the September 2011 transfer. *See Order: (1) Granting Motion for Summary Judgment Against Defendant Rudy E. Fuentes on Third, Sixth, and Tenth Claims for Relief in Trustee's Complaint, (2) Dismissing with Prejudice First, Second, Fourth, Fifth, Seventh, Eighth and Ninth Claims for Relief Against Defendant Rudy E. Fuentes in Trustee's Complaint; and (3) Dismissing Without Prejudice Tenth Claim for Relief Against Defendant Aida Fuentes in Trustee's Complaint (the "Judgment")* [Doc. No. 61, Adv. No. 2:14-ap-01159-ER]. With respect to Trustee Goodrich's claim seeking turnover of the Property as against Rudy, the Court ordered that Trustee Goodrich was entitled to final judgment in his favor, but further ordered that turnover "shall be subject to Rudy's homestead exemption in the Property and the Trustee's acquisition of an order authorizing a sale of the Property." Judgment at ¶3. The Judgment that avoided the September 2011 transfer is now final and non-appealable. As a result of the Judgment, Rudy has only a possessory interest in the Property.

On September 8, 2014, Rudy commenced a separate voluntary Chapter 7 petition, and claimed a \$175,000 homestead exemption in the Property. Sam S. Leslie was appointed as the Trustee in Rudy's case. On December 8, 2015, Trustee Goodrich moved to disallow Rudy's homestead exemption (the "Disallowance Motion"). On February 19, 2015, the Court denied the Trustee's Disallowance Motion, finding that Rudy was entitled to an exemption of \$175,000 based on his possessory interest in the Property. *See Order Denying Motion of David Goodrich for Order: (1) Disallowing Homestead Exemption in Fraudulently Transferred Real Property; or (2) in the Alternative Extending Time to Object to Debtor's Homestead Exemption* [Doc. No.

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56, Case No. 2:14-bk-27148-ER]. The Trustee appealed the Court's denial of the Disallowance Motion to the District Court, which affirmed the Bankruptcy Court's decision. The Trustee appealed the District Court's affirmance to the Ninth Circuit. On April 17, 2017, the Ninth Circuit issued a Memorandum of Decision affirming the District Court's ruling. However, the Ninth Circuit clarified that although Rudy was entitled to a homestead exemption, that exemption was limited to his possessory interest in the Property:

In order to qualify as a "homestead" under the automatic homestead exemption, certain residency requirements must be satisfied. Cal. Civ. Proc. Code § 704.710(c). If the residency requirements are satisfied, a judgment debtor can claim a homestead exemption in the interest he or she has in the property, "regardless of whether the judgment debtor's interest is a fee, leasehold, or lesser interest." Cal. Civ. Proc. Code § 704.820 Law Revision Commission Comments to 1982 Addition; *see also Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014) ("[T]he [California] automatic homestead exemption applies to any interest in the property if the debtor satisfies the continuous residency requirement.").

The parties do not dispute that [Rudy] Fuentes has satisfied these residency requirements. In addition, [Rudy] Fuentes holds a possessory interest in the Property, which is an interest in real property that California law recognizes. *See, e.g., Cal. Rev. & Tax. Code § 107; Cal. Code Regs. tit. 18, § 20.* Because [Rudy] Fuentes has satisfied the residency requirements, he can claim a homestead exemption in his bankruptcy for the possessory interest that he holds in the Property. However, this possessory interest can be sold by his creditors unless "no bid is received at a sale of [the possessory interest] pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property" Cal. Civ. Proc. Code § 704.800(a).

Further, [Rudy] Fuentes's possessory interest is still subject to all other provisions of California and federal law, which may "extinguish[] . . . [his] equitable possessory interests in the real property at issue." *See Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1128 (9th Cir. 2016).

Memorandum of Decision ("Ninth Circuit Memorandum") at 3–5 [Doc. No. 22, Case No. 15-56618].

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In a footnote, the Ninth Circuit explained that "[Rudy] Fuentes is not guaranteed to receive any particular amount of money if any other interest (besides his possessory interest) in the Property is sold." *Id.* at 5. The Ninth Circuit made no statements with respect to the amount of money, if any, that Rudy was entitled to receive on account of his homestead exemption.

Aida claimed a homestead exemption in the Property in the amount of \$175,000. On June 23, 2017, the Court granted the Trustee's motion to disallow Aida's homestead exemption. The Court found that, pursuant to §522(g), Aida was not entitled to a homestead exemption:

Section 522(g) provides:

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

- (1) (A) such transfer was not a voluntary transfer of such property by the debtor; and
(B) the debtor did not conceal such property; or
- (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

"Section 522(g) ... limits the ability of a debtor to claim an exemption where the trustee has recovered property for the benefit of the estate." *Hitt v. Glass (In re Glass)*, 164 B.R. 759, 761 (9th Cir. BAP 1994). Its purpose "is to prevent a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed." *Id.* at 764.

There is no dispute that Aida voluntarily transferred the Property to Rudy prior to the petition. The Trustee obtained a judgment avoiding the transfer as fraudulent and recovering the Property. Because Aida voluntarily transferred property that the Trustee recovered, she is not entitled to a homestead exemption under §522(g). It is not necessary for the Court to find that Aida concealed the transfer; the mere fact that she voluntarily transferred property that the Trustee subsequently recovered is sufficient to defeat her right to a

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Final Ruling Granting Trustee's Motions to Disallow Aida's Homestead Exemption and to Employ a Real Estate Broker to Market the Property [Doc. No. 54, Case No. 2:13-bk-11518-ER] at 7-8.

Over Aida's objection, the Court granted the Trustee's application to employ a real estate broker to market the Property. The Court rejected Aida's contention that there was no equity in the Property to be administered for the benefit of creditors:

Aida's opposition ... is premised upon the inaccurate assumption that Rudy is entitled to payment of his \$175,000 homestead exemption from the proceeds of the Property's sale. Aida's opposition ignores the language of the Ninth Circuit's Memorandum of Decision affirming the allowance of Rudy's homestead exemption. The Ninth Circuit held that Rudy is entitled to a homestead exemption, but only to the extent of his possessory interest in the Property. The Ninth Circuit further noted that Rudy is not guaranteed to receive any money on account of his homestead exemption if an interest in the Property other than his possessory interest is sold.

The Trustee is not seeking to sell Rudy's possessory interest in the Property. The Trustee will either sell the Property subject to Rudy's possessory interest, or will take action to extinguish Rudy's possessory interest prior to the sale. Rudy holds no other interest in the Property aside from his possessory interest. Rudy's homestead exemption cannot attach to the proceeds stemming from the sale of interests in the Property that he does not hold. Because Rudy's homestead exemption cannot attach to the sale proceeds, there is equity in the Property for distribution to unsecured creditors, and there is no merit to Aida's contention that the Trustee is pursuing the sale of the Property in bad faith.

This result is compelled by the language of the statute and the decision of the Ninth Circuit. The statute makes clear that a debtor's homestead exemption is limited to the debtor's interest in the property. *See, e.g.*, Cal. Civ. Proc. Code §704.740 (providing that "the *interest* of a natural person in a dwelling may not sold under this division to enforce a money judgment except pursuant to a court order ..."); *id.* at §704.820 (providing that where a judgment debtor holds less than a fee simple interest in the property, only "the *interest* of the judgment debtor in the dwelling and not the dwelling shall be sold," and further providing that where there is more than one judgment

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debtor, "each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own *interest*").

The Ninth Circuit's Memorandum further established that Rudy's homestead exemption applies only to his possessory interest in the Property. The court explained that Rudy "can claim a homestead exemption in his bankruptcy for the possessory interest that he holds in the Property." Memorandum at 4. The court further stated that Rudy "is not guaranteed to receive any particularly amount of money if any other interest (besides his possessory interest) in the Property is sold." *Id.* at 5.

The proposition that a debtor's homestead exemption can apply only to the debtor's interest in property is corroborated by the logic of other cases interpreting California's homestead statute. For example, in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991), the Ninth Circuit was confronted with a situation in which the debtor held only a one-half interest in property. For purposes of determining whether the debtor's homestead exemption could defeat the Trustee's sale of the property, the court compared the value of the exemption to the value of the debtor's one-half interest. The court did not use the value of the entire property to conduct the equity calculation. The court's approach is consistent with the principle that the homestead exemption applies only to the debtor's interest in the property. If the debtor's homestead exemption could apply to interests in the property that the debtor did not hold, the *Reed* court would have been required to perform the equity calculation using the value of the entire property, not just the value of the debtor's one-half interest. The limitation of a homestead exemption to the debtor's interest was also made clear in *Elliot v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014). In that case, the court said that the "homestead exemption applies to any *interest* in the property." *Id.* at 196 (emphasis altered).

Id. at 5–7.

On September 13, 2017, the Court conducted hearings on the Trustee's motion seeking to compel Aida to turnover the Property (the "Turnover Motion") and the Trustee's motion for an order authorizing the sale of the Property free and clear of liens and encumbrances (the "First Sale Motion"). The Court denied the Turnover Motion without prejudice, finding that because Aida, Rudy, and their children all lived at the Property, any turnover order issued by the Court with respect to Aida only

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would be impossible to enforce. *See* Order Denying Without Prejudice Chapter 7 Trustee's Turnover Motion (the "Turnover Denial Order") [Doc. No. 86, Case No. 2:13-bk-11518-ER]. The Court denied the Sale Motion without prejudice since the closing of the sale was contingent upon the Trustee's ability to deliver the Property to the buyers in vacant condition. *See* Order Denying Without Prejudice Chapter 7 Trustee's Sale Motion [Doc. No. 85, Case No. 2:13-bk-11518-ER].

In the Turnover Denial Order, the Court found that in light of the unenforceability of a turnover order issued only with respect to Aida, it was necessary for the possessory rights of both Aida and Rudy in the Property to be litigated simultaneously. The Court further held that the issues regarding Rudy's possessory interest and homestead exemption must be adjudicated before this Court—as opposed to being adjudicated before a state court by way of an unlawful detainer action—because those issues require interpretation of the Judgment avoiding the 2011 transfer of the Property and the application of bankruptcy law. On September 14, 2017, the Court issued an order reopening Rudy's bankruptcy case to permit such adjudication to occur. *See* Doc. No. 79, Case No. 2:14-bk-27148-ER. On September 28, 2017, the Court denied the Trustee's motion for reconsideration of the Court's finding that it was necessary for the issues regarding Rudy's possessory interest and homestead exemption to be adjudicated before the Bankruptcy Court. *See* Order Denying Chapter 7 Trustee's Motion for Reconsideration [Doc. No. 93, Case No. 2:13-bk-11518-ER].

On September 18, 2017, Rudy filed an "Adversary Complaint For: (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief" (the "Original Complaint") in his reopened bankruptcy case. The Trustee moved to dismiss the Original Complaint, for failure to state a claim, based on the fact that the Original Complaint named "David M. Goodrich" as a defendant in his individual capacity rather than in his capacity as the Chapter 7 Trustee of the estate of Aida Fuentes. The Court granted the Motion to Dismiss but gave Rudy leave to amend. The Court explained:

Given the contentious nature of this litigation, the Court finds that the caption of the Complaint must be amended to make it absolutely clear that David M. Goodrich is being sued in his capacity as a Chapter 7 Trustee, not in his individual capacity. Upon reading the Complaint, it is clear that Rudy did not intend to sue David M. Goodrich in his individual capacity; nonetheless, the Complaint's caption is misleading and therefore creates ambiguity.

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Ruling Granting Motion to Dismiss with Leave to Amend [Doc. No. 17, Case No. 2:17-ap-01475-ER] at 7.

On November 21, 2017, Rudy filed the operative First Amended Complaint (the "Complaint"). The Complaint alleges that Rudy's possessory interest in the Property has a value of no less than \$175,000; that Rudy holds an equitable interest in the Property as a result of community payments on the Property's mortgage; and that the Trustee's attempts to sell the Property without paying Rudy any amount on account of his homestead exemption constitute a taking of Rudy's property without just compensation. Based on these allegations, the Complaint seeks (1) a declaration that Rudy's possessory interest has a value of \$175,000; (2) a declaration that Rudy holds an equitable interest in the Property by virtue of community payments on the Property's mortgage; (3) a declaration that any termination of Rudy's possessory and equitable interests in the Property must provide for payment of or adequate protection of those interests; and (4) an injunction preventing the Trustee from selling the Property without paying Rudy \$175,000 on account of his homestead exemption.

B. Summary of Papers Filed in Connection with the Trustee's Second Sale Motion

The Trustee seeks authorization to sell his right, title, and interest in the Property to Equity Saver Construction, Inc. ("Equity"), free and clear of liens and encumbrances. *See generally* Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payment of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding that Purchaser is Good Faith Purchaser Under 11 U.S.C. §363(m) (the "Second Sale Motion") [Doc. No. 95, Case No. 2:13-bk-11518-ER]. The sale is subject to overbids. The sale is not contingent upon the delivery of the Property in a vacant condition and/or the extinguishment of the possessory interests of Aida, Rudy, or any other occupants. The Trustee is selling only his interest in the Property, not Rudy's possessory interest. The Trustee asserts that he is authorized to sell the Property upon the foregoing terms, without paying Rudy any amount on account of his homestead exemption, based upon the Ninth Circuit's determination that Rudy "is not guaranteed to receive any particular amount of money if any other interest (besides his possessory interest) in the Property is sold." Ninth Circuit Memorandum at p. 5, n. 1. The Trustee seeks a finding that Equity, or any qualified overbidder who prevails at the auction, is a good-faith purchaser entitled to

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the protections of §363(m).

Rudy opposes the Second Sale Motion and makes the following arguments in support of his opposition:

- 1) Pursuant to §363(e), Rudy's equitable interest in the Property cannot be sold absent adequate protection of that interest. Rudy holds an equitable interest in the Property because community funds were used to make mortgage payments. Until the value of Rudy's equitable interest has been determined through the pending adversary proceeding, the amount of adequate protection that Rudy must be provided on account of his equitable interest cannot be determined. Therefore, the Property cannot be sold until conclusion of the adversary proceeding.
- 2) The Property is being sold by quitclaim deed. A quitclaim deed contains no warranties of title and only operates to convey the seller's interest in the Property to the buyer. In this case, the Property is subject to (a) the final order granting turnover to the Trustee, but providing that turnover is subject to Rudy's allowed homestead exemption; (b) the final order in Rudy's case overrule the Trustee's objection to Rudy's \$175,000 homestead exemption; (c) the order of the District Court affirming the Bankruptcy Court's allowance of Rudy's homestead exemption; (d) the Ninth Circuit's order affirming the District Court's order; and (e) any other order relating to the Property, including the order denying the Trustee's motion for reconsideration of the order reopening Rudy's bankruptcy. Further, the purchaser would also take the Property subject to the pending adversary proceeding, meaning that the purchaser would be required to step into the Trustee's shoes and defend the adversary proceeding. This is another reason why the sale must be postponed until the adversary proceeding has been resolved.
- 3) In light of the fact that the Trustee was listed as a creditor in Rudy's case, and Rudy has obtained a discharge, the Trustee's attempt to sell the Property may violate the discharge injunction.

The Trustee makes the following arguments in reply to Rudy's opposition:

- 1) It is not necessary for the sale to be postponed until resolution of the adversary proceeding. The adversary proceeding seeks to value Rudy's possessory and alleged equitable interests in the Property. Rudy's possessory interest, and his homestead exemption in such possessory

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interest, is not relevant because the sale to Equity is not contingent upon the extinguishment of Rudy's possessory interest. If the sale is approved, Rudy's claims in the adversary regarding his possessory interest will become moot. Rudy's claim that he holds an equitable interest in the Property based upon the alleged use of community funds to maintain the Property are without merit, for the reasons set forth in the Trustee's concurrent motion to dismiss the adversary proceeding.

- 2) The Trustee has demonstrated that the standards governing the sale of property in a bankruptcy proceeding have been satisfied, and Rudy has failed to refute that these standards have been met. That is, the Trustee has demonstrated that the purchase price is fair and reasonable and that the sale is in the best interests of creditors and the estate.

C. Summary of Papers Filed in Connection with the Trustee's Motion to Dismiss Rudy's Claims for Valuation of His Alleged Equitable Interest in the Property

The Trustee seeks dismissal, with prejudice, of Rudy's claims regarding an equitable interest in the Property based upon the alleged use of community funds to maintain the Property from and after June 2006 (the "Equitable Claim"). The Trustee makes the following arguments in support of the Motion to Dismiss:

- 1) The "form of title" presumption establishes that the Property is Aida's separate property and that Rudy holds no equitable interest therein. Under the "form of title" presumption, the description in a deed as to how title is held presumptively reflects the actual ownership status of the property. *Fadel v. DCB United LLC (In re Fadel)*, 492 B.R. 1, 11 (9th Cir. BAP 2013). The "form of title" presumption is codified at California Evidence Code §662, which provides: "The owner of the legal title to property is presumed to be owner of the full beneficial title. This presumption may be rebutted only by clear and convincing proof." Here, during the time that Rudy alleges that community funds were used to pay the Property's mortgage, the title provided that the Property was Aida's separate property.
- 2) Even if the "form of title" presumption does not control, the Equitable Claim is based upon reimbursement for the alleged use of community funds. Reimbursement is a monetary right which arises only between spouses upon dissolution of the marriage. *Fadel*, 492 B.R. at 7. Here, there has been no dissolution.
- 3) Any equitable interest Rudy may have held in the Property dissipated as a

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result of the doctrine of merger when Aida conveyed all her right, title, and interest in the Property to Rudy as his sole and separate property by means of the deed recorded on September 12, 2011. Under the doctrine of merger, when the person holding a dominant tenement and a servient tenement are the same, all of the lesser property interests are merged into the fee simple interest.

- 4) In *In re Marriage of Moore*, 28 Cal.3d 366 (1980), the California Supreme Court held that where community funds are used to make payments on separate property, the community acquires an interest in the separate property to the extent of the payments. Therefore, even if Rudy did acquire an equitable interest in the Property based on the use of community funds to make the mortgage payments, any such equitable interest would be community property. As community property of Aida's estate, that equitable interest would belong to the Trustee pursuant to §541(a)(2). Because the equitable interest belongs to the Trustee, Rudy's attempt to obtain possession of that interest by way of the Complaint violates the automatic stay in Aida's case.
- 5) If Rudy's equitable interest were not property of Aida's estate, that interest would be property of Rudy's estate and would belong to the Trustee of Rudy's estate. Consequently, only the Trustee of Rudy's estate would have standing to pursue claims relating to the alleged equitable interest.
- 6) The Complaint exceeds the scope of the Turnover Denial Order, which stated that the Court would enter an order reopening Rudy's case for the limited purpose of adjudicating only issues regarding Rudy's possessory interest and homestead exemption. To the extent that the Complaint seeks relief exceeding the scope of the Turnover Denial Order, the Court lacks subject matter jurisdiction.

Rudy makes the following arguments in opposition to the Motion to Dismiss:

- 1) Civil Rule 12(g)(2) bars a party from raising arguments in a motion to dismiss that were available to the party but omitted from an earlier motion. The Trustee moved to dismiss the Original Complaint, which is identical to the operative First Amended Complaint, except that the caption was amended to make it absolutely clear that David M. Goodrich was being sued in his capacity as the Trustee for the estate of Aida Fuentes, not in his individual capacity. There is no reason why the arguments raised in this second motion to dismiss could have not been raised in the initial motion to dismiss.
- 2) The motion should be denied on the merits. First, Rudy's equitable interest in

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the Property is not property of his estate. Because Rudy's case was closed after having been fully administered, the equitable interest was abandoned to him pursuant to §554(c). The abandonment was not revoked upon the reopening of the case. Second, there is no merit to the Trustee's contention that the Complaint violates the automatic stay in Aida's case. The Complaint seeks to establish the value of Rudy's possessory and equitable interests in the Property. Nothing in the prayer for relief seeks to obtain possession of property of Aida's estate, as Rudy is already in lawful possession of the Property.

The Trustee makes the following arguments in reply to Rudy's opposition:

- 1) Civil Rule 12(g)(2) does not warrant denial of the Motion to Dismiss. First, Rule 12(g)(2) does not apply because the Original Complaint named David Goodrich in his individual capacity and not in his capacity as the Trustee of Aida's estate. Second, even if Rule 12(g)(2) did apply, courts within the Ninth Circuit liberally construe the rule and consider arguments raised in violation thereof if such consideration is in the interests of judicial economy. *See Pepper v. Apple, Inc. (In re Apple iPhone Antitrust Litig.)*, 846 F.3d 313, 319 (9th Cir. 2017) ("Although Rule 12(g) technically prohibits successive motions to dismiss that raise arguments that could have been made in a prior motion ... courts faced with a successive motion often exercise their discretion to consider the new arguments in the interests of judicial economy."). Judicial economy supports consideration of the Motion to Dismiss. If the claims related to Rudy's alleged equitable interest in the Property are dismissed, the only remaining issues pertain to Rudy's possessory interest and homestead exemption in the Property. Those issues will be resolved if the Court approves the Second Sale Motion.
- 2) Rudy fails to address most of the Trustee's important substantive arguments in support of dismissal. There is no dispute that Rudy's alleged equitable interest in the Property is community property and is therefore property of Aida's estate. By prosecuting the Complaint, Rudy is attempting to obtain possession of property of Aida's estate in violation of the automatic stay.

II. Findings and Conclusions

All findings set forth in Section I.A., above, are adopted as the findings of the Court. For the reasons set forth below, the Trustee's Motion to Dismiss Rudy's claims pertaining to his alleged equitable interest in the Property is granted. The Court finds

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that the sale of the Property need not be postponed until the conclusion of the adversary proceeding.

The Trustee's Motion to Dismiss is Granted

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice.... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' ... it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Civil Rule 12(g)(2) provides:

Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

Rule 12(h)(2) provides that the defense of failure to state a claim may be raised (1) in any pleading, (2) by way of a motion for judgment on the pleadings, or (3) at trial.

Courts within the Ninth Circuit consider motions to dismiss made in violation of Rule 12(g)(2) if such consideration furthers judicial economy:

Although Rule 12(g) technically prohibits successive motions to dismiss that

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raise arguments that could have been made in a prior motion ... courts faced with a successive motion often exercise their discretion to consider the new arguments in the interests of judicial economy.

Pepper v. Apple, Inc. (In re Apple Iphone Antitrust Litig.), 846 F.3d 313, 319 (9th Cir. 2017)

The reason for this flexible construction of Rule 12(g)(2) is as follows:

Rule 12(g) is designed to avoid repetitive motion practice, delay, and ambush tactics. If the Court were to evade the merits of Defendants' ... defenses here, Defendants would be required to file answers within 14 days of this Order.

They would presumably assert [the same defenses] in those answers.

Defendants would then file Rule 12(c) motions, the parties would repeat the briefing they have already undertaken, and the Court would have to address the same questions in several months. That is not the intended effect of Rule 12(g), and the result would be in contradiction of Rule 1's mandate [to construe the Civil Rules "to secure the just, speedy, and inexpensive determination of every action and proceeding"].

The Court rejects Rudy's contention that the Motion to Dismiss is barred by Rule 12(g)(2). First, the defenses now raised by the Trustee were not available to him in the context of his motion to dismiss the Original Complaint, in view of the Original Complaint's misleading caption which created ambiguity as to whether the Trustee was being sued in his individual capacity or in his capacity as the Trustee of Aida's estate. It was not unreasonable for the Trustee to be concerned about personal liability given the contentious nature of this litigation. Aida (who is represented by the same counsel as Rudy) has previously argued that the Trustee should be required to appear and show cause why he should not be removed pursuant to §324. Removal under § 324 is an extraordinary remedy that disqualifies a Trustee from serving as the Trustee in all pending cases under the Bankruptcy Code.

Second, denial of the Motion to Dismiss on Rule 12(g)(2) grounds would not be in the interests of judicial efficiency. Since the Motion to Dismiss is brought under Rule 12(b)(6), the Trustee could raise identical arguments by way of a motion for judgment on the pleadings or at trial. Refusing to consider the Trustee's arguments at this juncture would result only in delay, in contravention of Rule 1. *See Apple Iphone Antitrust Litig.*, 846 F.3d at 319.

Turning to the merits, the Court finds that the Complaint's allegations regarding Rudy's equitable interest in the Property fail to state a claim upon which relief can be granted. In California, where community funds are used to make payments on separate

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CONT... Aida Fuentes

Chapter 7

property, the community acquires an interest in the separate property proportionate to such payments. *See In re Marriage of Moore*, 28 Cal.3d 366 (1980). Consequently, any equitable interest that Rudy may have acquired in the Property is community property. As community property of Aida's estate, that equitable interest belongs to the Trustee pursuant to §541(a)(2). Rudy's attempt to obtain possession of this estate property is void as a violation of the automatic stay. *See* §362(a)(3) (staying "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate"); *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569 (9th Cir. 1992) (holding that actions in violation of the automatic stay are void, not voidable). **[Note 3]** The Trustee is entitled to dismissal of the void claims brought in violation of the stay. Because Rudy cannot plead facts showing that an equitable interest acquired through community payments is not property of Aida's estate, the dismissal is with prejudice. *See Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990) (holding that the Court may dismiss a complaint without leave to amend where any proposed amendment would be futile).

The Second Sale Motion is Granted

Rudy's primary opposition to the Second Sale Motion is that any sale must await resolution of the adversary proceeding. As discussed above, the Complaint has been dismissed with prejudice to the extent that it asserts that Rudy holds an equitable interest in the Property by virtue of community payments.

The Complaint's remaining claims seek relief based upon Rudy's possessory interest in the Property. The Ninth Circuit has held that Rudy "is not guaranteed to receive any particular amount of money if any other interest (besides his possessory interest) in the Property is sold." Ninth Circuit Memorandum at 5. Here, the Trustee is not selling Rudy's possessory interest in the Property, and the sale does not require the Trustee to deliver the Property to the successful purchaser in vacant condition. Consistent with the statements made by the Ninth Circuit, this Court has previously ruled that Rudy is not entitled to receive any payment on account of his homestead exemption if the Trustee does not sell Rudy's possessory interest in the Property. The Court's decision overruling Aida's opposition to the Trustee's motion to employ a real estate broker to market the Property applies with equal force here:

The Trustee is not seeking to sell Rudy's possessory interest in the Property.... Rudy holds no other interest in the Property aside from his possessory interest. Rudy's homestead exemption cannot attach to the

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proceeds stemming from the sale of interests in the Property that he does not hold. Because Rudy's homestead exemption cannot attach to the sale proceeds, there is equity in the Property for distribution to unsecured creditors, and there is no merit to Aida's contention that the Trustee is pursuing the sale of the Property in bad faith.

This result is compelled by the language of the statute and the decision of the Ninth Circuit. The statute makes clear that a debtor's homestead exemption is limited to the debtor's interest in the property. *See, e.g.*, Cal. Civ. Proc. Code §704.740 (providing that "the *interest* of a natural person in a dwelling may not sold under this division to enforce a money judgment except pursuant to a court order ..."); *id.* at §704.820 (providing that where a judgment debtor holds less than a fee simple interest in the property, only "the *interest* of the judgment debtor in the dwelling and not the dwelling shall be sold," and further providing that where there is more than one judgment debtor, "each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own *interest*").

The Ninth Circuit's Memorandum further established that Rudy's homestead exemption applies only to his possessory interest in the Property....

The proposition that a debtor's homestead exemption can apply only to the debtor's interest in property is corroborated by the logic of other cases interpreting California's homestead statute. For example, in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991), the Ninth Circuit was confronted with a situation in which the debtor held only a one-half interest in property. For purposes of determining whether the debtor's homestead exemption could defeat the Trustee's sale of the property, the court compared the value of the exemption to the value of the debtor's one-half interest. The court did not use the value of the entire property to conduct the equity calculation. The court's approach is consistent with the principle that the homestead exemption applies only to the debtor's interest in the property. If the debtor's homestead exemption could apply to interests in the property that the debtor did not hold, the *Reed* court would have been required to perform the equity calculation using the value of the entire property, not just the value of the debtor's one-half interest. The limitation of a homestead exemption to the debtor's interest was also made clear in *Elliot v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014). In that case, the court said that the "homestead exemption applies to any *interest* in the property." *Id.* at 196

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(emphasis altered).

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Final Ruling Granting Trustee's Motions to Disallow Aida's Homestead Exemption and to Employ a Real Estate Broker to Market the Property [Doc. No. 54, Case No. 2:13-bk-11518-ER] at 7-8.

There is no merit to Rudy's contention that the successful purchaser takes the Property subject to the pending litigation regarding Rudy's possessory interest. The terms of the purchase agreement provide that the purchaser is acquiring only the Trustee's interest in the Property and is not acquiring Rudy's possessory interest. It defies logic to suggest that the purchase of the Trustee's interest could somehow be subject to claims regarding an interest in the Property that is not being sold.

Contrary to Rudy's position, the successful purchaser will not be required to step into the Trustee's shoes and defend against Rudy's claims regarding his possessory interest. Once the sale has been completed, Rudy's estate will have no interest in the Property. Completion of the sale will divest the Court of jurisdiction over Rudy's claims regarding the value of his possessory interest. Therefore, once the sale has been completed, the Court will be required to dismiss the Complaint's remaining claims based upon its lack of jurisdiction.

The Bankruptcy Court has jurisdiction over "all cases under title 11." 28 U.S.C. § 1334(a). "Generally, in the bankruptcy context, the word 'case' is a term of art which refers to 'that which is commenced by the filing of a petition; it is the "whole ball of wax," the chapter 7, 9, 11, 12 or 13 case.'" *Blevins Elec., Inc. v. First Am. Nat'l Bank (In re Blevins Elec., Inc.)*, 185 B.R. 250, 253 (Bankr. E.D. Tenn. 1995).

The Bankruptcy Court also has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The three types of jurisdiction conferred under 28 U.S.C. §1334(b) are known as "arising under," "arising in," and "related to" jurisdiction. "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). "Arising in" jurisdiction applies to "those administrative proceedings that, while not based on any right created by title 11, nevertheless have no existence outside bankruptcy." *Id.* "Related to" jurisdiction exists if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.... An action is related to bankruptcy if the action could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." *Fietz v. Great Western Savings (In re Fietz)*,

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852 F.2d 455, 457 (9th Cir. 1988) (internal citations omitted).

Upon completion of the sale, the Court will lack "arising under" jurisdiction because the Complaint's causes of action arise under state law, not under title 11. The Court will lack "arising in" jurisdiction because the Complaint is not an administrative proceeding of the type that has no existence outside of bankruptcy. The Court will lack "related to" jurisdiction because there is no conceivable manner in which the outcome of the proceeding could affect the bankruptcy estate. Rudy has received a discharge and his estate has been fully administered.

The Court previously found that issues regarding Rudy's possessory interest and homestead exemption must be adjudicated before this Court—as opposed to being adjudicated before a state court by way of an unlawful detainer action—because those issues require interpretation of the Judgment avoiding the 2011 transfer of the Property and the application of bankruptcy law. That finding was made in the context of the First Sale Motion, which differed materially from the instant Second Sale Motion. The First Sale Motion required the Trustee to deliver the Property to the purchasers free of Rudy's possessory interest. By contrast, the instant Second Sale Motion contains no such requirement. As a result of the entirely different structure of the Second Sale Motion, Rudy's homestead exemption cannot attach to the sales proceeds, and the issues regarding Rudy's possessory interest no longer require interpretation of the Judgment avoiding the 2011 transfer of the Property or the application of bankruptcy law.

There is no merit to Rudy's assertion that the sale violates the discharge injunction entered in Rudy's bankruptcy case. The Trustee is not selling any interest of Rudy in the Property. The sale is not an attempt by the Trustee to collect a debt against Rudy.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$365,000. Subsequent overbids will be increments of \$5,000, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

At the conclusion of the auction the Court will take testimony from the winning bidder to determine whether that bidder is entitled to the protections of §363(m).

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There is no merit to Rudy's contention that the prevailing purchaser should not be afforded the protections of §363(m) simply because the sale is by way of a quitclaim deed.

The Trustee is authorized to pay any undisputed liens and costs of sale from escrow. The sale shall be free of liens and encumbrances, with any such liens and encumbrances to attach to the sales proceeds.

Note 1

Given names are used to distinguish Aida and Rudy Fuentes. No disrespect is intended.

Note 2

As discussed in greater detail below, Sam S. Leslie was appointed as the Chapter 7 Trustee for the bankruptcy estate of Rudy Fuentes. Rudy is the spouse of Aida Fuentes, and the facts of his bankruptcy case are relevant to the instant motion. Trustee Leslie has not filed any papers in connection with this motion. Unless otherwise indicated, all references to the "Trustee" are to David M. Goodrich, the Trustee of Aida Fuentes' bankruptcy estate.

Note 3

Rudy asserts in conclusory fashion that the Complaint's allegations do not violate the stay, but he cites no authority refuting *Marriage of Moore*.

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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Hearing Room 1568

10:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#2.00 Hearing

RE: [32] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendant, David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes, to Dismiss with Prejudice First Amended Complaint to the Extent That Plaintiff Alleges a Claim, and Seeks an Adjudication and Relief, Re Equitable Interest in Real Property Based on Alleged Use of Community Funds; Memorandum of Points and Authorities; and Request for Judicial Notice, with Proof of Service

FR. 1-24-18

Docket 32

Tentative Ruling:

1/30/2018

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Represented By
Robert A Hessling

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

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Wednesday, January 31, 2018

Hearing Room 1568

10:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

- #3.00** Hearing
RE: [110] Motion for Default Judgment And Application For Entry of Default Judgment By The Court Against Defendant TrueERP, Inc.; Memorandum of Points and Authorities (Comer, Kirk)

FR. 1-24-18

Docket 110

Tentative Ruling:

1/30/2018

For the reasons set forth below, the Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Breach of Contract and (2) Fraud (the "Complaint") [Doc. No. 1]
- 2) Notice of Application and Application for Entry of Default Judgment by Court Against Defendant TrueERP (the "Motion") [Doc. No. 110]
 - a) Order Continuing Hearing on Motion for Default Judgment from January 24, 2018 at 10:00 a.m. to January 31, 2018 at 10:00 a.m. [Doc. No. 112]
- 3) Order Striking Defendant's Answer and Entering Default [Doc. No. 101]
 - a) Final Ruling on Order to Show Cause [Doc. No. 100]

I. Facts and Summary of Pleadings

On August 31, 2016, BBeautiful LLC dba Chrislie Formulations ("BBeautiful") filed a "Complaint for: (1) Breach of Contract; and (2) Fraud" (the "Complaint") [Doc. No. 1] against TrueERP, Inc. ("TrueERP"). The Complaint alleged that TrueERP sold BBeautiful defective software which caused serious disruption to BBeautiful's business.

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CONT... BBeautiful, LLC, a California limited liability co

Chapter 11

On November 13, 2017, the Court struck TrueERP's Answer and entered its default, based on TrueERP's failure to retain counsel and failure to respond to the Court's order requiring it to show cause why its default should not be entered. *See* Order Striking Defendant's Answer and Entering Default [Doc. No. 101] and Final Ruling on Order to Show Cause [Doc. No. 100].

BBeautiful seeks entry of default judgment in its favor in the amount of \$147,256.40, consisting of \$146,100.00 (the amount BBeautiful paid for the defective software) plus \$1,156.40 (for prejudgment interest). BBeautiful does not seek recovery on its claims for punitive damages or for damages incurred as a result of the business disruption caused by the defective software. In support, BBeautiful submits declarations of its principal, Helga Arminak; its damages expert, Robert Wunderlich, Ph.D., and its current counsel.

II. Findings and Conclusions

The findings previously made by the Court in connection with its entry of default against TrueERP are incorporated herein by reference. *See* Order Striking Defendant's Answer and Entering Default [Doc. No. 101] and Final Ruling on Order to Show Cause [Doc. No. 100].

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). The Complaint's well-pleaded allegations establish that BBeautiful is entitled to judgment against TrueERP for fraud and breach of contract, because of TrueERP's failure to deliver operational enterprise resource planning software as promised. The declaration of BBeautiful's principal, Helga Arminak, establishes that BBeautiful sustained damages in the amount of \$146,100.00 (the amount paid for the defective software). That amount is confirmed by the declaration of BBeautiful's damages expert, Robert Wunderlich, Ph.D., who analyzed BBeautiful's invoices. BBeautiful has also established that it is entitled to prejudgment interest, in the amount of \$1,156.40, pursuant to Cal. Civ. Code §3287, which provides for the award of prejudgment interest if damages are capable of being made certain by calculation. Accordingly, BBeautiful is entitled to judgment in the total amount of \$147,256.40. **[Note 1]**

BBeautiful shall submit a conforming judgment, via the Court's Lodged Order Upload System, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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CONT... BBeautiful, LLC, a California limited liability co Chapter 11

intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Among the reasons for entry of TrueERP's default was TrueERP's failure to file a Second Amended Counterclaim by the deadline set by the Court. As a result of the dismissal of TrueERP's First Amended Counterclaim, the failure of TrueERP to file a Second Amended Counterclaim, and the entry of TrueERP's default, no operative counterclaim is before the Court.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael S Fox
Thomas Fleming
Matteo J Rosselli
Maxwell M Blecher
Daniel J McCarthy

Defendant(s):

Trueerp, INC

Pro Se

Plaintiff(s):

BBeautiful, LLC

Represented By
Howard K Alperin
Kirk Stephen Comer

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2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#4.00

Hearing re: amount of Plaintiff BBeautiful's damages re Show Cause
Hearing re: [52] and [96] Appear And Show Cause Why Its Answer Should Not
Be Stricken And Why Its Default Should Not Be Entered

fr. 11-8-17; 12-13-17; 1-24-18

Docket 52

Tentative Ruling:

1/30/2018

See Cal. No. 3, incorporated in full by reference.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael S Fox
Thomas Fleming
Matteo J Rosselli
Maxwell M Blecher
Daniel J McCarthy

Defendant(s):

Trueerp, INC

Pro Se

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher

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Monday, February 05, 2018

Hearing Room 1568

10:00 AM

2:05-40453 Armen Mekikian

Chapter 7

Adv#: 2:06-01192 Dayan et al v. Mekikian et al

#1.00 Hearing re re [44] Appearance and Examination of ARMEN MEKIKIAN, dba LA WEDDING SETS.

fr. 9-13-17; 12-19-17

Docket 0

Tentative Ruling:

2/1/2018

Appearances required

Party Information

Debtor(s):

Armen Mekikian

Represented By
Ronald E Michelman

Defendant(s):

Armen Mekikian

Represented By
Ronald E Michelman

Marine Mary Mekikian

Represented By
Ronald E Michelman

Joint Debtor(s):

Marine Mary Mekikian

Pro Se

Plaintiff(s):

Shahin Dayan

Represented By
Nico N Tabibi

Yafa Dayan

Represented By

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CONT... Armen Mekikian

Chapter 7

Nico N Tabibi

Los Angeles Jewelry Production Inc

Represented By
Nico N Tabibi

Trustee(s):

David L Ray (TR)

Pro Se

**United States Bankruptcy Court
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Monday, February 05, 2018

Hearing Room 1568

10:00 AM

2:17-23056 Darren James Searle and Andrea Lynn Searle

Chapter 7

#2.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 27935 Stageline Road, Castaic, CA 91384 . , Creditor c/o Seterus, Inc., its successors and/or assigns (Glowin, Nichole)

Docket 11

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$460,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$546,937.97. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the

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CONT... Darren James Searle and Andrea Lynn Searle Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-23066 Brandon Vanell Robinson

Chapter 7

#3.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 INFINITI Q50, VIN # JN1EV7AP5HM734992 . (Vanlochem, Michael)

Docket 9

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel,

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CONT... Brandon Vanell Robinson

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the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Brandon Vanell Robinson

Represented By
Halli B Heston

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, February 05, 2018

Hearing Room 1568

10:00 AM

2:17-23370 Kenny Alexander Penate

Chapter 7

#4.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Toyota RAV4 (VIN 2T3ZFREV0HW353375) .

Docket 12

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel,

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CONT... Kenny Alexander Penate

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the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Kenny Alexander Penate

Represented By
Floyd Aragon

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Monday, February 05, 2018

Hearing Room 1568

10:00 AM

2:17-25543 Norlaine, Inc,

Chapter 7

#5.00 HearingRE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1449 W Industrial Park Street, Covina, CA . (Long, Helen)

Docket 6

Tentative Ruling:

2/1/2018

Hearing required.

Party Information

Debtor(s):

Norlaine, Inc,

Represented By
James R Selth

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 06, 2018

Hearing Room 1568

10:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

#1.00 HearingRE: [29] Motion to Dismiss Debtor Bankruptcy Case pursuant to 11 U.S.C. Section 349(a) (Nguyen, Nguyen)

Docket 29

Tentative Ruling:

2/5/2018

For the reasons set forth below, the Court DENIES the Motion.

Pleadings Filed and Reviewed:

- 1) Motion to Dismiss Bankruptcy Case without Prejudice Pursuant to 11 U.S.C. § 349(a), and to Dismiss Both Trustee's Complaints against Debtor (the "Motion") [Doc. No. 29]
- 2) Trustee's Opposition to the Motion (the "Opposition") [Doc. No. 33]

I. Facts and Summary of Pleadings

Hiep Tan Tran (the "Debtor") filed a voluntary Chapter 7 petition on September 1, 2017 (the "Petition") [Doc. No. 1]. Timothy J. Yoo was appointed as Chapter 7 Trustee of the Estate (the "Trustee"). There are two pending adversary proceedings against the Debtor, both of which are in default. The first is *Yoo v. Tan (In re Tran)*, Adv. No. 2:17-ap-01507-ER (the "548 Adversary"); the second is *Yoo v. Tan (In re Tran)*, Adv. No. 2:17-ap-01508-ER (the "727 Adversary"). The 548 Adversary was commenced by the Trustee on October 20, 2017 against the Debtor's brother Tran Hung Tan to avoid the undisclosed allegedly fraudulent transfer of a certain triplex located at 4335 W. 139th Street, Hawthorne, CA 90250 (the "Triplex"). A default against Tran Hung Tan was entered in the 548 Adversary on December 1, 2017. The 727 Adversary was commenced by the Trustee on October 20, 2017 against the Debtor and seeks to deny the Debtor his discharge for alleged bankruptcy fraud concerning the Triplex. A default against the Debtor was entered in the 727 Adversary on December 1, 2017.

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Tuesday, February 06, 2018

Hearing Room 1568

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CONT... Hiep Tan Tran

Chapter 7

The Motion

On December 15, 2017, the Debtor filed the "Motion to Dismiss Bankruptcy Case without Prejudice Pursuant to 11 U.S.C. § 349(a), and to Dismiss Both Trustee's Complaints against Debtor" (the "Motion") [Doc. No. 29]. The Motion contends that cause exists to grant dismissal of the case and the related adversary proceedings without prejudice because, in sum, the timing of the filing of the Petition was due to mistake or inadvertence, and transfers of property at issue in the respective adversary proceedings were not made with fraudulent intent as the Trustee alleges. The Debtor's primary contention is that, notwithstanding the multiple transfers of the Triplex between the Debtor's parents, the Debtor, and other family members, the Debtor never actually held a beneficial ownership interest in the Triplex because it was the intent of his parents for the Triplex to be held for the benefit of the family. The Debtor further contends that the two pre-petition transfers of the Triplex executed by the Debtor in favor of his brother, Tran Hung Tan, were not made to avoid liability from an automobile accident as the Trustee alleged. The Motion argues that dismissal of the case will not harm creditors because the Debtor never actually owned a beneficial interest in the Triplex and to allow the Trustee to administer the Triplex would, therefore, be "inequitable and unconscionable."

The Trustee's Opposition

On January 23, 2018, the Trustee filed the Opposition to the Motion (the "Opposition") [Doc. No. 33]. The Opposition contends that the Debtor has not shown the requisite "cause" for dismissal, and that dismissal would not be in the best interest of creditors. Furthermore, the Motion does not disclose any arrangement to pay the unsecured administrative claims against the Estate as required by LBR 1017-2(e)(2). Additionally, the Trustee contends that the Motion seeks *sub rosa* to improperly dismiss the two pending adversary proceedings, both of which are in default.

II. Findings of Fact and Conclusions of Law

The Motion was filed as a motion to "Dismiss Bankruptcy Case without Prejudice Pursuant to 11 U.S.C. § 349(a)." Doc. No. 29. Section 349, however, does not set forth the standards for voluntary dismissal of a bankruptcy case. Rather, voluntary dismissal of a Chapter 7 case is governed by the standards set forth in § 707

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Chapter 7

(a); thus, the Court construes the Motion as a Motion to Dismiss pursuant to § 707(a).

Section 707(a)(1) provides that the "court may dismiss a case under this chapter only after notice and a hearing and only for cause." In *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008), the court observed that the "term 'for cause' is defined in the Bankruptcy Code only by way of a list of three examples—unreasonable delay prejudicial to creditors, nonpayment of filing fees, and not filing schedules—that is plainly incomplete." The *Hickman* court explained that courts should examine the totality of the circumstances in determining whether "cause" under § 707(a) is present. *Id.* at 840. A "case will not be dismissed on the motion of a debtor if such dismissal would cause 'some plain legal prejudice' to a creditor." *Id.* Legal prejudice exists if dismissal will result in a decreased distribution to creditors. *See, e.g., Leach v. Internal Revenue Service (In re Leach)*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991) (upholding denial of debtor's motion to dismiss, because dismissal would prejudice the Internal Revenue Service by permitting the debtor to refile at a later date when tax liabilities would be dischargeable).

Local Bankruptcy Rule 1017-2(e), which governs "Dismissal of Case or Suspension of Proceedings," provides in pertinent part that:

- (2) the declaration in support of the motion must disclose any arrangement or agreement between the debtor and creditors or any other person in connection with the motion for dismissal or suspension.
- (3) the court may condition the dismissal upon payment of fees and expenses, including fees due to the United States Trustee.

Here, the Debtor has failed to demonstrate sufficient cause exists to warrant dismissal. As an initial matter, the Motion seeks not only dismissal of the Debtor's bankruptcy case, but also the related Adversary Proceedings in which default has been entered against the Debtor's brother, Tran Hung Tan, and the Debtor, respectively. To the extent the Motion seeks dismissal of the Adversary Proceedings, the Debtor cannot rely upon § 707(a) to dismiss the Adversary Proceedings where Default judgments have already been entered. Neither the Debtor nor Mr. Tan filed any responsive pleadings in the Adversary Proceedings despite having the opportunity to do so. The Court finds that the arguments raised by the Debtor in the instant Motion could and should have been raised in an appropriate responsive pleading in the

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CONT... Hiep Tan Tran

Chapter 7

Adversary Proceedings. Furthermore, the Debtor has failed to show cause for setting aside either of the judgments in the Adversary Proceedings. *See In re Shamam*, 2015 WL 1544581 at *6 (B.A.P. 9th Cir. 2015) ("To determine whether good cause exists, the bankruptcy court must consider whether: (1) the defendant engaged in culpable conduct that led to the default; (2) the defendant lacked a meritorious defense; or (3) reopening the default judgment would prejudice the plaintiff.").

To the extent the Motion seeks dismissal of the Debtors bankruptcy case under § 707(a), the Court finds that dismissal would not be in the best interest of creditors or the Estate, especially in light of the two pending adversary proceedings, which are both in default. The Court is not persuaded by the Debtor's arguments regarding the relevant pre-petition transfers of ownership of the Triplex and the Debtor's supposed lack of a beneficial ownership interest in the Triplex.

III. Conclusion

In conclusion, the Court DENIES the Debtor's Motion in its entirety.

The Trustee shall lodge a conforming order within seven (7) days of the hearing on the Motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Trustee(s):

Timothy Yoo (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 06, 2018

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CONT... Hiep Tan Tran

Wesley H Avery

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 06, 2018

Hearing Room 1568

10:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01507 Yoo v. Tan et al

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01507. Complaint by Timothy J Yoo against Tran Hung Tan. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363 (h)))(Avery, Wesley)

fr. 1-16-18

Docket 1

Tentative Ruling:

2/5/2018

The Court has issued a tentative ruling denying the motion of Hiep Tan Tran, the Debtor in the underlying bankruptcy case, to dismiss his bankruptcy petition. Default has been entered against Tran Hung Tan, the Debtor's brother and the Defendant in this fraudulent transfer action.

The deadline for the Trustee to file a motion for default judgment is **February 23, 2018**. Because default has been entered, the dates previously set in the Court's Scheduling Order are VACATED.

The Trustee shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Los Angeles
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CONT... Hiep Tan Tran

Chapter 7

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Tran Hung Tan

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Central District of California
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Tuesday, February 06, 2018

Hearing Room 1568

10:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01508 Yoo v. Tran

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01508. Complaint by Timothy J Yoo against Hiep Tan Tran. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Avery, Wesley)

FR. 1-16-18

Docket 1

Tentative Ruling:

2/5/2018

The Court has issued a tentative ruling denying the motion of Hiep Tan Tran, the Debtor in the underlying bankruptcy case, to dismiss his bankruptcy petition. Default has been entered against the Debtor in this action to deny the Debtor's discharge.

The deadline for the Trustee to file a motion for default judgment is **February 23, 2018**. Because default has been entered, the dates previously set in the Court's Scheduling Order are VACATED.

The Trustee shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

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Central District of California
Los Angeles
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CONT... Hiep Tan Tran

Chapter 7

Defendant(s):

Hiep Tan Tran

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 06, 2018

Hearing Room 1568

10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#4.00 HearingRE: [73] Motion Notice of Motion and Motion for Order Approving Payment of Administrative Expense and Sale Related Expenses; Memorandum of Points and Authorities and Declaration of Peter Yoon in Support Thereof with Proof of Service

Docket 73

Tentative Ruling:

2/5/2018

For the reasons set forth below, the Court GRANTS the Motion. The Debtor is authorized to pay the Administrative Expenses from the Sale Proceeds.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Approving Payment of Administrative Expense and Sale Related Expenses; Memorandum of Points and Authorities (the "Motion") [Doc. No. 73]
 - a) Notice of Motion for Order Approving Payment of Administrative Expense and Sale Related Expenses with Proof of Service [Doc. No. 74]
- 2) Motion for Sale of Property of the Estate under Section 363(b) (the "Sale Motion") [Doc. No. 36]
 - a) Order Granting Sale Motion (the "Sale Order") [Doc. No. 57]
- 3) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The case was initially assigned to the Hon. Julia W. Brand, but was reassigned to the Hon. Ernest M. Robles on November 8, 2017, as a result of a conflict of interest.

On November 10, 2017, the Debtor filed the "Motion for Sale of Property of the Estate under Section 363(b)" (the "Sale Motion") [Doc. No. 36]. On December 8, 2017, the Court entered the Order Granting the Sale Motion (the "Sale Order") [Doc.

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CONT... Beach Dans, Inc.
No. 57].

Chapter 11

The Motion

On January 9, 2018, the Debtor filed the "Notice of Motion and Motion for Order Approving Payment of Administrative Expense and Sale Related Expenses; Memorandum of Points and Authorities" (the "Motion") [Doc. No. 73]. The sale of the property authorized by the Sale Order closed ahead of schedule on December 28, 2017. Motion at 5. Pursuant to the Sale Order, the Sale Proceeds are being held in Goe & Forsythe, LLP's Trust Account. *Id.* at 6; Yoon Declaration at ¶ 8. The Motion states that the Debtor incurred certain expenses in the Debtor's operation of its business up to the closing of the sale and in connection with the sale for which the Debtor is liable and which constitute administrative expenses. *Id.* The Administrative Expenses are as follows:

- (1) Buyer's DFO, LLC fees in the total amount of \$7,123.46;
- (2) McLane/Meadowbrook Meat Company, food vendor transactions for the period between December 13, 2017 and December 27, 2017, in the total amount of \$10,740.02, *id.*; *see also* Declaration of Peter Yoon ("Yoon Declaration") [Doc. No. 73], Exhibit 10;
- (3) SoCalGas, post-petition utility charges, in the estimated total amount of \$3,500;
- (4) Long Beach Power, post-petition utility charges, in the estimated total amount of \$6,000;
- (5) Verizon/Frontier, phone/internet charges, in the estimated total amount of \$1,100; and
- (6) Athens Trash Management, trash services, in the estimated total amount of \$3,000.

The Motion states that there are sufficient funds in the Estate from the sale proceeds to pay the Administrative Expenses.

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Central District of California
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CONT... Beach Dans, Inc.

Chapter 11

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 503(b) provides in relevant part:

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including –

(1)(A) the actual, necessary costs and expenses of preserving the estate . . .

Section 507 of the Bankruptcy Code gives priority status to "administrative expenses allowed under section 503(b)." A claimant must show that the debt: (1) arose from a transaction with the debtor-in-possession and (2) directly and substantially benefitted the estate. *In re BCE W, L.P.*, 319 F.3d 1166, 1172 (9th Cir. 2003). "The burden of proving an administrative expense claim is on the claimant." *Id.* (citing *Microsoft Corp. v. DAK Indus. (In re DAK Indust.)*, 66 F.3d 1091, 1094 (9th Cir.1995)).

Here, the Court finds that the Debtor has sufficiently shown that the expenses incurred were ordinary and necessary expenses which arose post-petition, and which directly and substantially benefitted the estate. Thus, the claimed Administrative Expenses are allowable under § 503(b), and are entitled to administrative priority under § 507. Moreover, as of the date of this Tentative Ruling, the court has not received any opposition. Pursuant to LBR 9013-1(h), failure to file a timely opposition may be deemed consent to the granting of the motion.

III. Conclusion

In conclusion, based on the foregoing the Court GRANTS the Motion. The Debtor is authorized to pay the administrative expenses from the Sale Proceeds.

The Debtor shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to**

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CONT... Beach Dans, Inc.

Chapter 11

do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 06, 2018

Hearing Room 1568

11:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#100.00 Pre-Trial Conference re [15] Amended Complaint (FIRST) Objecting To Discharge of Debt and Requesting Determination of Nondischargeability

fr: 7-11-17

Docket 0

Tentative Ruling:

2/5/2018

The parties have failed to submit a Joint Pretrial Stipulation as directed by the Court's Order to Comply. The Order to Comply directed Plaintiff to submit a separate proposed Pretrial Stipulation in the event that Defendant refused to cooperate in the preparation of a Joint Pretrial Stipulation. Plaintiff has failed to comply with this requirement.

By separate order, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute.

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Represented By
Raymond H. Aver

Nadeen AbouZanad Dorian

Represented By
Raymond H. Aver

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

11:00 AM

CONT... Robert Bassem Dorian

Chapter 7

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 06, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#101.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr, 12-12-17

fr. 1-23-18

Docket 1

***** VACATED *** REASON: CONTINUED 2-21-18 AT 11:00 A.M.**

Tentative Ruling:

12/11/2017

This status conference is CONTINUED to January 23, 2018, at 11:00 a.m., to take place concurrently with Defendant's motion to set aside default. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By

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Hearing Room 1568

11:00 AM

CONT... Blue Global, LLC

Chapter 7

Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, February 06, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC et

#102.00 Hearing
RE: [18] Defendant's Motion to Set Aside Default [Federal Rule of Bankruptcy
Procedure 55(c)] -

fr. 1-23-18

Docket 18

***** VACATED *** REASON: CONTINUED 2-21-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Soundside Holdings, LLC

Represented By
J Scott Bovitz

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 07, 2018

Hearing Room 1568

11:00 AM

2:15-21624 Harry Roussos

Chapter 7

#1.00 HearingRE: [921] Motion to Approve Compromise Under Rule 9019 Chapter 7 Trustee's Motion for Order Authorizing and Approving "Stipulation by and Between Howard M. Ehrenberg, Chapter 7 Trustee, and CIT Bank, N.A., f/k/a OneWest Bank, N.A. Regarding Allowance of Secured Claim and Authorization for Payment From Escrow" Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure; Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

Docket 921

Tentative Ruling:

2/6/2018

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Authorizing and Approving "Stipulation By and Between Howard M. Ehrenberg, Chapter 7 Trustee, and CIT Bank, N.A., f/k/a OneWest Bank, N.A. Regarding Allowance of Secured Claim and Authorization for Payment from Escrow" Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Motion") [Doc. No. 921]
 - a) Notice of [Motion] [Doc. No. 922]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of a stipulation (the "Stipulation") between the Trustee and CIT Bank, N.A. ("CIT") providing for the compromise of CIT's secured claim.

On February 20, 1992, CIT's predecessor-in-interest extended a loan, in the amount of \$2.6 million, to Theodosios and Harry Roussos (collectively, the "Roussos Brothers"). The loan was secured by property located at 153 San Vicente Boulevard, Santa Monica, CA 90402 (the "San Vicente Property"). The loan is evidenced by a Promissory Note and Deed of Trust (the Note and Deed of Trust collectively, the "Loan"), which provides that CIT is entitled to recover attorneys' fees incurred in

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CONT... Harry Roussos

Chapter 7

litigation affecting the San Vicente Property or CIT's security interest therein. In its proof of claim, CIT asserts an entitlement to post-petition attorneys' fees and costs in excess of \$200,000.

On May 24, 2017, the Court entered an order approving the Trustee's sale of the San Vicente Property for \$23.8 million. The sale closed on July 25, 2017. The Trustee has paid CIT \$736,708.78 from escrow to satisfy the Loan's remaining principal balance (excluding attorneys' fees and costs). Because the parties could not agree upon the amount of attorneys' fees, costs, and other ancillary charges to which CIT was entitled, the parties agreed to hold back an additional \$235,287.93 in escrow.

The Trustee subsequently objected to CIT's claim for attorneys' fees and costs based upon CIT's refusal to submit its billing records to the Trustee for review. The Trustee asserted that it was impossible to evaluate the reasonableness of the claimed attorneys' fees without reviewing the billing records. CIT argued that it was not required to submit its billing records to the Trustee because the records were protected by the attorney-client and work product privileges.

On September 29, 2017, the Court entered an order referring the dispute to mediation before recalled United States Bankruptcy Judge Thomas B. Donovan. Shortly before the scheduled mediation, the Trustee and CIT reached an agreement providing for the settlement of CIT's claim. Specifically, CIT has agreed to accept \$150,000 in full and final satisfaction of its claims against the estates. The Trustee seeks approval of the Stipulation memorializing the compromise pursuant to Bankruptcy Rule 9019. No opposition to the Motion has been filed.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest

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Wednesday, February 07, 2018

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11:00 AM

CONT... Harry Roussos

Chapter 7

point in the range of reasonableness." *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the settlement is adequate, fair, and reasonable, and are in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the settlement. No creditors have objected to approval of the settlement. The settlement benefits creditors by reducing CIT's allowed claim by approximately \$85,000—from \$235,287.93 to \$150,000.

Difficulties to Be Encountered in the Matter of Collection

This factor does not apply.

Complexity of the Litigation

This factor weighs in favor of approving the settlement. If the Court declined to approve the settlement, CIT's post-petition attorneys' fees and expenses would continue to increase. The settlement agreement prevents additional fees from accruing.

Probability of Success on the Merits

This factor weighs in favor of approving the settlement. As an oversecured creditor, CIT is entitled to receive "any reasonable fees, costs, or charges provided for under" the Loan under which its claim arises, pursuant to §506(b). The Trustee's opposition to CIT's attorneys' fees was predicated upon CIT's failure to provide its complete billing records. The Trustee's position was that it was impossible to verify whether CIT's fees were reasonable absent a review of CIT's complete billing records. However, although CIT has not produced its complete billing records, it has provided a detailed description of the legal work it undertook in connection with its claim. In other words, the record is not entirely devoid of evidence in support of CIT's contention that its fees are reasonable. Therefore, it is not likely that the Trustee could succeed in disallowing CIT's claim for attorneys' fees in its entirety, as the Trustee had originally sought to do. The settlement, which reduces CIT's attorneys' fees and costs by approximately \$85,000, is reasonable. This is not a situation where the Trustee has reached a quick settlement simply to avoid litigation.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Trustee

**United States Bankruptcy Court
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Wednesday, February 07, 2018

Hearing Room 1568

11:00 AM

CONT... Harry Roussos

Chapter 7

shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

United States Bankruptcy Court
Central District of California
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Thursday, February 08, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#1.00 Hearing
RE: [31] Motion to Avoid Lien JUDICIAL LIEN with POWELL INDUSTRIES

Docket 31

*** VACATED *** REASON: PER ORDER ENTERED 1-31-18

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, February 08, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#2.00 Hearing
RE: [34] Motion to Avoid Lien JUDICIAL LIEN with LA FINANCIAL FCU

Docket 34

*** VACATED *** REASON: PER ORDER ENTERED 1-31-18

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, February 08, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#3.00 Hearing
RE: [33] Motion to Avoid Lien JUDICIAL LIEN with FINANCIAL PACIFIC
LEASING

Docket 33

***** VACATED *** REASON: PER ORDER ENTERED 1-31-18**

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

United States Bankruptcy Court
Central District of California
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Thursday, February 08, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#4.00 Hearing
RE: [32] Motion to Avoid Lien JUDICIAL LIEN with EMAN COUNTS

Docket 32

*** VACATED *** REASON: PER ORDER ENTERED 1-31-18

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, February 12, 2018

Hearing Room 1568

10:00 AM

2:18-10204 Henry Richard Miller, Jr. and Peter Atthaphol

Chapter 7

#1.00 HearingRE: [15] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Fraud. # 5 Exhibit 2 (part 2 of 2) # 6 Exhibit 3) (Bryner, Candice)

Docket 15

Tentative Ruling:

2/8/2018

The Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against Debtors or estate property. The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 15]
- 2) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Henry Richard Miller, Jr., and Peter Atthaphol Wisuthsuraphol (the "Debtors") filed a voluntary Chapter 7 petition on January 6, 2018 (the "Petition") [Doc. No. 1]. On January 16, 2018, Khaled M. Ahmed and M&K General Merchandise, LLC (the "Movants") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 15].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movants may proceed under applicable nonbankruptcy law to enforce their remedies to proceed to final judgment in the nonbankruptcy forum in an action currently pending in the

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CONT... Henry Richard Miller, Jr. and Peter Atthaphol

Chapter 7

Superior Court of California, County of Los Angeles, captioned *Jong W. Park v. Khaled M. Ahmed, et al.*, Case No. BC567940 (the "State Court Action"). The Movant, Khaled M. Ahmed, is a named defendant in the State Court Action, and Cross-Complainant. The Movant, M&K General Merchandise is a defendant in the State Court Action. The Movants contend that the Debtor, Henry Richard Miller, Jr. ("Mr. Miller"), is an "indispensable witness regarding the claims involving the other parties . . ." in the State Court Action. Motion at 4. The State Court Action was filed on December 29, 2014. Trial is scheduled to begin on February 20, 2018, and is estimated to require 15 days of trial/hearings. The State Court Action involves a dispute concerning the sale of certain real estate. The Complaint in the State Court Action against the Movants asserts claims for: Rescission & Restitution; Fraudulent Suppression; Promissory Fraud; Breach of Contract; Breach of Implied Covenant; Conversion; Violation of Civil Code 1950.7; and Fraudulent Transfer. The Cross-Complaint in the State Court Action filed by the Movant, Khaled M. Ahmed, asserts claims for: Fraudulent Misrepresentation; Concealment; and Negligent Misrepresentation. The Cross-Complaint alleges, among other things, that the Cross-Defendants, Ludger Mercier and DMY Far East Enterprises, Inc. ("DMY") were under the direct management and supervision of Mr. Miller who was also a purported broker. "Supplemental to the Motion" ("Supplemental") [Doc. No. 15-1] at 1. Mr. Miller is alleged to be the sole owner and principal of DMY. *Id.* at 2. Movants noticed the deposition of DMY to take place in December 2017; however, Mr. Miller refused to appear or designate a corporate representative to appear at DMY's deposition. *Id.* The Movants filed a Motion to Compel which was scheduled for hearing on January 23, 2018. Neither Mr. Miller nor DMY opposed the Motion to Compel. The Movants contend that rather than opposing the Motion to Compel, Mr. Miller and the Joint-Debtor, Mr. Wisuthsuraphol, filed the Petition. *Id.* at 3.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The State Court Action can be tried more expeditiously in the nonbankruptcy forum. The State Court Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.
- (2) The bankruptcy case was filed in bad faith specifically to delay or interfere with the prosecution of the State Court Action. The timing of

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CONT...

Henry Richard Miller, Jr. and Peter Atthaphol

Chapter 7

the filing of the Petition indicates it was intended to delay or interfere with the State Court Action, based upon the fact that the Petition was filed approximately one month before trial in the State Court Action which has been pending for over 3 years. The Petition was filed just prior to a hearing regarding whether Mr. Miller should be sanctioned for refusing to attend a deposition on behalf of non-debtor Cross-Defendant DMY.

The Motion seeks an order: (1) terminating the automatic stay; (2) permitting the Movants to proceed to judgment in the State Court Action, along with Mr. Miller's co-defendants Ludger Mercier, Jong Park and DMY; and/or (3) permitting Movants to subpoena Mr. Miller to appear as a witness and cross examine him during the trial in the State Court Action. Supplemental at 1.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the

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CONT... Henry Richard Miller, Jr. and Peter Atthaphol

Chapter 7

following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing Movants to continue the intended state court complaint will best promote the judicial economy by adjudicating and entering a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint. If a state court judgment is entered against the Debtors or either one of them, and if the Movant herein later seeks to have that judgment held nondischargeable in this court, clear findings and conclusions must be rendered sufficient to meet the standards under 11 U.S.C. section 523.

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to

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CONT... Henry Richard Miller, Jr. and Peter Atthaphol Chapter 7

final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movants will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

All other relief is denied.

The Movants shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Henry Richard Miller Jr.

Represented By
Edwin A Barnum

Joint Debtor(s):

Peter Atthaphol Wisuthsuraphol

Represented By
Edwin A Barnum

Trustee(s):

Carolyn A Dye (TR)

Represented By

**United States Bankruptcy Court
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Monday, February 12, 2018

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10:00 AM

CONT...

Henry Richard Miller, Jr. and Peter Atthaphol
Edwin A Barnum

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, February 12, 2018

Hearing Room 1568

10:00 AM

2:17-25733 Hae Sik Kang

Chapter 7

#2.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11441 Gonsalves Street, Cerritos, CA 90703 . (Weifenbach, Diane)

Docket 12

Tentative Ruling:

2/8/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Gloria A. Rocha in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

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10:00 AM

CONT... Hae Sik Kang

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Hae Sik Kang

Pro Se

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:14-10910 Matthew Messingham

Chapter 7

Adv#: 2:14-01525 Krasnoff, Ch 7 Trustee v. Roberts

#1.00 Status Hearing re Documentation of Settlement Agreement

FR. 5-16-17; 7-11-17, 8-15-17; 9-12-17; 12-12-17

Docket 0

***** VACATED *** REASON: Adversary Dismissed 2/7/2018**

Tentative Ruling:

12/11/2017

For the reasons set forth in the concurrently issued order, this status conference is CONTINUED to February 13, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Defendant(s):

Julie Hein Roberts

Represented By
Michael D Kwasigroch

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

Plaintiff(s):

Brad D Krasnoff, Ch 7 Trustee

Represented By
Diane C Weil

Trustee(s):

Brad D Krasnoff (TR)

Represented By

**United States Bankruptcy Court
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Tuesday, February 13, 2018

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10:00 AM

CONT... Matthew Messingham

Diane C Weil

Chapter 7

**United States Bankruptcy Court
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:14-10910 Matthew Messingham

Chapter 7

Adv#: 2:16-01017 Krasnoff v. Roberts

#2.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01017. Complaint by Brad D. Krasnoff against Julie Hein Roberts. (Charge To Estate). Complaint: (1) To Avoid And Recover Preferential Transfer Pursuant To 11 U.S.C. § 547(b); (2) To Recover Preferential Transfer Pursuant To 11 U.S.C. § 550(a); And (3) To Preserve Transfer Pursuant To 11 U.S.C. § 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Weil, Diane)

FR. 12-12-17

FR. 7-11-17, 8-15-17

FR. 5-16-17; 9-12-17

Docket 1

***** VACATED *** REASON: Adversary Dismissed 2/7/2018**

Tentative Ruling:

12/11/2017

For the reasons set forth in the concurrently issued order, this status conference is CONTINUED to February 13, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Defendant(s):

Julie Hein Roberts

Represented By
Michael D Kwasigroch

**United States Bankruptcy Court
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10:00 AM

CONT... Matthew Messingham

Chapter 7

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

Plaintiff(s):

Brad D. Krasnoff

Represented By
Diane C Weil

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

**United States Bankruptcy Court
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

Adv#: 2:16-01436 Ehrenberg v. Montano, Jr. et al

#3.00 Cont'd Status conference re Complaint for Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548 and 550(a)

(transferred from Judge Donovan to Judge Robles)

fr. 11-16-16, 1-18-17, 3-8-17; 4-19-17; 8-15-17; 10-17-17; 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED 1-18-18**

Tentative Ruling:

12/11/2017

The Trustee has filed a motion for approval of a settlement agreement resolving this action. Pursuant to the stipulation between the Trustee and the Defendant, this status conference is CONTINUED to February 13, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Defendant(s):

Arnold Montano, Jr.

Represented By
Steven Ibarra

Michael Montano

Represented By
Steven Ibarra

Plaintiff(s):

Howard M Ehrenberg

Represented By
Elissa Miller
Jason Balitzer

**United States Bankruptcy Court
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10:00 AM

CONT... Arnold Montano

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#4.00 Status Hearing RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. This matter has settled, the settlement payment has been made, and the Trustee is in the process of preparing a motion to obtain Court approval of the settlement. A continued status conference will be held on **April 17, 2018, at 10:00 a.m.** The status conference will go off calendar if the settlement is approved.

The dates previously set by the Court in the Scheduling Order issued on November 1, 2017 [Doc. No. 12] are VACATED. Within seven days of the hearing, the Trustee shall submit a conforming order.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... West Coast Psychiatry Inc.

Lindsey L Smith

Chapter 7

**United States Bankruptcy Court
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17

Docket 1

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. On November 16, 2017, the Court entered an order staying this adversary proceeding pending the completion of Defendant's appeal of the state court judgment giving rise to the indebtedness alleged to be non-dischargeable. The appeal was argued and submitted on January 25, 2018. The parties anticipate a decision by the end of April 2018.

A continued status conference will take place on **May 15, 2018, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the appeal, must be submitted by no later than fourteen days prior to the hearing.

Plaintiff shall submit an order continuing the status conference within seven days of the hearing.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By

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10:00 AM

CONT... John Martin Kennedy

Chapter 7

Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#6.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17

Docket 0

Tentative Ruling:

2/12/2018

Pleadings Filed and Reviewed

- Reorganized Debtor's Post Confirmation Status Report ("Status Report") [Doc. No. 323]

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **August 14, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. The continued status conference will be vacated if a final decree is entered before the date of the continued status conference.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

**United States Bankruptcy Court
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

- #7.00** Status Hearing RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

Docket 1

Tentative Ruling:

2/12/2018

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) (Richards, Jeremy)

FR. 12-12-17; 1-16-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-13-18 aAT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Pro Se

Lantern Brands, Inc., a California

Pro Se

TT Investment Los Angeles Fund I,

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

CONT...

Liberty Asset Management Corporation

Gail S Greenwood

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01525 Official Unsecured Creditors Committee for Liberty v. Tsang et al

#9.00 Status Hearing RE: [1] Adversary case 2:17-ap-01525. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Steven Tsang, Cathy Tsang, ELSV LLC. (14 (Recovery of money/property - other)) (Greenwood, Gail)

Docket 1

Tentative Ruling:

2/12/2018

Defendants do not consent to entry of final judgment by the Bankruptcy Court in this fraudulent conveyance action. *See Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012) (holding that absent consent of all the parties, the Bankruptcy Court lacks constitutional authority to enter final judgment in a fraudulent conveyance action). The Court will prepare and transmit to the District Court a Report and Recommendation; final judgment will be entered by the District Court.

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates previously ordered shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be

**United States Bankruptcy Court
Central District of California
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

- heard is the next closest date which is available for self calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Sandford L. Frey

Defendant(s):

Steven Tsang Pro Se

Cathy Tsang Pro Se

ELSV LLC Pro Se

David Tsang Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01540 Liberty Asset Management Corporation v. Pan

#10.00 Status Hearing RE: [1] Adversary case 2:17-ap-01540. Complaint by Liberty Asset Management Corporation against Yonggan Pan. (Fee Not Required). / Complaint for: (1) Slander of Title; (2) Disallowance of Claim [11 U.S.C. § 502(b); (3) Avoidance of Lien; [FRBP 7001] (4) Declaratory Relief; (5) Violation of Cal. Civ. Code § 2943; (6) Punitive Damages; and (7) Attorneys' Fees and Costs (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (91 (Declaratory judgment)),(81 (Subordination of claim or interest)) (Golubchik, David)

Docket 1

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. Plaintiff has filed a Motion for Default Judgment which is set for hearing on February 22, 2018. A continued status conference will be held on **April 17, 2018, at 10:00 a.m.** The continued status conference will go off calendar in the event default judgment is entered.

Plaintiff shall submit an order continuing the status conference within seven days of the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Yonggan Pan

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Plaintiff(s):

Liberty Asset Management

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#11.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Oganessian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

Docket 1

***** VACATED *** REASON: CONTINUED 4-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman

Pro Se

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Pro Se

Hassan Mahmoudi

Pro Se

Howard Miller

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Rideshare Port Management, LLC Chapter 11

Jose Diaz Pro Se

Juan Martinez Pro Se

Kaushaal Laxmee Pro Se

Raymond Moradian Pro Se

Roberto Martinez Pro Se

Ronaldo Ramos Pro Se

Valo Khalatian Pro Se

Vince Olivar Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#100.00 Pre-Trial Conference: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 7-18-13; 10-17-13; 3-6-14; 5-8-14; 7-10-14; 10-16-14; 1-22-15; 5-12-15; 9-15-15; 1-12-16; 4-12-16; 3-14-17; 7-11-17; 9-12-17; 11-14-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

UNION BANK, N.A., a national Pro Se

Plaintiff(s):

JASON M. RUND Represented By
Ronald P Abrams

Trustee(s):

Jason M Rund (TR) Pro Se

Jason M Rund (TR) Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:13-32201 Darra Cleveland

Chapter 7

Adv#: 2:17-01167 Cleveland v. Educational Credit Management Corp. et al

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01167. Complaint by Darra Cleveland against Educational Credit Management Corp., Deutsche Bank ELT Navient & SLM Trusts, JP Morgan Chase N.A., CITIBANK ELT STUDENT LOAN CORP, Wells Fargo ELT Navient Student Loan Trust, U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

FR. 8-15-17

Docket 1

***** VACATED *** REASON: CONTINUED 4-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darra Cleveland

Represented By
Jennifer Ann Aragon
Christine A Kingston

Defendant(s):

Educational Credit Management	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
JP Morgan Chase N.A.	Pro Se
CITIBANK ELT STUDENT LOAN	Pro Se
Wells Fargo ELT Navient Student	Pro Se
U.S. Department of Education	Pro Se

Plaintiff(s):

Darra Cleveland

Represented By

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

CONT... Darra Cleveland

Christine A Kingston

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01051 Goodrich v. Corra Technology, Inc. a New Jersey corporation

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01051. Complaint by David M. Goodrich against Corra Technology, Inc. a New Jersey corporation. (Charge To Estate).
Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

*** VACATED *** REASON: DISMISSED 11-7-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Corra Technology, Inc. a New Jersey

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01052 Goodrich v. Costar International Enterprises, Inc. a Californi

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01052. Complaint by David M. Goodrich against Costar International Enterprises, Inc. a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 9-12-17

Docket 1

*** VACATED *** REASON: DISMISSED 11-13-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Costar International Enterprises, Inc.

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01063 Goodrich v. G & H Textiles Trading, Inc., a California corpora

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01063. Complaint by David M. Goodrich against G & H Textiles Trading, Inc., a California corporation. (Charge To Estate).
Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. The Court has approved a settlement of this action. The Trustee anticipates that the settlement payment will be made within the next two weeks.

A status conference to monitor consummation of the settlement will be held on **April 17, 2018, at 10:00 a.m.** The status conference will go off calendar in the event that the settlement payment is made and the action is dismissed. The Trustee shall submit an order with respect to the status conference within seven days of the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

G & H Textiles Trading, Inc., a

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

CONT... Shasa USA LLC

Chapter 7

Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01067 Goodrich v. KC Exclusive, Inc., a California corporation, d/b/

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01067. Complaint by David M. Goodrich against KC Exclusive, Inc., a California corporation, d/b/a Zenana. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

***** VACATED *** REASON: DISMISSED 9-7-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

KC Exclusive, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01076 Goodrich v. Gre-Ter Enterprises, Inc., an Indiana corporation,

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01076. Complaint by David M. Goodrich against Gre-Ter Enterprises, Inc., an Indiana corporation, d/b/a Management Recruiters of Indianapolis-North. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 9-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 12-22-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Gre-Ter Enterprises, Inc., an Indiana

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01078 Goodrich v. MDG Brands, Inc., a New York corporation, d/b/a Fi

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01078. Complaint by David M. Goodrich against MDG Brands, Inc., a New York corporation, d/b/a Finesse Novelty Corp.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-21-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

MDG Brands, Inc., a New York

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01086 Goodrich v. Noble U, a California corporation

#108.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01086. Complaint by David M. Goodrich against Noble U, a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. The Court has approved a settlement of this action. Pursuant to the settlement, Defendant commenced making payments on October 1, 2017, and will continue making payments through and including September 1, 2019.

A status conference to monitor consummation of the settlement will be held on **October 16, 2018, at 10:00 a.m.** The status conference will go off calendar in the event that the settlement payment is made and the action is dismissed. The Trustee shall submit an order with respect to the status conference within seven days of the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Noble U, a California corporation

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

CONT... Shasa USA LLC

Chapter 7

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01088 Goodrich v. Odin Fashion Corp., a New York corporation

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01088. Complaint by David M. Goodrich against Odin Fashion Corp., a New York corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

*** VACATED *** REASON: DISMISSED 11-15-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Odin Fashion Corp., a New York

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01089 Goodrich v. Patzzi, Inc. a California corporation, d/b/a Codig

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01089. Complaint by David M. Goodrich against Patzzi, Inc. a California corporation, d/b/a Codigo. (Charge To Estate).
Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

*** VACATED *** REASON: DISMISSED 11-6-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Patzzi, Inc. a California corporation,

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01094 Goodrich v. Shoe Magnate, Inc., a California corporation

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01094. Complaint by David M. Goodrich against Shoe Magnate, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 11-20-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shoe Magnate, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01105 Goodrich v. Vivace Design, Inc., a California corporation

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01105. Complaint by David M. Goodrich against Vivace Design, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17

Docket 1

Tentative Ruling:

2/12/2018

This action has been voluntarily dismissed. This hearing is vacated and no appearances are required.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Vivace Design, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

CONT... Shasa USA LLC

Chapter 7

Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01115 Goodrich v. Shanghai Jingtong International Trading Co.

#113.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: PER 8-15-17 STATUS CONFERENCE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01116 Goodrich v. Zhejiang Shindai Sanshun Trading Co.

#114.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01116. Complaint by David M. Goodrich against Zhejiang Shindai Sanshun Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: DISMISSED 9-29-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Zhejiang Shindai Sanshun Trading

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:17-11911 Dicran Garo Kuftedjian

Chapter 7

Adv#: 2:17-01287 Parts Network, Inc. v. Kuftedjian et al

#115.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01287. Complaint by Parts Network, Inc. against Dicran Garo Kuftedjian, Linda Torikian Kuftedjian. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Avanesian, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Defendant(s):

Dicran Garo Kuftedjian

Pro Se

Linda Torikian Kuftedjian

Pro Se

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Plaintiff(s):

Parts Network, Inc.

Represented By
Michael Avanesian

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#116.00 Pre-Trial Conference
RE: [193] **SECOND AMENDED COUNTERCLAIM** by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, ROES 21 through 40 -

Docket 193

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#117.00 Pre-Trial Conference

RE: [158] First Amended-, Counterclaim by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, Roes 1 through 20, inclusive (Yan, James)

FR. 12-12-17

Docket 158

***** VACATED *** REASON: SECOND AMENDED COUNTERCLAIM
FILED 5-26-17 [D.E. 193]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#118.00 Pre-Trial Conference

RE: [143] Amended Cross-claim by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk, ROES 21 through 40. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian) CORRECTION: Complaint not signed. Attorney to file Original Signature; Modified on 1/19/2016 (Lomeli, Lydia R.). (Landsberg, Ian)

FR. 10-17-17

Docket 143

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#119.00 Pre-Trial Conference

RE: [142] Second Amended Complaint by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against HCL 2011, LLC a California limited liability company. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian)

FR. 10-17-17

Docket 142

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#120.00 Pre-Trial Conference
RE: [176] Crossclaim CRYSTAL WATERFALLS LLCS SECOND AMENDED
CROSSCLAIM AGAINST BENJAMIN KIRK AKA BENNY KIRK AND TSAI-
LUAN HO AKA SHELBY HO by Crystal Waterfalls, LLC a California limited
liability company against Shelby Ho, Benjamin Kirk (Landsberg, Ian)

Docket 176

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#121.00 Pre-Trial Conference
RE: [52] Counterclaim by Trueerp, INC against BBeautiful, LLC

Docket 52

***** VACATED *** REASON: AMENDED COUNTERCLAIM FILED 6-1
-17 [D.E. 63]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

Defendant(s):

Trueerp, INC

Represented By
Jonathan L Gerber
Maxwell M Blecher

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Jonathan L Gerber

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#122.00 Pre-Trial Conference
RE: [63] AMENDED COUNTERCLAIM by Trueerp, INC against BBeautiful, LLC

Docket 63

Tentative Ruling:

2/12/2018

Judgment has been entered in this action. This hearing is vacated and no appearances are required.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

Defendant(s):

Trueerp, INC

Represented By
Jonathan L Gerber
Maxwell M Blecher

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Jonathan L Gerber

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, February 13, 2018

Hearing Room 1568

11:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#123.00 Pre-Trial Conference
RE: [1] Adversary case 2:16-ap-01403. Complaint by BBeautiful, LLC against Trueerp, INC . (Fee Not Required). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))
(Cowan, Sarah)

Docket 1

Tentative Ruling:

2/12/2018

Judgment has been entered in this action. This hearing is vacated and no appearances are required.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger

Defendant(s):

Trueerp, INC

Pro Se

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Maxwell M Blecher

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:12-36594 Fusione, Inc.

Chapter 11

#1.00 Post Confirmation status conference re [216]

FR. 2-17-15; 2-19-15; 9-9-15; 11-17-15; 2-17-16; 6-14-17; 10-11-17

Docket 0

Tentative Ruling:

2/13/2018

Pleadings Filed and Reviewed:

· Post-Confirmation Status Report No. 5 ("Status Report") [Doc. No. 296]

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **August 14, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

Fusione, Inc.

Represented By
Marta C Wade
Sandford Frey
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#2.00 Hearing
RE: [384] Debtor's Amended Disclosure Statement

FR. 6-14-17; 10-18-17

Docket 384

Tentative Ruling:

2/13/2018

Hearing required.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#3.00 Hearing re [77] *Disclosure Statement Describing Chapter 11 Plan Of Reorganization Dated June 21, 2017 Of Radiology Support Devices*

fr. 8-8-17; 9-12-17; 11-15-17; 12-13-17; 1-3--18

Docket 0

Tentative Ruling:

2/13/2018

This hearing is VACATED and no appearances are required. The Court sets the following deadlines for the filing of the First Amended Disclosure Statement and Plan:

- (1) The deadline for the Debtor to file an Amended Disclosure Statement and Plan is **March 21, 2018**.
- (2) The hearing on the Amended Disclosure Statement will be on **April 18, 2018 at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Second Stipulation between Debtor and Wilmington Associates for Chapter 11 Plan Treatment of Claim and Assumption of Lease (the "Second Wilmington Stipulation") [Doc. No. 193]
 - a) Order Granting the Second Wilmington Stipulation [Doc. No. 198]
- 2) Stipulation for Chapter 11 Plan Treatment of Claim of the Internal Revenue Service (the "IRS Stipulation") [Doc. No. 177]
 - a) Order Approving the IRS Stipulation [Doc. No. 181]
- 3) Order Granting Motion for Order to Disallow Claim of Michael Kohrman (Claim #8) [Doc. No. 185]
- 4) Order Granting Motion for Order to Disallow Late Filed Claim of Chawalit

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

CONT... Radiology Support Devices, Inc. Chapter 11

- Krautim (Claim #10) [Doc. No. 170]
- 5) Order Granting Motion for Order to Disallow Late Filed Claim of Daniel Krautim (Claim #39) [Doc. No. 152]
 - 6) Disclosure Statement Describing Chapter 11 Plan of Reorganization Date June 21, 2017 of Radiology Support Devices, Inc. ("Disclosure Statement" or "DS") [Doc. No. 77]
 - 7) Chapter 11 Plan of Reorganization Date June 21, 2017 of Radiology Support Devices, Inc. ("Plan") [Doc. No. 79]

I. Background

The Court has entered Orders approving the following stipulations providing for Plan treatment of certain Claims:

- (1) On February 7, 2018, the Court entered the "Order Granting Second Stipulation between Debtor and Wilmington Associates for Chapter 11 Plan Treatment of Claim and Assumption of Lease" [Doc. No. 198]. *See also* "Second Stipulation between Debtor and Wilmington Associates for Chapter 11 Plan Treatment of Claim and Assumption of Lease" (the "Second Wilmington Stipulation") [Doc. No. 193].
- (2) On January 4, 2018, the Court entered the "Order Granting Stipulation for Chapter 11 Plan Treatment of Claim of the Internal Revenue Service" [Doc. No. 181]. *See also* "Stipulation for Chapter 11 Plan Treatment of Claim of the Internal Revenue Service" (the "IRS Stipulation") [Doc. No. 177].

Each respective Stipulation contains a provision stipulating that the Debtor will file a First Amended Disclosure Statement and Plan to provide for, and set forth the stipulated treatment of, the respective allowed claim. *See* Second Wilmington Stipulation at 3; IRS Stipulation at 4.

II. Conclusion

Based on the foregoing, the Court sets the following deadlines for the filing of the First Amended Disclosure Statement and Plan:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

CONT... Radiology Support Devices, Inc.

Chapter 11

(1) The deadline for the Debtor to file an Amended Disclosure Statement and Plan is **March 21, 2018**.

(2) The hearing on the Amended Disclosure Statement will be on **April 18, 2018 at 10:00 a.m.**

The Court will prepare the Order.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:17-24053 Katie May McKay

Chapter 7

#4.00 Hearing re [10] Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments

Docket 0

***** VACATED *** REASON: 2/9/2018 order signed vacated matter**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katie May McKay

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#5.00 Hearing re [120] Objection to Claim #2 by Claimant Department of the Treasury - Internal Revenue Service

Docket 0

***** VACATED *** REASON: CONTINUED 3-14-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#6.00 Hearing re [113] Objection to Claim #4 by Claimant Rainbow International of Van Nuys

Docket 0

Tentative Ruling:

2/13/2018

The Debtor's Claim Objection involves disputed issues of material fact that must be resolved by way of a trial at which live witness testimony will be taken. As set forth below, trial will take place during the week of **8/27/2018**.

Pleadings Filed and Reviewed:

- 1) Debtor's Objection to Claim #4 by Rainbow International of Van Nuys, in the Amount of \$16,149.96 (the "Claim Objection") [Doc. No. 113]
- 2) Rainbow International of Van Nuys' Response to Debtor's Objection to its Proof of Claim (the "Opposition") [Doc. No. 133]
- 3) Debtor's Reply Memorandum in Support of His Objection to Claim #4 by Rainbow International of Van Nuys, in the Amount of \$16,149.96 (the "Reply") [Doc. No. 136]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). Doc. No. 62 (the "Sale Order"). As ordered by the Court, the sales proceeds of the Residence are currently being held on deposit in the Court's registry.

Rainbow International of Van Nuys ("Rainbow") asserts an unsecured claim in the amount of \$16,149.96, based upon water remediation and repair services that

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, February 14, 2018

Hearing Room 1568

10:00 AM

CONT...

John Fuchs

Chapter 11

Rainbow performed after a flood occurred at the Residence. Debtor asserts that Rainbow's claim should be disallowed in its entirety.

The Debtor's Claim Objection

The Debtor makes the following arguments and representations in support of his objection to Rainbow's claim:

On July 27, 2015, a massive flood occurred at the Residence. The Debtor was instructed by his home insurer, State Farm, to retain Rainbow to remediate the standing water, and to retain Service Masters Professional Restoration ("Service Masters") for repair work. The Debtor later discovered that State Farm had existing relationships with Service Masters and Rainbow, because they provided lower bids than other contractors.

At the direction of State Farm, the Debtor retained Rainbow to perform the following four tasks:

- 1) Inspect every room at the Residence to determine the extent of the water damage so that a proper repair estimate could be prepared by Service Masters.
- 2) Remove water-damaged carpeting, subfloors, drywall, and other damaged property, and install floor protection in the undamaged parts of the Residence to prevent the migration of mold and moisture.
- 3) "Pack-out" the damaged and undamaged furniture and other personal property and place it in storage until the repairs were completed.
- 4) "Pack-back" the undamaged items once repairs were completed.

As a result of Rainbow's failure to adequately perform these tasks, the Debtor sustained damages as follows:

- 1) As a result of Rainbow's failure to adequately inspect all affected rooms, the Debtor did not discover water damage in the garage and laundry room until two months after the flood. Because of the delay in the discovery of the damage, State Farm refused to pay the claim, and the Debtor was required to pay \$10,000 out of pocket to make necessary repairs. The Debtor ultimately obtained payment on the claim from State Farm, but only after incurring legal fees in excess of \$25,000.
- 2) Rainbow refused to provide the report generated from its inspections, which the Debtor needed for the bad faith lawsuit that he commenced against State Farm. As a result of Rainbow's failure to provide the report, the Debtor was unable to demonstrate the extent of the water damage as of the day of the flood

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- to State Farm. Consequently, State Farm denied the Debtor's claims for damage to \$41,000 worth of furniture and \$48,000 worth of electronics.
- 3) Rainbow began the demolition and removal of water-damaged property before testing for mold. A day or two after Rainbow began the demolition process, the Debtor was advised by the contractor who constructed the Residence that immediate demolition could cause mold to become airborne and spread to areas undamaged by the flood. When the Residence was sold two years later, the Debtor was required to give the purchasers a \$10,000 credit to remediate mold that was still present. Rainbow's negligent conduct in commencing immediate demolition without first determining the presence of mold was most likely responsible for exacerbating the mold damage. The Debtor's spouse contracted pneumonia for eight months as a result of the mold. Rainbow's claim should be reduced by \$5,000 as compensation for its negligent conduct.
 - 4) Rainbow failed to provide sufficient protection for the undamaged carpets and wood flooring while its workers performed the pack-out and pack-in. As a result, most of the existing carpeting on the first and second floors had to be steam-cleaned at a cost of \$400, and the hardwood floors had to be sanded and refinished.

In view of the damages sustained by the Debtor as a result of Rainbow's negligence, Rainbow's claim of \$16,149.96 should be disallowed in its entirety.

Rainbow's Opposition to the Debtor's Claim Objection

Rainbow makes the following arguments and representations in its Opposition to the Debtor's Claim Objection:

The Debtors did not allow Rainbow's employees to access certain portions of the Residence. Specifically, the Debtors did not permit employees to access the garage or laundry room. Therefore, it was impossible for Rainbow to discover the water damage in these areas.

Rainbow's employees did not damage the carpeting or hardwood floors during the pack-out and pack-in. Rainbow never received any complaints about the work it performed at any time during the pack-out or pack-in.

At no time was Rainbow hired by or instructed by State Farm.

The Debtor's Reply in Support of the Claim Objection

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The Debtor makes the following arguments and representations in his Reply to Rainbow's Opposition:

Rainbow falsely states that the Debtor refused to allow its employees access to certain areas of the Residence. Rainbow's own contract, which is attached to its claim, states that "[o]ccupant agrees to provide full and unrestricted access to the Job Site Address to RAINBOW INTERNATIONAL employees, agents and subcontractors, and their vehicles and equipment." Pictures taken by the Debtor to document the flood damage show that the door to the laundry room is wide open and that Rainbow had started the process of removing damaged carpeting from the first floor hallway, some of which is at the entrance to the laundry room.

II. Findings of Fact and Conclusions of Law

Adjudicating the Claim Objection requires the Court to make findings with respect to a material factual dispute—namely, whether the Debtor permitted Rainbow's employees access to the laundry room and garage. This issue cannot be determined solely upon declaration testimony. A trial at which live witness testimony will be taken is required because the Court must assess the credibility of the witnesses. *See Khachikyan v. Hahn (In re Khachikyan)*, 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) (holding that where material facts are in dispute, testimony must be taken in the same manner as in an adversary proceeding).

Trial of the Claim Objection shall take place during the week of **8/27/2018**. The exact date of the trial will be set at the Pretrial Conference. The following dates shall apply:

- 1) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 2) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 3) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery

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motions to be heard is the next closest previous date which is available for self-calendaring.)

- 4) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

The Court will issue a separate order informing the parties of the procedures that apply to the trial (i.e., the deadlines for the submission of witness lists and pretrial briefs).

This matter shall be referred to the Mediation Panel. The Debtor shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter an appropriate scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By

John R Fuchs

Gail S Gilfillan

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#7.00 Hearing re [112] Objection to Claim #14 by Claimant Mikhaeil Rouil Corporation, Inc. dba ServiceMaster Professional Restoration

Docket 0

Tentative Ruling:

2/13/2018

The Debtor's Claim Objection involves disputed issues of material fact that must be resolved by way of a trial at which live witness testimony will be taken. As set forth below, trial will take place during the week of **8/27/2018**.

Pleadings Filed and Reviewed:

- 1) Debtor's Objection to Claim #14 by Mikhaeil Rouel Corporation, Inc. d/b/a Service Master Professional Restoration, in the Amount of \$30,703.56 (the "Claim Objection") [Doc. No. 112]
- 2) Response to Debtor's Objection to Claim #14 by Mikhaeil Rouel Corporation, Inc. d/b/a Service Master Professional Restoration, in the Amount of \$30,703.56 (the "Opposition") [Doc. No. 135]
- 3) Reply Memorandum in Support of Debtor's Objection to Claim #14 by Mikhaeil Rouel Corporation, Inc. d/b/a Service Master Professional Restoration, in the Amount of \$30,703.56 (the "Reply") [Doc. No. 137]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). See Doc. No. 62 (the "Sale Order"). As ordered by the Court, the sales proceeds of the Residence are currently being held on deposit in the Court's registry.

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Mikhaeil Rouel Corporation, Inc., d/b/a Service Master Professional Restoration ("Service Masters") asserts an unsecured claim in the amount of \$30,703.56. Debtor asserts that Service Master's claim should be disallowed in its entirety.

The Debtor's Claim Objection

The Debtor makes the following arguments and representations in support of his objection to Service Masters' claim:

On July 27, 2015, a massive flood occurred at the Residence. The Debtor was instructed by his home insurer, State Farm, to retain Rainbow International ("Rainbow") to remediate the standing water, and to retain Service Masters Professional Restoration ("Service Masters") for repair work. The Debtor later discovered that State Farm had existing relationships with Service Masters and Rainbow, because they provided lower bids than other contractors.

Because much of the work upon which Service Masters' claim is predicated was done negligently or was not done at all, Service Masters' claim should be disallowed. Specifically, Service Masters is not entitled to payment for the following:

- 1) Service Masters' claim includes a charge of \$8,232.45 for "mold remediation." Service Masters failed to adequately remediate the mold. A ProLab Report commissioned by the purchasers of the Residence showed elevated mold levels in the downstairs hallway, which is where the worst of the flooding occurred. The Debtor was required to provide the purchasers a \$15,000 credit, at least \$10,000 of which was allocated to mold remediation. In addition, the Debtor's spouse contracted pneumonia and sustained \$2,000 in medical expenses as a result of Service Masters' failure to remediate the mold.
- 2) Service Masters' claim includes a charge of \$1,800 for framing a damaged shear wall, plus \$1,044.96 for a scaffold and two ladders. Service Masters never performed this work. Because Service Masters negligently overcut the shear wall too close to the ceiling ledgers, the Debtor hired his own framer to perform the repairs at a cost of \$1,500.
- 3) Service Masters failed to provide a construction supervisor. As a result, the Debtor and his spouse had to stay at home for a portion of the day during a four-month period to perform construction supervision. The Debtor and his spouse spent 319 hours performing construction supervision work that Service Masters should have performed as part of its line item for overhead and profit. At \$25/hour, the supervision cost to the Debtor and his spouse was at least \$7,975.

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- 4) Service Masters' work was negligent in numerous other respects. Service Masters did not have a subcontractor who could match the Canadian maple hardwood floor that needed to be replaced. Service Masters did not have a carpeting subcontractor and was not qualified to replace the laundry room cabinets.

Service Masters' Opposition to the Debtor's Claim Objection

Service Masters makes the following arguments and representations in its Opposition to the Debtor's Claim Objection:

The Claim Objection is nothing more than the Debtor's attempt to avoid paying Service Masters the money it is owed. The Debtor did not raise any of the complaints he now makes to the Court at the time Service Masters performed the work. On November 8, 2015, Service Masters signed over to the Debtor an insurance check jointly made out to the Debtor and Service Masters, based upon the Debtor's promise that Service Masters would receive payment in full within thirty days. At this time, the Debtor was fully aware of all the issues which he now asserts furnish cause for disallowing Service Masters' claim.

As further evidence that the Claim Objection is a sham, the Debtor's spouse wrote a glowing letter of recommendation for Service Masters that contradicts every claim the Debtor is now making. The letter states:

The following is a letter of recommendation for the outstanding service provided by Service Masters of Canoga Park, CA.

My husband and I had a flood in our Pacific Palisades home in July of 2015. The pressure regulator from the street to the house failed and caused the in-take hose on one of our upstairs toilets to burst, which caused the water from that second floor toilet to gush for over four hours. When I arrived home that day, it was raining on the first floor of our house. The damage done was enormous.

We were referred to Mike Rouel of Service Masters. Mike is a licensed General Contractor so we knew we were in good hands. Mike and his team of experts handled every single aspect of our damage recovery. They came to our home and walked us through all the steps that needed to be taken. This was a big job—we had five rooms that needed to be completely demolished and rebuilt. They took care of the demolition of walls, ceilings and floors down to the studs. They did the mold remediation. They handled the reconstruction of our walls, ceilings and floors. They completed the drywall and painting of all

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the affected rooms. Throughout this process, they were always very careful and considerate of our home. Mike came almost every single day to check with his team of workers, see what progress had been made, and check-in with us.

Mike's team is professional, well-spoken, considerate and efficient. They are excellent at what they do. One employee in particular, Luiz, was especially helpful to me during this difficult time. Luiz is always willing to go the extra mile. He was the "point person" on the job daily and was always there if I needed anything or could answer a question for me.

I strongly recommend Mike Rouel of Service Masters located on Deering Avenue in Canoga Park, CA. If, God forbid, you ever have a flood in your home, you need to put yourself in the hands of an expert who knows what to do. We are thankful we called Service Masters.

The Debtor's Reply in Support of the Claim Objection

The Debtor makes the following arguments and representations in his Reply in support of the Claim Objection:

Service Masters asserts that because the Debtor agreed in November 2015 to pay the balance then claimed to be due, he is now somehow barred from objecting to Service Masters' claim based on its incomplete and negligent remediation and repair work.

The letter of recommendation that the Debtor's spouse wrote does not undermine the Claim Objection. The Debtor's spouse wrote the letter before discovering that Service Masters' work was incomplete and negligent.

Service Masters does not refute the undisputed evidence that the mold was not properly remediated. And in addition to failing to properly complete repairs, Service Masters failed to discover the damage to the laundry room as well as various other instances of damage. As a result, the estimate that Service Masters submitted to State Farm was incomplete and State Farm initially refused to pay for all of the repair costs. The Debtor was forced to incur substantial litigation expenses to obtain payment of the repair claim from State Farm.

II. Findings of Fact and Conclusions of Law

Adjudicating the Claim Objection requires the Court to make findings with respect to disputed material facts—including whether Service Masters adequately performed the mold remediation work and whether Service Masters negligently performed various repairs. The Court has been presented with conflicting declaration testimony

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regarding the quality of the work. The issue of whether the work was adequately performed cannot be determined solely upon declaration testimony. A trial at which live witness testimony will be taken is required because the Court must assess the credibility of the witnesses. *See Khachikyan v. Hahn (In re Khachikyan)*, 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) (holding that where material facts are in dispute, testimony must be taken in the same manner as in an adversary proceeding).

Trial of the Claim Objection shall take place during the week of **8/27/2018**. The exact date of the trial will be set at the Pretrial Conference. The following dates shall apply:

- 1) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 2) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 3) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 4) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

The Court will issue a separate order informing the parties of the procedures that apply to the trial (i.e., the deadlines for the submission of witness lists and pretrial briefs).

This matter shall be referred to the Mediation Panel. The Debtor shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order

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Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter an appropriate scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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#8.00 Hearing re [116] Objection to Claim #5 by Claimant The Bank of New York Mellon fka The Bank of New York

Docket 0

Tentative Ruling:

2/13/2018

For the reasons set forth below, the Claim Objection is **OVERRULED**, and SLS's claim is allowed in the amount of \$1,648,975.29.

Pleadings Filed and Reviewed:

- 1) Debtor's Objection to Claim #5 by the Bank of New York Mellon f/k/a the Bank of New York, Successor in Interest to JPMorgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Inc., Bear Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2005-3 C/O Specialized Loan Servicing LLC, in the Amount of \$1,648,975.29 (the "Claim Objection") [Doc. No. 116]
- 2) Response to Debtor's [Claim Objection] (the "Opposition") [Doc. No. 132]
- 3) Debtor's Reply Memorandum in Support of [Claim Objection] (the "Reply") [Doc. No. 138]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Property"). *See* Doc. No. 62 (the "Sale Order"). As ordered by the Court, the sales proceeds of the Property are currently being held on deposit in the Court's registry.

Specialized Loan Servicing, as servicer for the Bank of New York Mellon ("SLS"), asserts a secured claim against the sales proceeds in the amount of

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\$1,648,975.29. SLS' claim is based on a loan extended to the Debtor to purchase the Property. Prior to the filing of the petition, the Debtor commenced litigation against SLS and affiliated entities in the Los Angeles Superior Court (the "State Court Litigation"), alleging that SLS [**Note 1**] violated the California Homeowners Bill of Rights ("HBOR") in connection with attempts to foreclose upon the Property. The State Court Complaint seeks damages against SLS based upon the alleged violations of the HBOR. The trial court declined to award the Debtor any damages for HBOR violations. The Debtor has appealed that decision and filed an opening brief in the appeal on October 19, 2017. The Debtor asserts that he is likely to prevail in the appeal and ultimately obtain a judgment against SLS in excess of \$300,000.

By way of the instant Claim Objection, the Debtor seeks to reduce SLS's secured claim by approximately \$300,000, from \$1,648,975.29 to \$1,348,975.20, on account of the recovery the Debtor anticipates obtaining in the State Court Litigation. In the alternative, the Debtor requests that the Court postpone determining the allowed amount of SLS' claim until the State Court Litigation has been completed. As a second alternative, the Debtor requests that the Court set the amount of the claim at \$1,392,136.22, in which case the Debtor will dismiss the State Court Litigation.

In opposition, SLS asserts that the Debtor has failed to show that its claim may be disallowed under any of the grounds set forth under §502(b)(9). According to SLS, the Debtor's claims regarding violations of the HBOR do not supply a basis for reducing its claim. In reply to SLS' opposition, the Debtor reiterates that it is appropriate to offset SLS' claim by the \$300,000 in damages that the Debtor anticipates recovering in the State Court Litigation.

II. Findings and Conclusions

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re*

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Medina, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Here, the Debtor does not attack the validity of the Deed of Trust securing the indebtedness or assert some other infirmity infecting SLS's claim. Instead, Debtor argues that SLS's claim should be reduced by the damages the Debtor contends that he sustained as a result of SLS's alleged violations of the HBOR. Although the Debtor does not reference the doctrine of recoupment in his papers, that is the remedy that he is seeking here. Under the equitable doctrine of recoupment, if A is indebted to B, and B is likewise indebted to A, one debt may be applied in satisfaction of the other and A and B are not required to satisfy their mutual liabilities separately.

In order to avail himself of the doctrine of recoupment, the Debtor must show that the debts in question satisfy the "logical relationship" test, meaning that the debts must arise from the "same transaction or occurrence." *Sims v. U.S. Dep't of Health and Hum. Servs. (In re TLC Hosps., Inc.)*, 224 F.3d 1008, 1011 (9th Cir. 2000). For recoupment purposes, a transaction "may include 'a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship,'" *id.* at 1012 (internal citation omitted), provided that the "logical relationship" test is not "applied so loosely that multiple occurrences in any one continuous commercial relationship would constitute one transaction" *Id.* In the recoupment context, courts use the same definition of "transaction or occurrence" as is used to determine whether a counterclaim is compulsory:

The common-law claim for recoupment is analogous to a "compulsory counterclaim interposed solely to defeat or diminish plaintiff's recovery." The "logical relationship test" is applied under Fed.R.Civ.P. 13(a) to determine a compulsory counterclaim, *i.e.*, whether the claim "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim."

A logical relationship exists when the counterclaim arises from the same

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aggregate set of operative facts as the initial claim, in that the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights otherwise dormant in the defendant.

In applying this standard, "courts have permitted a variety of obligations to be recouped against each other, requiring only that the obligations be sufficiently interconnected so that it would be unjust to insist that one party fulfill its obligation without requiring the same of the other party."

Id. at 755 (internal citations omitted).

In addition, "[a]lthough an express contract is not necessary for the application of recoupment, courts often find that the 'same transaction' requirement is satisfied when corresponding liabilities arise under a single contract." *Id.* at 758.

Here, the Debtor is not entitled to recoup any damages he may have sustained as a result of SLS's violations of the HBOR (if any), because the logical relationship is not satisfied. The aggregate core of operative facts that serve as the basis for SLS' claim—the Debtor's failure to remain current under the loan—does not activate the Debtor's rights against SLS. The Debtor's claims against SLS are not based upon SLS's failure to comply with its obligations under the loan; they are based upon SLS' alleged failure to comply with obligations imposed under California law (in this case, the California HBOR). While it is true that there is some relationship between the claims—they both involve the Residence—that relationship is too attenuated to meet the "same transaction" requirement. And the Court can discern no injustice in requiring the Debtor to pursue his claims against SLS before a separate forum—the State Court—as opposed to the Bankruptcy Court.

Based upon the foregoing, the Claim Objection is OVERRULED. SLS's claim is allowed in the amount of \$1,648,975.29.

SLS shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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Note 1

Multiple defendants were named in the State Court Litigation. For simplicity, the Court refers to all defendants collectively as "SLS."

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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#9.00 Hearing re [119] Disclosure Statement in Support of Plan of Reorganization

Docket 0

***** VACATED *** REASON: CONTINUED 3-14-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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2:17-12677 Green Jane Inc

Chapter 7

#10.00 Hearing
RE: [143] Motion to Extend Time Chapter 7 Trustee's Third Motion for Order Extending Time Pursuant to 11 U.S.C. § 365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases; Declaration of Rosendo Gonzalez in Support Thereof

Docket 143

Tentative Ruling:

2/13/2018

For the reasons set forth below, the Trustee's deadline to assume or reject the Debtor's executory contracts and unexpired leases is extended to and including April 23, 2018.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Third Motion for Order Extending Time Pursuant to 11 U.S.C. §365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases (the "Motion") [Doc. No. 147]
 - a) Notice of Chapter 7 Trustee's Motion for Order Extending Time Pursuant to 11 U.S.C. §365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases [Doc. No. 113]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on March 6, 2017. On May 26, 2017, the Court converted the case to Chapter 7. Doc. Nos. 58 and 61. Pursuant to §365(d)(1), the initial deadline for the Chapter 7 Trustee (the "Trustee") to assume or reject the Debtor's executory contracts or unexpired leases of residential real property was July 25, 2017 (such deadline, the "Assumption/Rejection Deadline"). The Court has twice extended the Assumption/Rejection Deadline, without prejudice to the Trustee's ability to seek further extensions; the Assumption/Rejection deadline is currently January 22, 2018. The Trustee seeks a third extension of the deadline to April 23, 2018. The Trustee

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states that his ability to investigate the executory contracts and unexpired leases has been inhibited, because the Trustee has been required to initiate contempt proceedings against BevTech to protect the estate's assets. (A hearing on an Order to Show Cause Re: Contempt issued against BevTech is set for February 21, 2018.)

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(d)(1) provides:

In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

The Trustee has not cited, and the Court has been unable to locate, any Ninth Circuit authority setting forth what constitutes "cause" for an extension of the 60-day period specified in §365(d)(1). However, the Ninth Circuit BAP has stated that cause exists to extend §365(d)(4)'s deadline to assume an unexpired lease of nonresidential real property where the case involves numerous and complicated leases. *Willamette Water Front, Ltd. v. Victoria Station Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989). Applying *Victoria Station's* reasoning to the analogous situation presented by this case, the Court finds that cause exists to extend the Assumption/Rejection Deadline in view of the numerous complicated executory contracts and unexpired leases to which the Debtor is a party. The Trustee's counsel has not had an adequate opportunity to review these unexpired leases and executory contracts. Creditors and the estate would be prejudiced if the Assumption/Rejection Deadline were not extended, since some of the executory contracts and unexpired leases could prove to be valuable to the estate.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Trustee's deadline to assume or reject the Debtor's executory contracts and unexpired leases is extended to and including April 23, 2018, without prejudice to the Trustee's ability to seek a further extension. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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2:13-27702 Morad Javedanfar

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Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#11.00 HearingRE: [172] Motion -- Real Party In Interest JL AM PLUS, LLC's Notice Of Motion And Motion To Compel Further Responses To Interrogatories And Initial Disclosures, With Proof Of Service

Docket 172

Tentative Ruling:

2/13/2018

For the reasons set forth below, the Motions to Compel are GRANTED. MBN is ordered to (1) cause Morad Neman to appear and provide deposition testimony by no later than **February 23, 2018**; (2) supply amended interrogatory responses as described herein; and (3) pay JLAMP \$10,000 in legal fees incurred in bringing these motions.

Pleadings Filed and Reviewed:

- 1) Motion to Compel Deposition of Morad Neman:
 - a) Real Party in Interest JL AM Plus, LLC's Notice of Motion and Motion to Compel the Deposition of Morad Neman [Doc. No. 168]
 - i) Joint Stipulation in Support of Plaintiff's Motion to Compel the Deposition of Morad Neman [Doc. No. 169]
 - ii) Declaration of John S. Purcell in Support of Motion to Compel Deposition of Morad Neman [Doc. No. 170]
 - b) Response Brief in Support of Plaintiff's Motion to Compel the Deposition of Morad Ben Neman [Doc. No. 188]
- 2) Motion to Compel Further Interrogatory Responses:
 - a) Real Party in Interest JL Am Plus, LLC's Notice of Motion and Motion to Compel Further Responses to Interrogatories and Initial Disclosures [Doc. No. 172]
 - i) Joint Stipulation Filed in Support of Plaintiff's Notice of Motion and Motion to Compel Further Responses to Interrogatories and Initial Disclosures [Doc. No. 173]
 - ii) Declaration of John S. Purcell in Support of Motion to Compel Further

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Responses to Interrogatories [Doc. No. 174]

- b) Declaration of Stephen F. Biegenzahn in Opposition to Plaintiff's Motion to Compel Further Responses to Interrogatories and Initial Disclosures [Doc. No. 178]
- c) Supplemental Memorandum in Support of Plaintiff's Motion to Compel Further Responses to Interrogatories and Initial Disclosures [Doc. No. 187]

I. Facts and Summary of Pleadings

On August 29, 2016, the Court approved the sale of the estate's interest in this litigation to Defendants Morad Neman and MBN Real Estate, LLC ("MBN") for \$1 million. Bankruptcy Doc. No. 130. After Morad Neman failed to complete the purchase, backup bidder Accessories Mart, LLC purchased the litigation for \$905,000 on October 20, 2016. Adv. Doc. No. 57. Accessories Mart subsequently assigned its interest in the litigation to JL AM Plus ("JLAMP"). On September 2, 2016, the Court entered a preliminary injunction, barring Morad Neman and MBN Real Estate from transferring or encumbering the assets which are the subject of this litigation. Bankruptcy Doc. No. 138.

On November 22, 2016, JLAMP filed a First Amended Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; and (3) Unjust Enrichment (the "Complaint") [Adv. Doc. No. 68]. The Complaint's allegations are as follows:

- 1) Prior to commencing a voluntary Chapter 7 petition, Morad and Yaffa Javedanfar (the "Debtors") owned interests in (A) Boyd L.P. and Sky High LLC and (B) properties located at 310 East Boyd Street, Los Angeles, CA 90013 (the "Boyd Street Property"), 931 East Pico Boulevard, Los Angeles, CA 90021 (the "Pico Blvd. Property"), and 715 East 14th Street, Los Angeles, CA 90021 (the "14th Street Property") (collectively, the "Assets"). In or around December 2012, Debtors transferred their interests in Boyd LP and Sky High LLC to defendants Morad Neman and MBN Real Estate, LLC (collectively, the "Defendants"). On January 11, 2013, Debtors transferred their interests in the Boyd Street Property, the Pico Blvd. Property, and the 14th Street Property to the Defendants.
- 2) At the time of the transfers, Defendants knew of the Debtors' obligations to their creditors and knew that the Debtors were insolvent. The purpose of the transfers was to frustrate the rights of the Debtors' creditors.
- 3) There is a unity of interest between Morad Neman and MBN, such that

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treatment of MBN as a distinct entity would permit an abuse of the corporate privilege and produce an inequitable result. Accordingly, Morad Neman should be deemed to be the alter ego of MBN.

Based on the foregoing allegations, the Complaint seeks the following relief:

- 1) Avoidance of the transfers as constructively fraudulent, pursuant to §§544(b) and 548(a)(1)(B).
- 2) Avoidance of the transfers as preferences, pursuant to §547(b).
- 3) Restitution and disgorgement of the transferred Assets, and an award of punitive damages against the Defendants.
- 4) Imposition of a constructive trust upon the Assets and immediate turnover of the Assets.

On May 25, 2017, the Court granted Morad Neman's motion for summary judgment. The Court found that JLAMP had failed to allege the specific facts necessary to establish that Mr. Neman was the alter ego of MBN. The Court found that Morad Neman had presented facts showing that there was no genuine dispute that Morad Neman could not be held liable as MBN's alter ego. The Court entered final judgment in Morad Neman's favor after finding under Civil Rule 54(b) that there was no just reason to delay entry of judgment.

JLAMP moves to compel Morad Neman's deposition testimony, in his capacity as the manager of MBN, and to compel MBN to furnish additional responses to interrogatories. JLAMP has noticed a motion to compel MBN to produce additional documents, which is set for hearing on February 21, 2018. Trial is set for the week of March 26, 2018.

Summary of Plaintiffs' Motions to Compel Discovery Responses, the Defendants' Opposition, and Plaintiffs' Supplemental Memoranda in Support of the Motions

Morad Neman is the manager of MBN. See Declaration of John S. Purcell, Exhibit A, pg. 7 (Simon Neman's deposition, p. 12-13.) On September 18, 2017, JLAMP took the Rule 30(b)(6) deposition of MBN. MBN produced Simon Neman, Morad Neman's nephew, as its Rule 30(b)(6) witness. JLAMP contends that Simon Neman lacked adequate knowledge of MBN's operations or the transactions relevant to this litigation. JLAMP subsequently noticed the deposition of Morad Neman, but he failed to appear. Morad Neman took the position that he was unable to appear because he faced criminal charges in another matter. JLAMP asserts that the criminal charges Morad Neman faces have nothing to do with the instant litigation and in no

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way prevent Morad Neman from offering deposition testimony.

In its opposition to JLAMP's motion to compel Morad Neman to provide deposition testimony, MBN no longer asserts that the criminal charges Morad Neman faces preclude him from testifying. Instead, MBN states that it is not required to designate Morad Neman to testify because it has already produced Simon Neman as its Rule 30(b)(6) witness. In reply, JLAMP states that MBN has misunderstood its motion. JLAMP states that it does not contend that Morad Neman was required to appear as a substitute Rule 30(b)(6) witness. Instead, JLAMP's position is that as a party, MBN is required to produce any officer, director, or managing agent, and that Mr. Neman is indisputably a managing agent of MBN. JLAMP states that the deposition notice directed to Morad Neman never mentioned Rule 30(b)(6). JLAMP's position is that it is entitled to compel Morad Neman to appear, in his capacity as a managing agent of MBN, pursuant to Rule 30(b)(1).

In a companion motion to compel MBN to supply further interrogatory responses, JLAMP contends that MBN purposefully failed to identify Morad Neman as a witness knowledgeable about facts relevant to this case, solely to avoid having him deposed. JLAMP moves to compel MBN to submit verified discovery responses and amended initial disclosures that identify Mr. Neman as a witness with knowledge. JLAMP states that the deposition testimony of Simon Neman establishes that Morad Neman had final say in all material decisions related to the transactions at the center of this case.

MBN asserts that JLAMP is in no way prejudiced by its failure to list Mr. Neman as a witness, given that Mr. Neman was named as a defendant. MBN further contends that JLAMP is not in compliance with its initial disclosure obligations because it has not provided MBN with any document relating to the value of the assets that JLAMP seeks to recover in this litigation.

JLAMP maintains that certain of MBN's other interrogatory responses are deficient and moves to compel MBN to amend those responses. The deficiencies alleged by JLAMP are as follows:

- 1) In response to interrogatories requiring a description of all consideration received by the Debtors in exchange for the transfer of various properties or interests in property, MBN stated that it "assumed secured and unsecured debt obligations in amounts which, in the aggregate, equaled or exceed the value of all of the" property that was transferred.
- 2) In response to other interrogatories dealing with the consideration provided Debtors in exchange for the properties at issue, MBN stated that it would

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provide JLAMP a "catalogue" containing the information requested. MBN has never provided the catalogue.

- 3) MBN's responses to Interrogatories 19 and 22 both cut off at the following point: "Without limiting the generality of that objection ..., MBN responds as follows:" Although JLAMP has pointed out this apparent error repeatedly to MBN, the response has not been corrected.

In response to these alleged deficiencies, MBN states that its "[i]nterrogatory responses were forthright and complete, if the goal is information." Doc. No. 173 at ¶III.B.

JLAMP seeks attorneys' fees and costs for bringing the two motions to compel, in the aggregate amount of \$17,500. JLAMP also seeks sanctions against MBN's counsel, on the grounds that MBN's Opposition is comprised of frivolous and irrelevant arguments. MBN argues that JLAMP's counsel's billing rate of \$870 per hour is excessive in view of the complexity of the litigation.

II. Findings and Conclusions

Civil Rule 37(a) provides that a "party may move for an order compelling disclosure or discovery." Civil Rule 37(a)(3)(B) provides that a "party seeking discovery may move for an order compelling an answer, designation, production, or inspection." For purposes of Rule 37, an "evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond."

"Parties are permitted to discover any relevant nonprivileged matter. Fed.R.Civ.P. 26(b)(1). This rule is construed very broadly, encompassing 'any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.' Discovery is not limited to the issues raised only in the pleadings, but rather it is designed to define and clarify the issues." *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992). "The party opposing discovery bears the burden of resisting disclosure." *Rogers v. Giurbino*, 288 F.R.D. 469, 478-79 (S.D. Cal. 2012).

MBN is Ordered to Cause Morad Neman to Appear and Provide Deposition Testimony

MBN is ordered to cause Morad Neman to appear and provide deposition testimony. There is no dispute that Morad Neman is the manager of MBN and has been involved in the real property transactions that are the subject of this litigation. There is no merit to MBN's argument that Morad Neman is not required to testify

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simply because MBN designated Simon Neman as its Rule 30(b)(6) witness. As the leading treatise on federal practice provides:

The Rule 30(b)(6) procedure should be distinguished from the situation in which a party wants to take the deposition of a specific individual associated with the corporation or organization. Because Rule 30(b)(6) imposes on the organization the obligation to select the individual witness, the party seeking discovery under that provision of the rule is not permitted to insist that it choose a specific person to testify unless in response to a Rule 30(b)(6) notice. But Rule 30(b)(6) also says expressly that it does not preclude taking a deposition by any other procedure authorized by the rules. Thus, a party who wishes the deposition of a specific officer or agent of a corporation may still obtain it and is not required to allow the corporation to decide for itself whose testimony the other party may have.

Wright and Miller, 8A Fed. Prac. & Proc. Civ. § 2103 (3d ed.).

JLAMP and MBN shall meet and confer to establish a mutually agreeable time for Morad Neman's deposition. However, Morad Neman must appear for deposition by no later than **February 23, 2018**.

MBN is Ordered to Supply Amended Interrogatory Responses

As set forth below, the Court finds that certain of MBN's interrogatory responses are evasive and incomplete. Pursuant to Civil Rule 37(a), the Court will order MBN to supply amended responses that are not evasive and incomplete.

The following interrogatory responses must be amended:

- 1) Interrogatories 9, 11, 21, and 23 required MBN to identify witnesses who had knowledge of MBN's defenses or who had knowledge of the transactions that are the subject of this litigation. In response, MBN identified only Simon Neman, Anthony Friedman (who served as the Chapter 7 Trustee in the related bankruptcy case of Morad Javedanfar), and accounting firm Newmark Grubb Knight Frank. MBN did not identify Morad Neman, even though it is undisputed that Morad Neman is the manager of MBN and has substantial knowledge of the real estate transactions that are the subject of this litigation. The failure to disclose Morad Neman as a witness renders MBN's response incomplete and evasive.
- 2) Interrogatory 7 required MBN to describe "all consideration received by Debtors in exchange for the transfer of their interest in Boyd LP to MBN."

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In response, MBN stated that it “assumed secured and unsecured debt obligations in amounts which, in the aggregate, equaled or exceeded the value of all of the ‘interest in Boyd LP.’” This tautological statement is not responsive.

- 3) In response to interrogatories 8, 10, 19, and 20, MBN stated that it would furnish JLAMP with a catalogue containing the relevant information. MBN has failed to supply the catalogue. This omission must be corrected.
- 4) MBN’s responses to interrogatories 19 and 22 are blank, and as such are completely inadequate.

None of the arguments advanced by MBN in opposition to the Motions to Compel have merit. First, MBN accuses JLAMP of undue delay in bringing the Motions. JLAMP properly attempted to obtain the discovery to which it was entitled without Court intervention. Only after those repeated efforts proved futile did it file the Motions to Compel.

Second, MBN attempts to distract from the issues at hand by asserting that it has produced 1,153 pages of documents and data and 400 pages of e-mails. That production does not address the deficiencies identified above.

MBN is Ordered to Pay JLAMP Attorneys’ Fees in the Amount of \$17,500

Civil Rule 37(a)(5)(A) provides that where a motion to compel discovery is granted, the "court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant’s reasonable expenses incurred in making the motion, including attorney’s fees." However, if any of the following three circumstances apply, the Court must not order the payment of expenses:

- i. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- ii. The opposing party’s nondisclosure, response, or objection was substantially justified; or
- iii. Other circumstances make an award of expenses unjust.

Civil Rule 37(a)(5)(A)(i)–(iii).

None of the circumstances preventing the Court from ordering the payment of expenses apply here. First, JLAMP attempted in good faith to resolve the discovery dispute without Court intervention. JLAMP reached out to MBN to obtain adequate responses to the interrogatories on numerous occasions but its efforts were

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unsuccessful.

Second, MBN's evasive interrogatory responses, as well as its failure to produce Morad Neman for a deposition, were not substantially justified. Substantial justification means "'justified in substance or in the main'—that is, justified to a degree that could satisfy a reasonable person." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988). Noncompliance with discovery obligations is substantially justified if there is a "genuine dispute," *id.* at 565, or if "reasonable people could differ as to whether the party requested must comply." *Reygo Pac. Corp. v. Johnston Pump Co.*, 680 F.2d 647, 649 (9th Cir. 1982) (overruled on other grounds, *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1055 n.2 (9th Cir. 2007)). MBN has failed to identify any genuine dispute and presents only conclusory arguments in opposition to JLAMP's Motions to Compel.

Third, there are no other circumstances which make an award of expenses, including legal fees unjust.

The Court finds attorneys' fees in the amount of \$10,000 for both Motions warranted under the circumstances. The Court finds that neither Motion would have been required absent a good faith attempt to fully respond to interrogatories or to have Morad Neman appear for deposition. The Court also finds that JLAM attempted to resolve these disputes without Court intervention. A fee award of \$10,000.00 is reasonable given the fact that the Motions factually and legally covered much of the same ground. The Court declines to make MBN's counsel jointly and severally liable for the expenses, or to impose sanctions against MBN's counsel pursuant to Local Bankruptcy Rule 7026-1(c)(4). There is not sufficient evidence before the Court to establish that counsel advised MBN to neglect its discovery obligations.. And although the Court finds MBN's arguments in opposition to be without merit, those arguments are not so frivolous as to warrant sanctions.

Conclusion

Based upon the foregoing, MBN is ordered to (1) cause Morad Neman to appear and provide deposition testimony by no later than **February 23, 2018**; (2) supply amended interrogatory responses as described herein; and (3) pay JLAMP \$10,000 in attorney's fees.

Within seven days of the hearing, JLAMP shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#12.00 HearingRE: [168] Motion -- Real Party In Interest JL AM PLUS, LLC's Notice Of Motion And Motion To Compel The Deposition Of Morad Neman, With Proof Of Service

Docket 168

Tentative Ruling:

See Cal. No. 11, above, incorporated in full by reference.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By

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Morad Javedanfar

Anthony A Friedman

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#100.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14

fr. 7-10-14; 7-9-14; 10-8-14; 5-12-15

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fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

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Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#101.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14; 7-9-14; 10-8-14; 8-15-17; 12-12-17

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

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Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

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Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#102.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#103.00 Motion for default judgment

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#104.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Skyville, Inc., a California

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#105.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

10/2/2013

Continued to March 6, 2014 at 11:00 a.m.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Skyville, Inc., a California

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#106.00 Motion for Default Judgment RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Financial, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By

Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#107.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-10

FR. 10-8-14; 5-12-15; 10-18-16; 4-11-17

FR. 12-8-15

fr. 6-14-16; 6-7-16; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Financial, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#108.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#109.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#110.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Fallbrook Investments, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#111.00 Status Conference

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Fallbrook Investments, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#112.00 Motion for Default Judgment re : [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#113.00 Status Hearing: [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#114.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr: 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr: 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-16-18 AT 11:00 AM**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#115.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr: 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr: 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-16-18 AT 11:00 AM**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#116.00 Hearing re Motion for Default Judgment

FR. 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 0

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#117.00 Status Hearing: [1] Adversary case 2:12-ap-02608. Complaint by Jason M Rund against Tina Fraccola, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13; 4-4-13; 8-1-13; 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15; 10-18-16; 4-11-17; 8-15-17; 12-12-17

FR. 12-8-15

fr. 6-14-16; 6-7-16

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#118.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#119.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Bruce Johnston, an individual Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#120.00 Motion for Default Judgment re [1] Adversary Complaint

fr: 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 am**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

PREHA INVESTMENTS, a general

Pro Se

KEITH PRESSMAN, an individual

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#121.00 Status Hearing
RE: [1] Adversary Complaint

fr. 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 am**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

PREHA INVESTMENTS, a general

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC
KEITH PRESSMAN, an individual

Pro Se

Chapter 7

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#122.00 Status Hearing: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;
fr. 10-8-14; 1-8-15; 6-9-15;fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to June 14, 2016 at 11:00 a.m.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

Barbara J. Mintz	Pro Se
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Virginia R. Coombes	Pro Se
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Edward Mintz	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Mintz Management, Inc. Pro Se

Mildred V. Zalis Pro Se

1 through 5, Inclusive DOES Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#123.00 Motion for default judgment: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;fr. 10-8-14; 1-8-15; 6-9-15; fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

12/7/2015

Continued to June 14, 2016 at 11:00 a.m. No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

Barbara J. Mintz Pro Se

Virginia R. Coombes Pro Se

Edward Mintz Pro Se

Mintz Management, Inc. Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Mildred V. Zalis

Pro Se

1 through 5, Inclusive DOES

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#124.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

12/7/2015

Continued to June 14, 2016 at 11:00 a.m. No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Entertainment Marketing, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#125.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 a.m.**

Tentative Ruling:

12/7/2015

Continued to June 14, 2016 at 11:00 a.m. No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Entertainment Marketing, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#126.00 Status Hearing

RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 am**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#127.00 Motion for Default Judgment
RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: Cont'd to 5/16/2018 at 11:00 am**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#128.00 Status Hearing: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

Katharine J Werner, an individual, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Ronald P Abrams
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#129.00 Motion for default judgment: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-16-18 AT 11:00 A.M.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Katharine J Werner, an individual,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Michael W Davis

Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 14, 2018

Hearing Room 1568

11:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#130.00 Hearing

RE: [61] Application for Compensation for Allowance and Payment of Fees and Reimbursement of Expenses of Jung & Yuen, LLP, General Counsel for Chapter 7 Trustee Edward M. Wolkowitz for Clifford P Jung, General Counsel, Period: 11/16/2011 to 1/16/2018, Fee: \$1,047,059.00, Expenses: \$41,606.31, for Edward M Wolkowitz (TR), Trustee Chapter 7, Period: 11/16/2011 to 1/16/2018, Fee: \$65,000.00, Expenses: \$0.00.

Docket 61

***** VACATED *** REASON: PER NOTICE FILED ON 2-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, February 16, 2018

Hearing Room 1568

3:00 PM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#1.00 Hearing re [12] Motion in Individual Ch 11 Case for Order Authorizing Payment of Prepetition Payroll and to Honor Prepetition Employment Procedures

Docket 0

Tentative Ruling:

2/15/18:

Hearing required.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Friday, February 16, 2018

Hearing Room 1568

3:00 PM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#2.00 Hearing re [11] *Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral*

Docket 0

Tentative Ruling:

2/15/18:

Hearing required.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 20, 2018

Hearing Room 1568

10:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 11

#1.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2278 Canyonback Road, Los Angeles, CA 90049 .

Docket 17

Tentative Ruling:

2/16/2018

The Court finds that based upon the pleadings and evidence filed in connection with this matter to date, sufficient cause has been established to continue this matter to a final hearing on **April 23, 2018 at 10:00 a.m.** At that time, the Court will take testimony from live witnesses to establish the burdens of proof set forth in section 362 (g) and will be limited to the issues of adequate protection and equity in the subject property.

The court orders that the automatic stay is extended to and including April 23, 2018, or to any continued date which may hereafter be ordered.

The following briefing schedule shall apply:

Movant's supplemental brief, declaration(s) and list of witnesses (witnesses must include the declarants): Filed and served March 23, 2018

Debtor's supplemental opposition brief, declaration(s) and list of witnesses (witnesses must include the declarants): Filed and served April 16, 2018

No other briefs will be entertained by the court and may not be filed absent permission of the court.

Court to prepare the order.

Party Information

**United States Bankruptcy Court
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Tuesday, February 20, 2018

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10:00 AM

CONT... Deepak B. Vasandani and Mira Vasandani

Chapter 11

Debtor(s):

Deepak B. Vasandani

Represented By
Sheila Esmaili

Joint Debtor(s):

Mira Vasandani

Represented By
Sheila Esmaili

**United States Bankruptcy Court
Central District of California
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Tuesday, February 20, 2018

Hearing Room 1568

10:00 AM

2:17-25225 James Richard Avilez, Jr.

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 JEEP GRAND CHEROKEE, VIN 1C4RJEAG8EC120275 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

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Tuesday, February 20, 2018

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10:00 AM

CONT... James Richard Avilez, Jr.

Chapter 7

Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

James Richard Avilez Jr.

Represented By
Michael E Clark

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 20, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#3.00 HearingRE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2395 Roanoke Road, San Marino, CA 91108 . (Wilkinson, Reilly)

Docket 28

Tentative Ruling:

2/16/2018

Hearing required.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, February 20, 2018

Hearing Room 1568

10:00 AM

2:17-24228 RIGOBERTO HERNANDEZ GONSALEZ

Chapter 7

#4.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 10920 Ramona Blvd Apt O El Monte CA 91731 . (O'Connor, Barry)

Docket 12

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant caused a notice to quit to be served upon the Debtor on December 29, 2017.

This Motion has been filed to allow the Movant to proceed with the Movant's contemplated unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

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10:00 AM

CONT... RIGOBERTO HERNANDEZ GONSALEZ

Chapter 7

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the Court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

RIGOBERTO HERNANDEZ

Represented By
Ivan M Lopez Ventura

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:18-10467 Walcott Gray

Chapter 7

#5.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6620 2nd Avenue, Los Angeles, Ca . (Long, Helen)

Docket 11

Tentative Ruling:

2/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on August 30, 2017. Judgment for the Movant was entered in the unlawful detainer action on November 17, 2017. A writ of possession for the Property was issued on December 28, 2017.

This Motion has been filed to allow the Movant to proceed with the Movant's state unlawful detainer remedies. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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CONT...

Walcott Gray

Chapter 7

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

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Walcott Gray

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#6.00 HearingRE: [1093] Motion to Compel Production of Documents from the Debtor
(Katzman, Steven)

Docket 1093

Tentative Ruling:

2/19/2018

For the reasons set forth below, the Motion to Compel is DENIED.

Pleadings Filed and Reviewed:

- 1) Discovery Motion:
 - a) Notice of Motion of Official Committee of Unsecured Creditors to Compel Production of Documents from the Debtor (the "Motion to Compel") [Doc. No. 1093]
 - i) Local Bankruptcy Rule 7026-1(c)(3) Joint Stipulation Regarding Motion of Official Committee of Unsecured Creditors to Compel Production of Documents from the Debtor [Doc. No. 1093]
 - ii) Application for Order Setting Hearing on Shortened Notice [Doc. No. 1094]
 - iii) Order Setting Hearing on Discovery Motion Filed by the Official Committee of Unsecured Creditors [Doc. No. 1097]
 - iv) Declaration of Lucas F. Hammonds Regarding Notice of Order Setting Hearing on Discovery Motion Filed by the Official Committee of Unsecured Creditors [Doc. No. 1100]
 - b) Response of Roxbury Healthcare Services, LLC and Sycamore Healthcare Services, LLC to Motion of Official Committee of Unsecured Creditors to Compel Production of Documents from the Debtor [Doc. No. 1104]
 - c) Reply to Response of Roxbury Healthcare Services, LLC and Sycamore Healthcare Services, LLC to Motion of Official Committee of Unsecured Creditors to Compel Production of Documents from the Debtor [Doc. No. 1111]
- 2) Other Relevant Papers:
 - a) Notice of Motion and Motion to Approve Terms and Conditions of Settlement

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

- Agreement By and Between the Debtor, and Sycamore Healthcare Services, LLC, Roxbury Healthcare Services, LLC, S&W Health Management, Co., Inc., Selvin & Weiner, PC, and Beryl Weiner, in Accordance with Bankruptcy Rule 9019 (the "Compromise Motion") [Doc. No. 1106]
- b) Notice of Motion and Motion of the Official Committee of Unsecured Creditors for (I) Leave, Standing and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of Debtor's Estate and (II) Settlement Authority (the "Standing Motion") [Doc. No. 1039]
 - i) The Official Committee of Unsecured Creditors' Notice of Claims and Disputes of Alleged Secured Claims of Roxbury Healthcare Services, LLC and Sycamore Healthcare Services, LLC [Doc. No. 796]
 - c) Response of Roxbury Healthcare Services, LLC and Sycamore Healthcare Services, LLC to Application of the Official Committee of Unsecured Creditors for an Order (1) Modifying the Briefing Schedule Set Forth in this Court's December 29, 2017 Order and (2) Scheduling a Status Conference Pursuant to 11 U.S.C. §105(d)(1) to Address Discovery Issues (the "Roxbury/Sycamore Response") [Doc. No. 1087]

I. Facts and Summary of Pleadings

The Official Committee of Unsecured Creditors (the "Committee") moves to compel the Debtor to produce documents. The Court has set a hearing on the Motion on shortened notice. The discovery dispute pertains to the Debtor's motion to approve a compromise (the "Compromise Motion") between the Debtor, on the one hand, and Sycamore Healthcare Services, LLC ("Sycamore"), Roxbury Healthcare Services, LLC ("Roxbury"), S&W Health Management, Co., Inc. ("SW Health"), Selvin & Weiner, APC ("S&W APC"), and Beryl Weiner ("Mr. Weiner" and, collectively with Sycamore, Roxbury, SW Health, and S&W APC, the "Weiner Parties"), on the other hand. The Committee opposes the Compromise Motion and has filed a motion seeking derivative standing (the "Standing Motion") to prosecute against the Weiner Parties the claims that the Debtor seeks to resolve via the Compromise Motion. Pursuant to an order setting a briefing schedule entered on February 1, 2018 [Doc. No. 1091], the Standing Motion and Compromise Motion will stand submitted as of March 22, 2018, and no hearing on either motion will be conducted unless otherwise ordered by the Court.

On December 6, 2017, the Debtor and the Weiner Parties participated in mediation before the Hon. Gregg W. Zive and reached a settlement (the "Settlement

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Agreement”), the terms of which were placed on the record. The key terms of the settlement were as follows:

- 1) All secured and unsecured claims of the Weiner Parties were to be extinguished.
- 2) The \$1,707,434 reserved by the Debtor to pay the Weiner Parties’ claims was to be released to the Debtor for the benefit of the estate.
- 3) Certain of the Weiner Parties were to commence litigation against their insurers, asserting that the insurers breached their obligations to defend the Weiner Parties against claims asserted against the Weiner Parties by the Committee. After payment of attorneys’ fees, any recovery in the litigation would be shared equally between the estate and the Weiner Parties.

While the Debtor and the Weiner Parties were in the process of memorializing the Settlement Agreement reached before Judge Zive, the Committee served subpoenas upon the Weiner Parties and their insurance carriers, seeking to obtain information pertaining to the Weiner Parties’ insurance coverage claims. The Weiner Parties took the position that the Committee’s discovery was intended to build an argument, to be presented in open court, as to the potential weaknesses or defenses as to the Weiner Parties’ claims against their insurance carriers (the “Coverage Claims”). *See* Roxbury/Sycamore Response at ¶2. In order to protect the Coverage Claims, the Weiner Parties negotiated a revision to the Settlement Agreement with the Debtor. Under the revised Settlement Agreement, in lieu of the Debtor and the Weiner Parties sharing equally in any recovery obtained in connection with the Coverage Claims, the Weiner Parties will pay the estate \$400,000. The other terms of the settlement remain unchanged. The Debtor filed the Compromise Motion, seeking approval of the Settlement Agreement, on February 14, 2018.

By way of the instant Motion to Compel, the Committee seeks to compel the Debtor to produce documents and communications between the Debtor and the Weiner Parties from and after the conclusion of the December 6, 2017 mediation. The Committee asserts that such documents are necessary for it to prosecute the Standing Motion and oppose the Compromise Motion. The Committee’s theory is that evaluation of the Settlement Agreement requires a review of the documents and communications that the Debtor and the Weiner Parties exchanged during the process of memorializing the Settlement Agreement.

On December 18, 2017, the Committee served upon the Debtor the document request demanding the post-mediation communications between the Debtor and the

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Weiner Parties (the “December 18 Request”). The Debtor’s counsel agreed to accept the document request via e-mail in lieu of a formal document demand under Bankruptcy Rule 7034.

On December 20, 2017, the Debtor and the Weiner Parties executed a “Common Interest Privilege and Confidentiality Agreement” (the “Confidentiality Agreement”) [Doc. No. 1093, Ex. A]. The Confidentiality Agreement states that is effective as of December 7, 2017. The Debtor states that the Debtor and the Weiner Parties agreed to execute the Confidentiality Agreement on December 8 and commenced preparing the Confidentiality Agreement on December 20. The Debtor states that execution of the Confidentiality Agreement was delayed by a death and funeral.

The Confidentiality Agreement applies to information exchanged between the Debtor and the Weiner Parties during the process of memorializing the Settlement Agreement, and provides in relevant part:

The signatories to this Agreement intend that information be exchanged among them and still remain protected from disclosure under the attorney-client privilege and the attorney work-product privilege. The signatories to this Agreement further intend that any exchange of information be within the “joint defense/joint interest” privilege as recognized by numerous authorities, including, but not limited to *Hunydee v. United States*, 355 F.2d 183 (9th Cir. 1965); *Continental Oil Company v. United States*, 330 F.2d 347 (9th Cir. 1964); and *Raytheon Company v. Superior Court*, 208 Cal.App.3d 683 (1989), and to the maximum extent recognized by law.

Confidentiality Agreement at ¶1.

The Committee’s Motion to Compel

The Committee makes the following arguments in support of its Motion to Compel the Debtor to produce the information exchanged between the Debtor and the Weiner Parties during the process of memorializing the Settlement Agreement:

The Debtor’s assertion that the settlement communications are protected by the “common interest” or “joint defense” privilege is without merit. “Rather than a separate privilege, the ‘common interest’ or ‘joint defense’ rule is an exception to ordinary waiver rules designed to allow attorneys for different clients pursuing a common legal strategy to communicate with each other. However, a shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within this exception. Instead, the parties must make the communication in pursuit of a joint strategy in accordance with some form of

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agreement—whether written or unwritten.” *In re Pac. Pictures Corp.*, 679 F.3d 1121, 1129 (9th Cir. 2012) (internal citations omitted).

Parties negotiating a settlement agreement are inherently adverse. Unless the Debtor concedes that its interests are not adverse to the Weiner Parties—which would amount to an admission of its conflict of interest and inability to effectively address the estate’s claims against the Weiner Parties—the Debtor and the Weiner Parties cannot assert the common interest protection with respect to their communications.

Nor are the communications protected by this Court’s “Third Amended General Order 95-01” (“General Order 95-01”), which provides that communications during mediation are confidential. General Order 95-01 does not apply because the communications occurred after the mediation with Judge Zive. *See Folb v. Motion Picture Indus. Pension & Health Plans*, 16 F. Supp. 2d 1164, 1180 (C.D. Cal. 1998), *aff’d*, 216 F.3d 1082 (9th Cir. 2000) (“On the facts presented here, the Court concludes that communications to the mediator and communications between parties during the mediation are protected. In addition, communications in preparation for and during the course of a mediation with a neutral must be protected. Subsequent negotiations between the parties, however, are not protected even if they include information initially disclosed in the mediation. To protect additional communications, the parties are required to return to mediation. A contrary rule would permit a party to claim the privilege with respect to any settlement negotiations so long as the communications took place following an attempt to mediate the dispute.”).

In addition, General Order 95-01 requires the parties and the mediator to execute “a written confidentiality agreement in the form attached as Official Form 708.” General Order 95-01 at ¶6.3. The Debtor and the Weiner Parties did not execute Official Form 708.

If the Court does not compel the Debtor to produce to the Committee the documents covered by the December 18 Request, the Court should, at a minimum, (i) compel the production of all documents with respect to which the Debtor asserts common interest protection to the Court for *in camera* review and (ii) order the Debtor to produce a privilege log with respect to all such documents.

The Debtor’s Opposition to the Motion to Compel

The Debtor makes the following arguments in Opposition to the Motion to Compel:

General Order 95-01 provides in relevant part:

No written or oral communication made, or any document presented, by any

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Gardens Regional Hospital and Medical Center, Inc.

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party, attorney, Mediator, Alternate Mediator or other participant in connection with or during any Mediation Conference, including the written Mediation Conference statements referred to in Paragraph 7.8 below, may be disclosed to anyone not involved in the Mediation, nor may any such communication be used in any pending or future proceeding in this Court or any other court. All such communications and documents shall be subject to all of the protections afforded by FRBP 7068.

General Order 95-01 at ¶6.1.

The communications and documents sought by the Committee were exchanged between the Debtor and the Weiner Parties in their efforts to finalize the Settlement Agreement reached at the mediation before Judge Zive (the “Mediation Conference”). As such, those communications were made “in connection with” the Mediation Conference and may not be used in proceedings before the Court.

Although the parties did not execute Official Form 708 before the Mediation Conference began, there is no dispute that Judge Zive repeatedly made clear, and all parties agreed, that communications presented in connection with the Mediation Conference were confidential.

The Committee’s reliance upon *Folb* for the proposition that post-mediation communications are not confidential is misplaced. In *Folb*, the court examined the existence and scope of a mediation privilege under federal common law, not the scope of confidentiality under the Court’s Mediation Program for Bankruptcy Cases and Adversary Proceedings (the “Mediation Program”).

Even disregarding the rules governing the confidentiality of communications exchanged in connection with mediation, courts have held that where discovery is sought of settlement communications “in the same ongoing litigation,” such discovery “is proper only where the party seeking it lays a foundation by adducing from other sources evidence indicating that the settlement may be collusive.” *Diagnostics Systems Corp. v. Symantec Corp.*, No. SA CV 06–1211 DOC (ANx), 2008 WL 9396386 *10 (C.D.Ca. Apr. 4, 2008), citing *Lobatz v. U.S. West Cellular of Cal., Inc.*, 222 F.3d 1142, 1148 (9th Cir. 2000) and *Mars Steel Corp. v. Continental Illinois Nat’l Bank & Trust Co.*, 834 F.2d 677, 684 (7th Cir. 1987). The Committee has filed no declarations from anyone with first-hand knowledge showing that the Debtor has engaged in any collusion with the Weiner Parties.

Finally, much of the discovery sought by the Committee is no longer relevant given the modifications to the Settlement Agreement. Many of the communications at issue pertain to the prior version of the Settlement Agreement which provided that the

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Debtor and the Weiner Parties would share equally in any recovery obtained in connection with the Coverage Claims. In lieu of an equal recovery, the revised Settlement Agreement now provides that the Weiner Parties will pay the estate \$400,000. Therefore, issues pertaining to the Weiner Parties' insurance coverage are no longer relevant.

Roxbury and Sycamore's Opposition to the Motion to Compel and the Committee's Reply in Support of the Motion

Roxbury and Sycamore join the Debtor's Opposition to the Motion to Compel. Roxbury/Sycamore reiterate the Debtor's argument that a substantial portion of the Committee's discovery request has become moot in view of the revisions to the Settlement Agreement. Roxbury/Sycamore contest the Committee's assertion that the Settlement Agreement must be subjected to heightened scrutiny on the grounds that the Weiner Parties are insiders. According to Roxbury/Sycamore, as of the commencement of the case none of the Weiner Parties held any position with or interest in the Debtor and have not held any position with the Debtor during the case.

In Reply to Roxbury and Sycamore's Opposition, the Committee argues that review of the post-mediation communications is necessary so that the Committee can determine whether the Settlement Agreement was negotiated in good-faith. The Committee further argues that Mr. Weiner qualifies as an insider because he served as an ordinary course professional by representing the Debtor in connection with state court litigation.

II. Findings and Conclusions

Multiple reasons support denial of the Motion to Compel. First, the post-mediation communications are protected from disclosure by General Order 95-01, which provides in relevant part:

No written or oral communication made, or any document presented, by any party, attorney, Mediator, Alternate Mediator or other participant *in connection with* or during any Mediation Conference, including the written Mediation Conference statements referred to in Paragraph 7.8 below, may be disclosed to anyone not involved in the Mediation, nor may any such communication be used in any pending or future proceeding in this Court or any other court. All such communications and documents shall be subject to all of the protections afforded by FRBP 7068.

General Order 95-01 at ¶6.1 (emphasis added).

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CONT... Gardens Regional Hospital and Medical Center, Inc.

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Although the communications at issue did not occur at the Mediation Conference, the communications were necessary to memorialize the Settlement Agreement. Accordingly, the communications were made “in connection with” the Mediation Conference. The fact that the Debtor and the Weiner Parties did not execute Official Form 708 does not waive the protections of General Order 95-01. Judge Zive made clear and all parties understood that the communications at the Mediation Conference were confidential. A minor oversight such as the failure to sign Official Form 708 cannot waive the protections afforded by General Order 95-01.

The Committee’s reliance upon *Folb*, for the proposition that communications conducted subsequent to a mediation conference are not privileged, is misplaced. *Folb* examined whether a mediation privilege existed under federal common law and did not assess the scope of confidentiality under General Order 95-01. Therefore, *Folb* is inapposite.

Second, there is no merit to the Committee’s contention that it must have access to the post-mediation communications in order to evaluate whether the Settlement Agreement is in the best interests of the estate. The Committee, having conducted an extensive investigation of the claims that are the subject of the Settlement Agreement, is in possession of all the information it needs to present its arguments to the Court regarding the merits of the upcoming Compromise Motion. Further, many of the communications sought by the Committee are no longer relevant because they pertain to the earlier version of the Settlement Agreement that provided for an equal split between the Debtor and the Weiner Parties of any recovery obtained in connection with the Coverage Claims.

Third, the communications sought by the Committee are subject to the common interest privilege. Communications between attorneys for different clients are protected by the common interest privilege if the communications are made “in pursuit of a joint strategy in accordance with some form of agreement.” *Pac. Pictures Corp. v. U.S. Dist. Court (In re Pac. Pictures Corp.)*, 679 F.3d 1121, 1129 (9th Cir. 2012). Here, the Debtor and the Weiner Parties executed the written Confidentiality Agreement, in which the parties agreed to exchange confidential communications to facilitate Court approval of the Settlement Agreement. In seeking to obtain approval of the Settlement Agreement, the Debtor and the Weiner Parties were pursuing a joint legal strategy.

The Committee argues that the Debtor and the Weiner Parties were not pursuing a joint legal strategy, on the grounds that parties negotiating a settlement agreement are inherently adverse. The Committee is incorrect. The Debtor and the Weiner Parties

**United States Bankruptcy Court
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Tuesday, February 20, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

reached an agreement in principle at the Mediation Conference conducted by Judge Zive on December 6, 2017. The material terms of that agreement were placed upon the record. The post-mediation communications were exchanged in order to formalize the terms of the agreement that had already been reached. Therefore, at the time those communications were exchanged, the interests of the Debtor and the Weiner Parties no longer were adverse—their disputes had been resolved at the Mediation Conference. The fact that one of the terms of the Settlement Agreement had to be modified because the Committee’s discovery threatened to jeopardize the Weiner Parties’ Coverage Claims does not impact the analysis.

In re Lidoderm Antitrust Litig., No. 14-MD-02521-WHO, 2016 WL 861019, at *1 (N.D. Cal. Mar. 7, 2016), upon which the Committee relies in support of its contention that parties negotiating a settlement agreement are inherently adverse, is inapposite. In *Lidoderm*, the communications pertained to discussions between parties about how to allocate the costs of a settlement between themselves. *Id.* The communications did not concern the terms of the settlement. *Id.* In finding that the common interest privilege did not apply to such communications, the *Lidoderm* court observed that the settlement contained no cost-sharing provisions and that the parties engaged in the cost-sharing negotiations in furtherance of their ongoing business relationship, not for the purpose of facilitating the settlement. The court found that there was “little evidentiary support for the proposition that an agreement on the cost split ... was a ‘necessary predicate’ to the ... settlement.” *Id.* at *2. In the present case, by contrast, the communications at issue were necessary to memorialize the Settlement Agreement that had been reached before Judge Zive.

Based upon the foregoing, the Motion to Compel is DENIED. For the same reasons, the Committee’s request that the Court conduct an *in camera* review of the communications at issue and order the Debtor to produce a privilege log with respect to the communications is DENIED.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11
determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#1.00 Pre-Trial Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18

Docket 234

Tentative Ruling:

2/20/2018

The Court has entered an order vacating the Pretrial Conference and setting a continued Status Conference for May 15, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

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CONT... EPD Investment Co., LLC
Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:15-16111 Jung Hee Choi

Chapter 7

Adv#: 2:15-01381 DOOIN INDUSTRIAL CORPORATION, a foreign corporatio v. Choi

#2.00 Hearing RE [66]
(1) Order Requiring Jung Hee Choi To Show Cause Why She Should Not Be Held In Contempt Of Court For Failure To Produce Documents And Incarcerated Until She Produces The Documents (2) Appearance and examination of judgment debtor JUNG HEE CHOI, aka JUNG HEE LEE, dba THE HUGE TREE

fr. 1-25-17; 3-22-17; 4-19-17; 7-25-17; 11-22-17

Docket 0

Tentative Ruling:

2/20/2018

Hearing required. Movant to furnish translation services.

Party Information

Debtor(s):

Jung Hee Choi

Represented By
Kelly K Chang

Defendant(s):

Jung Hee Choi

Pro Se

Plaintiff(s):

DOOIN INDUSTRIAL

Represented By
Nico N Tabibi

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:15-16111 Jung Hee Choi

Chapter 7

Adv#: 2:15-01381 DOOIN INDUSTRIAL CORPORATION, a foreign corporatio v. Choi

#3.00 Hearing re [67]

(1) Order Requiring Sun Kyung Lee To Show Cause Why She Should Not Be Held In Contempt Of Court For Failure To Produce Documents And Incarcerated Until She Produces The Documents and (2) Appearance and examination of Judgment Debtor SUN KYUNG LEE, aka SUNNY LEE, dba PIUSSANCE TEXTILE

FR. 4-19-17; 7-25-17; 11-22-17

fr. 1-25-17; 3-22-17

Docket 0

Tentative Ruling:

2/20/2018

Hearing required. Movant to furnish translation services.

Party Information

Debtor(s):

Jung Hee Choi

Represented By
Kelly K Chang

Defendant(s):

Jung Hee Choi

Pro Se

Plaintiff(s):

DOOIN INDUSTRIAL

Represented By
Nico N Tabibi

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

CONT... Jung Hee Choi

Chapter 7

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-10476 PAO, Inc.

Chapter 7

#4.00 APPLICANT: Other : Franchise Tax Board

Hearing re [56] and [57] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

2/20/2018

See Cal. No. 7 below, which is incorporated by reference.

Party Information

Debtor(s):

PAO, Inc.

Represented By
Liphan A Lee

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-10476 PAO, Inc.

Chapter 7

#5.00 APPLICANT: Accountant for Trustee : Karl T Anderson, CPA, INC.

Hearing re [56] and [57] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

2/20/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$6,875.00

Expenses: \$649.02

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

PAO, Inc.

Represented By
Liphan A Lee

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
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10:00 AM

2:16-10476 PAO, Inc.

Chapter 7

#6.00 APPLICANT: Attorney for Trustee : Benjamin Nachimson

Hearing re [56] and [57] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

2/20/2018

Having reviewed the First and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,250.00

Expenses: \$16.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

PAO, Inc.

Represented By
Liphan A Lee

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
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10:00 AM

2:16-10476 PAO, Inc.

Chapter 7

#7.00 APPLICANT: Trustee : Rosendo Gonzalez

Hearing re [56] and [57] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

2/20/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,750.00

Total Expenses: \$288.09

Franchise Tax Board: \$0.00 (the Court approves as final all interim payments made to this applicant).

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

PAO, Inc.

Represented By
Liphan A Lee

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Benjamin Nachimson

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:16-10875 Lidvia P Minero

Chapter 7

#8.00 APPLICANT: Other : Swicker & Associates Accountancy Corporationl

Hearing re [59] and [60] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

2/20/2018

See Cal. No. 9 below, which is incorporated by reference.

Party Information

Debtor(s):

Lidvia P Minero

Represented By
Jennifer Ann Aragon

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:16-10875 Lidvia P Minero

Chapter 7

#9.00 APPLICANT: Predecessor Trustee : David A Gill

Hearing re [59] and [60] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

2/20/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,451.45

Total Expenses: \$2,044.39

Other—Swicker & Associates Accountancy Corporation: The Court approves as final the interim payment paid to this applicant in the amount of \$1,000.00 pursuant to the Court's Order Granting the Application [Doc. No. 48].

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Lidvia P Minero

Represented By
Jennifer Ann Aragon

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:16-14294 Charles Green

Chapter 7

#10.00 APPLICANT: Trustee : Rosendo Gonzalez

Hearing re [38] and [39] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

2/20/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$445.37

Total Expenses: \$159.73

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Charles Green

Represented By
Amanda G Billyard

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:16-15536 Hahn Jake Kim

Chapter 7

Adv#: 2:16-01339 Nobel Textile, Inc., a California corporation v. Kim

#11.00 Status Hearing RE: [1] Adversary case 2:16-ap-01339. Complaint by Nobel Textile, Inc., a California corporation against Hahn Jake Kim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-27-16,12-6-16,1-24-17,4-25-17,5-2-17,5-9-17, 8-15-17
10-24-17

Docket 1

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

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10:00 AM

CONT...

Hahn Jake Kim

Chapter 7

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will not require the Plaintiff to submit an order referring this matter to the Mediation Panel, but the Court expects that the parties will complete a second day of mediation before Mr. Nassif as the parties have stated they intend to do in the most recent Status Report.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hahn Jake Kim

Represented By
Sanaz S Bereliani

Defendant(s):

Hahn Jake Kim

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Hahn Jake Kim

Chapter 7

Plaintiff(s):

Nobel Textile, Inc., a California

Represented By
Nico N Tabibi

Trustee(s):

David A Gill (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#12.00 Status HearingRE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott) CORRECTION: (41 (Objection / revocation of discharge - 727(c),(d),(e))), FLAG SELECTED IN ERROR; Complaint is for 68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) ONLY; Modified on 1/31/2017 (Garcia, Elaine L.).

Docket 1

Tentative Ruling:

2/20/2018

Tentative Ruling:

Plaintiff has demanded a jury trial. However, "[b]ankruptcy litigants ... have no Seventh Amendment right to a jury trial in dischargeability proceedings." *American Express v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124 (9th Cir. 1996). A bench trial will be conducted in this matter.

Having reviewed Defendant's Unilateral Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

CONT... Joven C Cabasag

Chapter 7

calendar.)

- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Joven C Cabasag

Represented By

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

CONT... Joven C Cabasag

Chapter 7

David S Hagen

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#13.00 Show Cause Hearing re [148] Order To Show Cause Why Green CO2 IP, LLC, Bevtch, Inc., Michael K. Shutte, Daniel Schneider, Brette Schutte, Randall Willard, And Willard & Associates, P.C. Should Not Be Held In Contempt For Violation Of The Automatic Stay

Docket 0

Tentative Ruling:

2/20/2018

The Court has entered an order approving the parties' stipulation to continue this hearing, in view of the parties' settlement negotiations. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:17-21245 Donna Maria Santoyo
Adv#: 2:17-01584 Mata v. Santoyo

Chapter 7

#14.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01584. Complaint by Maria Mata against Donna Maria Santoyo. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Simons, Steven)

Docket 1

***** VACATED *** REASON: DISMISSED 2-16-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Donna Maria Santoyo

Represented By
Jason Wallach

Defendant(s):

Donna Maria Santoyo

Pro Se

Joint Debtor(s):

Jose A Santoyo

Represented By
Jason Wallach

Plaintiff(s):

Maria Mata

Represented By
Steven A Simons

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, February 21, 2018

Hearing Room 1568

10:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#15.00 Status Hearing RE: [1] Adversary case 2:17-ap-01533. Complaint by Robin Williams against Darren James Searle. false pretenses, false representation, actual fraud)) (Anaya, Alana)

Docket 1

Tentative Ruling:

2/20/2018

Tentative Ruling:

Defendants have demanded a jury trial. However, "[b]ankruptcy litigants ... have no Seventh Amendment right to a jury trial in dischargeability proceedings." *American Express v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124 (9th Cir. 1996). A bench trial will be conducted in this matter.

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on

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CONT...

Darren James Searle

Chapter 7

discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

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CONT... Darren James Searle
DOES 1 through 10, inclusive

Pro Se

Chapter 7

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:10-12765 Abram Tavera

Chapter 11

Adv#: 2:16-01555 Mastan v. Tavera et al

#16.00 Status Hearing
RE: [1] Adversary case 2:16-ap-01555. Complaint by Peter J Mastan against Abram Tavera, Ruth Tavera. (Charge To Estate). Complaint for Breach of Contract and Declaratory Judgment Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)) (Ekvall, Lei Lei)

Docket 1

***** VACATED *** REASON: Cont'd to 5/15/2018 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Abram Tavera

Represented By
Robert M Yaspan
David J Richardson

Defendant(s):

Abram Tavera

Represented By
Robert M Yaspan

Ruth Tavera

Represented By
Robert M Yaspan

Joint Debtor(s):

Ruth Tavera

Represented By
Robert M Yaspan

Plaintiff(s):

Peter J Mastan

Represented By
Lei Lei Wang Ekvall

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#17.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

fr. 9-19-17;

Docket 1

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the dates set forth in the Scheduling Order entered on September 14, 2017 [Doc. No. 19] shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **2/16/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/01/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/31/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

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CONT... Liberty Asset Management Corporation

Chapter 11

calendar.)

- 5) The last day for dispositive motions to be heard is **6/26/2018**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
- 7) A Pretrial Conference is set for **7/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, Plaintiff must submit a Proposed Pretrial Order via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **7/30/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

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CONT... Liberty Asset Management Corporation

Chapter 11

Defendant(s):

Steven Tsang	Pro Se
Hieu Tai Tran	Pro Se
Benjamin Kirk	Pro Se
Lucy Gao Seh	Pro Se
Sunshine Valley, LLC	Pro Se
California International Bank, N.A.	Pro Se
All Persons Unknown Claiming	Pro Se
DOES 1 through 10, inclusive	Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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2:17-18394 Marco Antonio Cueto

Chapter 11

#19.00 Hearing
RE: [38] and [67] and [69] Motion for approval of chapter 11 disclosure statement

fr. 12-5-17

Docket 38

Tentative Ruling:

2/20/2018

For the reasons set forth below, the Debtor's First Amended Disclosure Statement is APPROVED. The deadlines set forth herein shall apply to Confirmation of the Debtor's Amended Chapter 11 Plan.

Pleadings Filed and Reviewed:

- 1) Motion for Approval of Chapter 11 Disclosure Statement (the "Motion") [Doc. No. 69]
 - a) First Amended Disclosure Statement in Support of Plan of Reorganization (the "Amended Disclosure Statement") [Doc. No. 67]
- 2) First Amended Chapter 11 Plan of Reorganization [Doc. No. 68]
- 3) Objection of Secured Creditor HomeStreet Bank to Approval of the Amended Disclosure Statement and Amended Plan of Reorganization (the "HomeStreet Objection") [Doc. No. 79]
 - a) Request for Judicial Notice in Support of the HomeStreet Objection [Doc. No. 80].

I. Facts and Summary of Pleadings

Marco Antonio Cueto (the "Debtor") filed a voluntary Chapter 11 Petition on July 11, 2017 (the "Petition") [Doc. No. 1]. The Debtor has continued to operate his

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Chapter 11

business as a debtor-in-possession, and no Committee of Unsecured Creditors has been appointed in this case. The Debtor filed the

The Disclosure Statement

On January 9, 2018, the Debtor filed the "First Amended Disclosure Statement in Support of Plan of Reorganization" (the "Amended Disclosure Statement") [Doc. No. 67]. The "Motion for Approval of Chapter 11 Disclosure Statement" (the "Motion") [Doc. No. 69] was filed concurrently with the Disclosure Statement. The Amended Disclosure Statement includes the following information:

- (1) Unclassified Claims including Administrative Priority and Tax claims: these claims include (i) professional fees and costs; (ii) United States Trustee's fees; and (iii) postpetition domestic support obligations. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later. Holders of priority tax claims are entitled to priority under § 507(a)(8), and such claims shall be paid over five years from the date of the entry of the order for relief with 4% interest. Holders of involuntary gap period claims allowed under § 502(f), which are entitled to priority under § 507(a)(3), will be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
 - (a) Priority Tax Claim of the IRS: The IRS has an Unsecured Priority Claim in the amount of \$1,827.40. The Debtor proposes to pay the Unsecured Priority Claim of the IRS in equal monthly payments of \$156.00 over a one year period with an interest rate of 4%. Cueto Declaration at ¶ 17.
- (2) Administrative Claims/Fees: The Debtor estimates his attorney fees and costs to Anyama Law Firm to be \$10,000.00. "First Amended Declaration of Marco Antonio Cueto" (the "Cueto Declaration") [Doc. No. 67] at ¶ 8. The Debtor proposes to pay his administrative fees from his earnings in the amount of \$10,000.00 on the Effective Date of the Plan. *Id.* at ¶ 9. The Debtor understands that Administrative fees are subject to Court approval after notice and a hearing. *Id.* at ¶ 10.

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Marco Antonio Cueto

Chapter 11

- (3) Class 5(b)—Impaired Secured Claim of Home Street Bank: Home Street Bank is the First lienholder on the Debtor's real property located at 15111 Freeman Ave., Apt. 72, Lawndale, CA 90260 (the "Freeman Property") and as of July 11, 2017, has an impaired secured claim in the amount of \$310,995.27 (the "Home Street Claim"). The Debtor proposes to pay the Home Street Claim over 30 years. Cueto Declaration at ¶ 12. The total amount of payments over 30 years to satisfy the Home Street Claim is \$601,016.00, with an interest rate of 5%. The first payment date is the Plan Effective Date. The Debtor proposes to pay monthly installments on the first day of each month in the amount of \$1,669.00 with an anticipated final payment date of February 1, 2048.
- (4) Class 5(c)—Impaired Secured Claim of Citi Mortgage: Citi Mortgage is the Second lienholder on the Freeman Property and as of July 11, 2017, has an impaired secured claim for \$118,475.52. The total amount of payments over time to satisfy the Home Street Claim is \$118,475.52, with an interest rate of 0%. The first payment date was December 1, 2017. The Debtor proposes to pay monthly installments on the first day of each month in the amount of \$416.71 with an anticipated final payment date of February 21, 2037. The payments are based on the "Stipulation Agreement" entered into between the Debtor and Citi Mortgage. *See* "First Amended Chapter 11 Plan of Reorganization" (the "Amended Plan") [Doc. No. 68] Exhibit 1.
- (5) Class 6(b): Other General Unsecured Creditors: Other general unsecured creditors will be paid 100% of their allowed claims over one year in equal monthly installments due on the first day of each calendar month without interest starting on the first such date after the Effective Date. The total amount of the two claims in this class is \$1,040.42. *See* Amended Disclosure Statement Exhibit C.
- (6) Executory Contracts and Unexpired Leases: The Debtor assumes the unexpired lease with Christina E. Blais, 15111 Freeman Ave., Apt. 72, Lawndale, CA 90260 (the "Blais Lease"). *See* Amended Disclosure Statement Exhibit E. The Blaise Lease is a one year lease commencing on July 1, 2017 and ending July 1, 2018.

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Chapter 11

- (7) Sources of Plan Payments: The Debtor intends to make the payments required under the Plan from the following sources:
- (a) Available Cash: The Debtor projects \$10,500.00 cash will be available on the Effective Date.
 - (b) Future Disposable Income: The Debtor estimates that projected monthly disposable income available to creditors for the one year period following confirmation will be \$1,024.46. This is based on the monthly income of \$10,142.59 and expenses of \$9,118.13 as set forth in the "Debtor's Declaration of Current/Postpetition Income and Expenses," Amended Disclosure Statement Exhibit A.
- (8) Risk Factors: The Plan has the following risks: the Debtor has a one year rental agreement with his tenant. The tenant may refuse to renew the lease which may result in a lapse in time before the Debtor can secure new tenants. Furthermore, tenants may default on their rental obligations.
- (9) Liquidation Analysis: Pursuant to the Debtor's liquidation analysis, the Disclosure Statement shows that, under Chapter 7 liquidation, unsecured creditors would likely be paid 0% on their claims. The Debtor asserts that under the proposed Plan, unsecured creditors would receive 100% recovery.

Opposition

On February 6, 2018, Creditor HomeStreet Bank filed the "Objection of Secured Creditor HomeStreet Bank to Approval of the Amended Disclosure Statement and Amended Plan of Reorganization" (the "HomeStreet Objection") [Doc. No. 79]. The HomeStreet Objection objects to Amended Disclosure Statement and Amended Plan on the following grounds: (1) the Amended Disclosure Statement's and Amended Plan's proposal to repay HomeStreet's Secured Claim with interest payable at 5% amortized over 30 years from the Effective Date is insufficient—HomeStreet contends that 5.875% is an appropriate interest rate using the prime rate of 4.50% and adding a risk adjustment of 1.50%; (2) the Amended Plan's proposal to pay a monthly payment of \$1,699.00 per month for 30 years beginning on the Effective Date is not sufficient to cure the arrearage amounts as of the Petition Date; (3) the Amended Plan does not

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CONT... **Marco Antonio Cueto**

Chapter 11

contain a specific undertaking as to which party will be responsible for post-confirmation real estate taxes and casualty insurance; (4) the Amended Plan proposes an extension of the maturity date of HomeStreet's loan to 2048—HomeStreet objects to any extension of the maturity date; and (5) the Amended Plan does not provide for HomeStreet's pre-confirmation regular payments.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts

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Marco Antonio Cueto

Chapter 11

receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement satisfies many relevant *Metrocraft* factors, including: (2) a description of the available assets and their value; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (11) the Chapter 11 Plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; and (15) information relevant to the risks posed to creditors under the Plan.

The HomeStreet Objection

Having considered the arguments raised in the HomeStreet Objection, and based on the nature of the objections, the Court finds that the objections are objections to the Amended Plan and, thus, should be considered in the context of Plan Confirmation. The HomeStreet Objection does not object to the adequacy of the information contained in the Amended Disclosure Statement.

III. Conclusion

Based on the foregoing, the Debtor's Amended Disclosure Statement is APPROVED. The following dates will apply with respect to the solicitation of votes and plan confirmation:

- 1) A hearing will be held on the confirmation of the Debtor's Chapter 11 Plan on **April 25, 2018, at 10:00 a.m.**

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Chapter 11

- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **March 7, 2018**.
- 3) **March 21, 2018** is fixed as the last day for creditors and equity security holders to return to the Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by the Debtor's counsel by 5:00 p.m. on such date.
- 4) **April 4, 2018** is fixed as the last day on which the Debtor must file and serve a motion for an order confirming the Plan (the Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **April 11, 2018** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **April 14, 2018** is fixed as the last day on which the Debtor may file and serve their reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Marco Antonio Cueto

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Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

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2:17-13943 Unity Courier Service, Inc.

Chapter 11

#20.00 HearingRE: [228] Motion for order confirming chapter 11 plan Motion for Order Confirming Debtor's First Amended Plan of Reorganization Dated December 13, 2017 as Modified; Supporting Memorandum of Points and Authorities; and Supporting Declarations of Ali Sharifi and Larry Lum

Docket 228

Tentative Ruling:

2/20/2018

For the reasons set forth below, the Debtor's First Amended Plan of Reorganization is CONFIRMED.

Pleadings Filed and Reviewed:

- 1) Motion for Order Confirming Debtor's First Amended Plan of Reorganization Dated December 13, 2017 as Modified (the "Motion") [Doc. No. 228]
- 2) Amended Chapter 11 Plan—Redline Comparison of Original Plan Dated October 11, 2017 as Compared to First Amended Plan Dated December 13, 2017 (the "Plan") [Doc. No. 189]
 - a) Debtors' Plan of Reorganization Dated October 11, 2017 (the "Original Plan") [Doc. No. 134]
- 3) Amended Disclosure Statement—Redline of Original Disclosure Statement in Support of Chapter 11 Plan Dated October 11, 2017 as Compared to First Amended Disclosure Statement in Support of First Amended Chapter 11 Plan Dated December 13, 2017 (the "Amended Disclosure Statement") [Doc. No. 190]
 - a) Debtors' Disclosure Statement in Support of Plan of Reorganization Dated October 11, 2017 (the "Original Disclosure Statement") [Doc. No. 133]
- 4) Summary of Ballots in Support of the Motion [Doc. No. 230]
- 5) No Opposition filed.

I. Facts and Summary of Pleadings

Chapter 11 Debtor and Debtor in Possession Unity Courier Services, Inc. (the "Debtor") seeks confirmation of the "Amended Chapter 11 Plan—Redline

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CONT... Unity Courier Service, Inc.

Chapter 11

Comparison of Original Plan Dated October 11, 2017 as Compared to First Amended Plan Dated December 13, 2017" (the "Amended Plan") [Doc. No. 189]. No objections to confirmation are on file.

Summary of the Amended Plan

The Amended Plan will become effective (the "Effective Date") on the second business day after entry of the Confirmation Order.

The Amended Plan includes "Unclassified Claims" as follows:

- 1) Administrative Priority Claims: these claims include (i) professional fees and costs; (ii) United States Trustee's fees; and (iii) postpetition domestic support obligations. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
- 2) Priority Tax Claims: Unsecured Claims of Governmental Units entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date unless the Debtor files an objection to such claim prior to the Effective Date.
 - a) California State Board of Equalization, Proof of Claim ("POC") No. 7: \$537
 - b) California Franchise Tax Board, POC No. 15: \$0
 - c) California Employment Development Department, scheduled amount: \$0
 - d) City of Los Angeles, scheduled amount: \$3,142.32
 - e) Internal Revenue Service, POC No. 4 as amended: \$0
 - f) Los Angeles County Tax Collector, POC No. 9: \$4,236.44
 - g) Oregon DCBS, scheduled amount: \$0

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Unity Courier Service, Inc.

Chapter 11

- h) Oregon Department of Revenue, POC No. 35: \$114.00
- i) San Diego County Tax Collector, POC No. 11 as amended by POC No. 34: \$5,423.36
- j) Washington State Department of Revenue, POC No. 5: \$403.13
- k) Washington State Department of Labor and Industrial Relations, POC No. 33: \$1,917.79

The Amended Plan's classification scheme for Claims and Interests is as follows:

- 1) Class 1: Priority Claims – Classes 1(a)-(g): these classes include allowed unsecured claims entitled to priority under § 507 (except those which are unclassified claims as set forth above).
 - a) Class 1(a): Unsecured domestic support obligations – None
 - b) Class 1(b): Wage and commission claims – None
 - c) Class 1(c): Employee benefit plan contribution claims – None
 - d) Class 1(d): Grain producer and fishermen claims – None
 - e) Class 1(e): Consumer deposit claims – None
 - f) Class 1(f): Commitment to federal depository institutions regulatory agency – None
 - g) Class 1(g): Death or personal injury claims resulting from unlawful operation of a motor vehicle while intoxicated – None
- 2) Class 2: Secured Claims – Classes 2(a)–(b)
 - a) Class 2(a): Impaired Secured Claim of Camco Resources, LLC ("Camco"), POC No. 20 – \$1,236,683.57. There are no asserted arrearages. Pursuant to the "Commission Agreement," the Debtor is

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obligated to make minimum monthly payments to Camco; failure to make the required payments constitutes a default. Camco will be impaired in that the Debtor's obligation to make any payments during the first three calendar months following the Effective Date will be suspended (the "Suspended Payments"). Commencing on the 15th Day of the first calendar month that is more than three calendar months following the Effective Date, the Reorganized debtor will resume making the required monthly payments and will pay an amount equal to the Suspended Payments to Camco in 12 equal monthly installments.

- b) Class 2(b): Impaired Secured Claim of Steve Kelley Lopez ("Lopez"), POC No. 21 – \$201,698.00. There are asserted arrearages in the amount of \$200,000. The loan from Lopez matured on February 11, 2017, and is memorialized by a promissory note (the "Note"), security agreement, and filed UCC-1 financing statement. Interest on the loan accrues at 10% per annum. Post-petition, the Debtor has been making interest only payments. Lopez will be impaired in that the Note's maturity date will be extended one year after the Effective Date, with the Debtor continuing to make payments of interest only or more at the reduced rate of 5% per annum.
- 3) Class 3: General Unsecured Claims – Classes 3(a)–(b)
- a) Class 3(a): General Unsecured Claims of the Class Action Creditors and any other allowed wage and hour/class action claims – \$94,261,954.84 (consisting of the claims listed below). Claim No. 28 is based on a state court judgment that is currently being appealed by the Debtor, and Claim No. 26 is based on a state court lawsuit that was pending at the time of the filing of the Petition.¹ **[Note 1]**. Class 3(a) also includes all claims that were or may be asserted by *Joan Velarde and on behalf of All Others Similarly Situated v. Tricor America, Inc., et al.*, including the Debtor, in the case filed on July 13, 2017 in the Superior Court of California, County of San Francisco, Case No. CGC17560118 (the "Velarde Action"). The Velarde Action was filed post-petition, purportedly without

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knowledge of the Debtor's bankruptcy. While Velarde dismissed the Velarde Action against the Debtor, the Debtor deems the Velarde Action as an informal proof of claim. The Amended Plan treats all actual or potential members of the Velarde Action as Class 3(a) creditors. Additionally, pursuant to the "Order Setting Bar Date for Filing Proofs of Claim" [Doc. No. 150], which set November 29, 2017 as the supplemental proof of claims bar date, the following claims which were filed on or before the November 29, 2017 Supplemental Claims Bar Date are included in Class 3(a): (i) Claim No. 38 by Fern Marie Thompson in the amount of \$6,000.00; and (ii) Claim No. 39 filed by Janey Mills in the amount of \$1,735.71. *See* "Amended Disclosure Statement—Redline of Original Disclosure Statement in Support of Chapter 11 Plan Dated October 11, 2017 as Compared to First Amended Disclosure Statement in Support of First Amended Chapter 11 Plan Dated December 13, 2017" (the "Amended Disclosure Statement") [Doc. No. 190] at 27–28. Class 3 (a) Creditors shall share in the Class 3(a) Fund—an interpleader account established at the bankruptcy court, pursuant to Local Bankruptcy Rules—in the sum of \$400,000. Class 3(a) creditors shall not receive any other distribution.

- b) Class 3(b): Other General Unsecured Creditors – \$1,044,869.38. This class includes all allowed unsecured claims not in Class 3(a) and not entitled to priority. \$100,000 shall be deposited into an account reserved for the payment of Class 3(b) Claims ("Class 3(b) Fund") on the Effective Date. Distribution to Holders of Class 3(b) Claims will be made in two \$50,000 installments.

4) Class 4: Interests in the Debtor

- a) All Interests in the Debtor are currently held by Larry Lum ("Lum") and Ali Sharifi ("Sharifi"), who each own 50% of the Debtor's outstanding and issued stock, and who have been the Debtor's sole officers, directors, and shareholders since its inception. Holders of Interests in the Debtor shall have such Interests cancelled on the Effective Date, and new stock in the Debtor shall be issued to the conditioned upon their contributing the sum of \$500,000.00 on the

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Effective Date to purchase 100% of the equity in the Reorganized Debtor.

The Amended Plan and Amended Disclosure Statement detail the means of funding the Amended Plan and making Effective Date payments. The Debtor anticipates that it will have approximately \$1,584.00 in unrestricted cash on the Effective Date. *See* Disclosure Statement [Doc. No. 190], Ex. 6 (Debtor's Cash Flow Projection for the periods July 1, 2017 through October 31, 2017, and November 1, 2017 through February 31, 2018). Approximately \$100,000 in post-Effective Date payments to Camco are deferred under the Amended Plan, and are likely to become due within 90 days after the Effective Date. Approximately \$200,000 in post-Effective Date payments to Lopez are deferred under the Amended Plan, and are likely to become due within 90 days after the Effective Date. The deferral of the payments to Lopez will allow the Debtor 12 additional months to generate funds to pay off this debt. The \$500,000 to be paid to the Reorganized Debtor by Lum and Sharifi for their purchase of the equity in the Reorganized Debtor is earmarked for funding the Class 3 (a) Fund in the amount of \$400,000, and for funding the Class 3(b) Fund in the amount of \$100,000.

Opposition

As of the date of this tentative ruling, no objections to confirmation are on file.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Amended Plan complies with all applicable provisions of § 1129.

Section 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the Collier, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" Collier on Bankruptcy ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

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Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

Each of the secured claims is classified separately, as is appropriate because each secured claimant has unique rights with respect to specific collateral. The claims of unsecured creditors in Class 9 are substantially similar to each other. The Amended Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Amended Plan does not separately classify certain unsecured claims. Section 1122(b) is inapplicable.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary Chapter 11 case. The Amended Plan separately classifies § 507(a)(2) administrative expense claims and § 507(a)(8) priority tax claims. The Amended Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the plan "specify any class of claims or interests that is not impaired under the plan."

There are no unimpaired classes. The Amended Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the plan "specify the treatment of any class of claims or interests that is impaired under the plan."

The description of each class set forth in Article II of the Amended Plan details the treatment of the impaired class. The Amended Plan satisfies § 1123(a)(3).

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6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Amended Plan provides the same treatment to claims and interests of the same class. The Amended Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the plan "provide adequate means for the plan's implementation."

Article V of the Amended Plan describes the means for implementation of the Amended Plan's provisions. The Amended Plan provides for funding from: operating income; cash on hand on the Effective Date; a \$500,000 cash contribution from Lum and Sharifi which is used to create a \$400,000 fund to pay 100% of the amount to be distributed to Class 3(a) creditors and a \$100,000 fund to be used to pay 100% of the amount to be distributed to Class 3(b) creditors; the deferral of three monthly payments due to Class 2(a) creditor, and extension of the maturity date and reduction in the interest rate paid to the Class 2(b) creditor. The Amended Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Amended Plan provides that the Debtor's organizational documents will be amended to prohibit the Reorganized Debtor from issuing non-voting equity securities to the extent necessary to comply with § 1123(a)(6). The Amended Plan satisfies §1123(a)(6).

9. Section 1123(a)(7)

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Section 1123(a)(7) requires that the plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Amended Plan provides that, on the Effective Date, Larry Lum shall be appointed President and Ali Sharifi shall be the Chairman of the Board, Corporate Secretary, and Chief Financial Officer of the Reorganized Debtor and shall be its sole directors. Each of the directors has experience with the Debtor and will be the sole shareholders of the Reorganized Debtor. The Amended Plan satisfies § 1123(a)(7).

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization.

The Amended Plan contains certain of § 1123(b)'s optional provisions including subparagraphs (1), (2), (3), (5), and (6). The Amended Plan is consistent with § 1123(b).

Section 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title."

The Court finds that the Debtor as Amended Plan proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see Order Approving Disclosure Statement and Fixing Time for Filing Acceptance or Rejections of Plan* [Doc. No. 172]); and
- 2) Obtained Court approval of the employment of professional persons (*see Order Granting Application and First Amendment to Application by Debtor and Debtor-in-Possession for Authority to Employ Law Offices of Ira Benjamin Katz, P.C., and the Law Offices of David W. Meadows as General Bankruptcy Counsel* [Doc. No. 62]).

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

Section 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

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The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Amended Plan presented here seeks results consistent with the purposes and objectives of the code. The Debtor negotiated the Amended Plan provisions with both of its secured creditors and at least one member of each of the unsecured creditor classes. All of the ballots received were cast in favor of Amended Plan Confirmation. The interests of the Debtor's equity security holders are being canceled, but they are contributing \$500,000 to the Reorganized Debtor to fund the respective Amended Plan distributions to Class 3(a) and 3(b) creditors. The terms and conditions of the Amended Plan allow the Debtor's business to reorganize while paying creditors at least as much as such creditors would receive in a Chapter 7 liquidation. The Amended Plan satisfies §1129(a)(3).

Section 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

Article I, Section A of the Amended Plan provides for payment of attorney and other professional fees only upon application to, and approval by, the Court. The Amended Plan satisfies § 1129(a)(4).

Section 1129(a)(5)

Section 1129(a)(5) requires that the plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the plan proponent to disclose the identity of

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any insider to be employed by the reorganized debtor.

Article II, Section 4, Article VII, Section S, and Article VII, Section T describe the current and future roles of Lum and Sharifi as the sole current officers and directors of the Debtor and the sole post-Effective Date officers and directors of the Debtor. The Amended Plan satisfies § 1129(a)(5).

Section 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the Amended Plan, does not apply.

Section 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Based upon its review of the Liquidation Analysis included with the Disclosure Statement, under Chapter 7 liquidation unsecured creditors would likely be paid 0% on their claims. Not all holders of Class 3(a) and 3(b) claims voted. The Amended Plan provides each holder of a Class 3(a) or 3(b) claim with a recovery or property of value, as of the Effective Date, that is not less than the amount that such holder would receive in a Chapter 7 liquidation. Under the Amended Plan, unsecured creditors would receive between 0.42431454% and 9.6267647% of their allowed claim. The Amended Plan satisfies § 1129(a)(7).

Section 1129(a)(8)

Section 1129(a)(8) requires each class to accept the plan, unless the class is not impaired. To accept a plan, members of a class must affirmatively vote in favor of the plan. *In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989).

Classes 2(a), 2(b), 3(a), 3(b), and 4 are all impaired and all such classes voted to confirm the Amended Plan. Furthermore, 100% of the ballots received by the voting deadline were case in favor of Amended Plan confirmation, including votes of each of the five classes.

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In addition to the above, to be "fair and equitable," a plan must comply with the "absolute priority rule." *See Case v. Los Angeles Lumber Co.*, 308 U.S. 106 (1939). In applying § 1129(b)(2)(B), this Court follows the approach set forth in *In re Arnold*, 471 B.R. 578 (Bankr. C.D. Cal. 2012) and applies the absolute priority rule to individual chapter 11 debtors. Collier defines that absolute priority rule:

A plan of reorganization may not allocate any property whatsoever to any junior class on account of the members' interest or claim in a debtor unless all senior classes consent, or unless such senior classes receive property equal in value to the full amount of their allowed claims, or the debtor's reorganization value, whichever is less.

7 Collier on Bankruptcy ¶ 1129.03 02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

As required by the Bankruptcy Code, the Amended Plan places claims and interests into various Classes according to their priority, with the exception of the "unclassified claims" consistent with the provisions of § 1123(a)(1). The Amended Plan complies with the absolute priority rule.

In sum, the Amended Plan satisfies the applicable requirements of § 1129(a)(8) and § 1129(b).

Section 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment.

Article I, Section A provides for payment of attorney and other professional fees only upon application to, and approval by, the Court. The Debtor will pay other claims allowed under § 503(b) and entitled to priority under § 507(a)(2), including United States Trustee's fees, in full on the Effective Date except to the extent that a holder of these claims agrees to other terms.

Article I, Section B sets forth the list of filed and or scheduled "Unsecured Claims of Governmental Units" entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date unless the Debtor files an objection to such claim prior to the Effective Date or the Debtor and the creditor agree upon a different payment amount.

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The Amended Plan satisfies § 1129(a)(9).

Section 1129(a)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan.

All five impaired classes have accepted the Amended Plan. The Amended Plan satisfies § 1129(a)(10).

Section 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

Based upon its review of the budget projections included with the Amended Disclosure Statement, the Court finds that the Debtor's projected income and cash available on the Effective date are sufficient to make required plan payments. The Amended Plan is feasible and satisfies § 1129(a)(11).

Section 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

The Amended Plan and the projections in the Amended Disclosure Statement include payment of all Administrative Claims. The Amended Plan satisfies § 1129(a)(12).

Section 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

Section 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

Section 1129(a)(15)

Section 1129(a)(15)(B) applies only to an individual case. As the Debtor is not

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an individual, § 1129(a)(15)(B) does not apply.

Section 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Debtor is a Corporation that engages in a business for profit and, therefore, § 1129(a)(16) does not apply.

Section 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Amended Plan on the grounds that the Amended Plan's purpose is the avoidance of taxes. The Amended Plan was proposed in good faith, and the principal purpose of the Amended Plan is to allow the Debtor to continue operating its business while paying creditors at least as much as they would receive in a Chapter 7 liquidation. The Amended Plan satisfies § 1129(d).

III. Conclusion

Based on the foregoing, the Debtor's Amended Chapter 11 Plan of Reorganization is CONFIRMED.

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: On January 23, 2018, the Court conducted a hearing on the "TBS Class Supplemental Objection to Claim #26 by Claimant Pedro Polio Class" (the "Polio Objection") [Doc. No. 183]; the "Opposition to the Polio Objection" (the "Polio Opposition") [Doc. No. 211]; the "Reply to the Polio Opposition" [Doc. No. 218]; the "TBS Class Objection to Claim #31 by Claimant Tim Callejo" (the "Callejo Objection") [Doc. No. 168]; the "Response to the Callejo Objection" (the "Callejo Opposition") [Doc. No. 207]; the "Reply to the Callejo Opposition" [Doc. No. 210]; the "Creditor and Class Claimant Pedro Polio's Motion for Application of FRCP Rule 23 Class Certification" (the "Class Certification Motion") [Doc. No. 212]; and the "TBS Class Limited Opposition to Class Certification Motion" [Doc. No. 217]. At the conclusion of the hearing, the Court entered the following Orders with respect to the Claim Objections and the Class Certification Motion: (1) the "Order Sustaining Objection and Disallowing Claim No. 31" by Tim Callejo [Doc. No. 225]; (2) the "Order Granting Creditor and Class Claimant Pedro Polio's Motion for Class Certification" [Doc. No. 226]; and (3) the "Order Allowing Claim No. 26 in the Amount of \$80,867,985.71" [Doc. No. 227].

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#21.00 HearingRE: [179] Motion to Compel Further Responses to Requests for Production of Documents, Set One (Hewlett, Douglas)

Docket 179

Tentative Ruling:

2/20/2018

For the reasons set forth below, the Motion to Compel is GRANTED.

Pleadings Filed and Reviewed:

- 1) Real Party in Interest JL AM Plus, LLC's Notice of Motion and Motion to Compel MBN Real Estate Investments' Further Responses to Requests for Production of Documents, Set One (the "Motion") [Doc. No. 179]
 - a) Joint Stipulation in Support of Real Party in Interest JL AM Plus, LLC's Notice of Motion and Motion to Compel MBN Real Estate Investments' Further Responses to Requests for Production of Documents, Set One [Doc. No. 179]
- 2) Declaration of Stephen F. Biegenzahn in Opposition to Plaintiff's Motion to Compel Production of Documents [Doc. No. 185]
- 3) Plaintiff's LR 37-2.3 Supplemental Memorandum in Support of Plaintiff's Notice of Motion and Motion to Compel Further Responses to Requests for Production [Doc. No. 190]

I. Facts and Summary of Pleadings

On August 29, 2016, the Court approved the sale of the estate's interest in this litigation to Defendants Morad Neman and MBN Real Estate, LLC ("MBN") for \$1 million. Bankruptcy Doc. No. 130. After Morad Neman failed to complete the purchase, backup bidder Accessories Mart, LLC purchased the litigation for \$905,000 on October 20, 2016. Adv. Doc. No. 57. Accessories Mart subsequently assigned its interest in the litigation to JL AM Plus ("JLAMP"). On September 2, 2016, the Court entered a preliminary injunction, barring Morad Neman and MBN Real Estate from transferring or encumbering the assets which are the subject of this litigation.

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Bankruptcy Doc. No. 138.

On November 22, 2016, JLAMP filed a First Amended Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; and (3) Unjust Enrichment (the "Complaint") [Adv. Doc. No. 68]. The Complaint's allegations are as follows:

- 1) Prior to commencing a voluntary Chapter 7 petition, Morad and Yaffa Javedanfar (the "Debtors") owned interests in (A) Boyd L.P. and Sky High LLC and (B) properties located at 310 East Boyd Street, Los Angeles, CA 90013 (the "Boyd Street Property"), 931 East Pico Boulevard, Los Angeles, CA 90021 (the "Pico Blvd. Property"), and 715 East 14th Street, Los Angeles, CA 90021 (the "14th Street Property") (collectively, the "Assets"). In or around December 2012, Debtors transferred their interests in Boyd LP and Sky High LLC to defendants Morad Neman and MBN Real Estate, LLC (collectively, the "Defendants"). On January 11, 2013, Debtors transferred their interests in the Boyd Street Property, the Pico Blvd. Property, and the 14th Street Property to the Defendants.
- 2) At the time of the transfers, Defendants knew of the Debtors' obligations to their creditors and knew that the Debtors were insolvent. The purpose of the transfers was to frustrate the rights of the Debtors' creditors.
- 3) There is a unity of interest between Morad Neman and MBN, such that treatment of MBN as a distinct entity would permit an abuse of the corporate privilege and produce an inequitable result. Accordingly, Morad Neman should be deemed to be the alter ego of MBN.

Based on the foregoing allegations, the Complaint seeks the following relief:

- 1) Avoidance of the transfers as constructively fraudulent, pursuant to §§544(b) and 548(a)(1)(B).
- 2) Avoidance of the transfers as preferences, pursuant to §547(b).
- 3) Restitution and disgorgement of the transferred Assets, and an award of punitive damages against the Defendants.
- 4) Imposition of a constructive trust upon the Assets and immediate turnover of the Assets.

On May 25, 2017, the Court granted Morad Neman's motion for summary judgment. The Court found that JLAMP had failed to allege the specific facts necessary to establish that Mr. Neman was the alter ego of MBN. The Court found that Morad Neman had presented facts showing that there was no genuine dispute that

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Morad Neman could not be held liable as MBN's alter ego. The Court entered final judgment in Morad Neman's favor after finding under Civil Rule 54(b) that there was no just reason to delay entry of judgment.

JLAMP moves to compel MBN to further respond to its Requests for Production ("RFPs") of documents, and seeks monetary sanctions. According to JLAMP, MBN has promised, but failed, to produce the following documents:

- 1) Full and complete bank records from 2008 to the present. MBN has produced some bank records but only up to 2013.
- 2) All correspondence with the team that appraised the properties in question. MBN has produced the appraisal reports but has not produced its e-mail correspondence with its appraisers.
- 3) All documents relating to the debts that were forgiven in exchange for transfer of the properties, including financials and bank records for all the entities, as well as the data stored in Quickbooks and any other accounting software from 2008 to the present.
- 4) Any loan agreements between the Debtors and MBN or Morad Ben Neman or any entities owned in full or in part by Morad Ben Neman.

JLAMP asserts that MBN must be required to produce the missing documents, or to admit the documents at issue do not exist. MBN states that it has produced 1,153 pages of documents; that it produced additional documents on January 26, 2018; and that the Motion to Compel is a desperate attempt by JLAMP to salvage the claims asserted in the litigation. MBN further argues that JLAMP's theory of the case is predicated upon an inflated valuation of the properties at issue and does not take into account the circumstances under which those properties were transferred—including that MBN's minority interest in the properties significantly reduced any value that MBN could have realistically expect to receive. With respect to JLAMP's request for sanctions, MBN argues that JLAMP's counsel's billing rate of \$870 per hour is excessive in view of the complexity of the litigation.

II. Findings and Conclusions

Civil Rule 37(a) provides that a "party may move for an order compelling disclosure or discovery." Civil Rule 37(a)(3)(B) provides that a "party seeking discovery may move for an order compelling an answer, designation, production, or inspection." For purposes of Rule 37, an "evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond."

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"Parties are permitted to discover any relevant nonprivileged matter. Fed.R.Civ.P. 26(b)(1). This rule is construed very broadly, encompassing 'any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.' Discovery is not limited to the issues raised only in the pleadings, but rather it is designed to define and clarify the issues." *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992). "The party opposing discovery bears the burden of resisting disclosure." *Rogers v. Giurbino*, 288 F.R.D. 469, 478-79 (S.D. Cal. 2012).

A. RFP Nos. 17–24, 74–81, 177–178, and 188–189

These RFPs seek information regarding whether the debts owed by the Debtors were sufficient to justify the transfer of the assets to MBN. The RFPs seek, among other things, information regarding the Debtors' liabilities to various entities; information regarding any loans from such entities to the Debtors; and information regarding any payments on such loans.

As this is a fraudulent transfer action, the Court finds that these RFPs are "relevant ... and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Civil Rule 26(b)(1). The RFPs deal with a key issue—whether the exchange of the properties for the debt was legitimate.

MBN must produce the responsive documents by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

B. RFP Nos. 27–32, 84–89, 128–133, and 194–199

These RFPs seek, among other things, information pertaining to the transfer of the Debtors' interest in the assets in question to MBN or to other entities, and information regarding the Debtors' liabilities to entities directly or indirectly owned and/or controlled by MBN. There is no dispute that MBN promised to produce a catalogue containing the requested documents, but never produced such a catalogue.

The Court finds that the information sought by the RFPs is relevant to the matters at issue in this fraudulent transfer action, and that the discovery sought is proportional to the needs of the case. There is no merit to MBN's assertion that the legitimacy of the Debtors' indebtedness to Morad Ben Neman and/or MBN is not relevant. If the

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Debtors did owe Mr. Neman and/or MBN money, then the transfer of assets having an equivalent value would not likely be avoidable as fraudulent.

MBN must produce the responsive documents by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

C. RFP Nos. 42–52, 99–108, 134–143, and 204–213

These RFPs seek information regarding the financial and tax affairs of the relevant entities, including information regarding the entities' income, accounts receivable, operating expenses, indebtedness, and tax returns.

The Court finds that the information sought by the RFPs is relevant, because it is necessary to allow JLAMP to evaluate MBN's claims that it has been operating its businesses relating to the relevant properties in good faith and has dealt legitimately with the Debtors. The Court further finds that the discovery sought is proportional to the needs of the case.

MBN states that it produced documents responsive to these RFPs on January 26, 2018. It is not clear from the record whether MBN's January 26 production (which occurred on the same date the Motion to Compel was filed) was adequate. Therefore, the Court will order MBN to produce the responsive documents, to the extent that it has not already produced them, by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

D. RFP Nos. 37–41, 94–98, 132–133, 167–168, and 202–203

These RFPs seek copies of leases relating to the Properties from 2008 to the present. MBN asserts that not all of the leases are relevant; it argues that, for example, a 2017 lease is not relevant to a valuation of the property as of 2012.

MBN's objections as to relevance are overruled. Although a 2017 lease is not as probative as to value as leases closer to the transfer date, such a lease has some relevance, especially considering that the properties are located in a gentrifying area in which rent increases could be anticipated. In view of the amount at issue, the discovery sought is proportional to the needs of the case.

MBN must produce the responsive documents by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

E. RFP Nos. 33, 90, 123, and 193

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These RFPs seek information relating to appraisals of the assets at issue. MBN has produced the appraisals themselves and an agreement with appraisers but has not produced other related communications, such as e-mails, billing records, or other communications with the appraisers. MBN has admitted that it communicated with its appraisers. MBN objects to the production of communications with appraisers on the ground that such communications are protected by the work-product doctrine. JLAMP responds that MBN has waived any applicable privilege by failing to claim such privilege in its responses to the RFPs, and that MBN has not previously asserted that its appraisers were "litigation experts." JLAMP further notes that the appraisals in question were conducted years before this litigation began.

MBN's privilege objection is overruled. Civil Rule 26(b)(3) protects "documents ... prepared in anticipation of litigation or for trial." The communications at issue do not fall within the scope of Rule 26(b)(3), because the appraisals were commissioned prior to this litigation.

MBN must produce the responsive documents by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

F. RFP Nos. 54–59, 111–116, 146–151, 181–186, and 216–221

These RFPs seek information regarding MBN's legal position, such as documents supporting MBN's contention that the Debtors' interest in Boyd LP had no value; documents supporting the contention that the Debtors received reasonably equivalent value and fair consideration in exchange for the transfers at issue; and documents supporting the contention that the Debtors were obligated by contract to make the transfers.

MBN does not deny that it has failed to produce the documents; it instead states that its legal position is that the value of the assets transferred was roughly equal to the secured obligations encumbering those assets. MBN's cursory recital of its legal position is not an excuse to avoid responding to the RFPs. MBN must produce the responsive documents by no later than **February 28, 2018**. To the extent that responsive documents do not exist, MBN must amend its responses to so state.

MBN is Ordered to Pay JLAMP Attorneys' Fees in the Amount of \$6,000

Civil Rule 37(a)(5)(A) provides that where a motion to compel discovery is granted, the "court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that

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conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." However, if any of the following three circumstances apply, the Court must not order the payment of expenses:

- i. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- ii. The opposing party's nondisclosure, response, or objection was substantially justified; or
- iii. Other circumstances make an award of expenses unjust.

Civil Rule 37(a)(5)(A)(i)-(iii).

None of the circumstances preventing the Court from ordering the payment of expenses apply here. JLAMP met and conferred with MBN prior to filing the Motion to Compel in a good-faith effort to obtain the discovery without court action. MBN's failure to produce the documents at issue was not substantially justified, and there are no other circumstances that make an award of expenses unjust. JLAMP will be awarded fees of only \$6,000, not the \$10,000 in fees that it requests. The Court declines to hold MBN's counsel jointly and severally liable for the fee award, or to impose sanctions against MBN's counsel pursuant to Local Bankruptcy Rule 7026-1(c)(4). There is not sufficient evidence before the Court to establish that counsel advised MBN to neglect its discovery obligations. And although the Court finds MBN's arguments in opposition to be without merit, those arguments are not so frivolous as to warrant sanctions.

Based upon the foregoing, the Motion to Compel is GRANTED. JLAMP shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By

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Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#100.00 HearingRE: [95] Motion RE: Objection to Claim Number 13 by Claimant Tod Short. Notice of Objection and Debtor's Objection to Creditor Tod Short's Claim; Memorandum of Points and Authorities; Declaration of Michael Anderson In Support Thereof, with Proof of Service

Docket 95

Tentative Ruling:

2/20/2018

For the reasons set forth below, the Debtor's Objection to Claim No. 13 filed by Tod Short in the amount of \$51,499.81 is SUSTAINED. Claim No. 13 is disallowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Objection and Debtor's Objection to Creditor Tod Short's Claim (the "Short Objection") [Doc. No. 95]
- 2) Claim No. 13 filed by Tod Short in the Amount of \$51,499.81

I. Facts and Summary of Pleadings

Base Architecture Planning & Engr, Inc. (the "Debtor") filed a voluntary Chapter 11 Petition on July 14, 2017 (the "Petition") [Doc. No. 1].

Claim No. 13

On September 1, 2017, Creditor Tod Short filed Claim No. 13 in the amount of \$51,499.81 (the "Short Claim"). The Short Claim asserts that (i) all or part of the Claim is secured, and (ii) all of the Claim is entitled to priority under 11 U.S.C. § 507 (a)(4). Claim No. 13 at 2–3. The aggregate amount of the Short Claim consists of claims for "\$28,999.81 less pay" and "\$22,500 [commissions] for the Inglewood Stadium Construction Project." *Id.* at 4. As to the claim for commissions for the

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Inglewood Stadium Construction Project, the Short Claim states:

On August 21, 2017 . . . I was informed that BASE Architecture, Planning & Engineering, Inc. (BASE) had obtained a 3 year contract with the Inglewood Stadium Construction Project. Under oath Mr. Michael Anderson Owner and CEO of [BASE] said that for the next 3 year [*sic*] BASE will be making \$600,000 a year. This true statement by Mr. Anderson means BASE must pay me a Performance Bonus of \$7,500 a year for 3 years [citing to page 2 of the "Offer of Employment" submitted with Claim No. 13].

Claim No. 13 at 4; *see also id.* at 6. The following evidence was filed in support of the Short Claim: (1) "Offer of Employment" dated July 4, 2010, Claim No. 13 at 5–8; (2) Correspondence dated September 3, 2016 from Michael Anderson to Tod Short with the subject line "Payrate," *id.* at 9; (3) Pay Stubs for multiple pay periods, *id.* at 10–11; (5) Correspondence dated July 20, 2017 from "tshort512@aol.com" to "tshort512@aol.com" with a note stating "text from Michael Anderson 7/15/17 . . .," *id.* at 12; and (6) Documents which appear to be time sheets for Tod Short for various pay periods, *id.* at 13–18.

Objection to Claim No. 13

On January 18, 2018, the Debtor filed the "Notice of Objection and Debtor's Objection to Creditor Tod Short's Claim" (the "Short Objection") [Doc. No. 95]. The Debtor objects to the entire amount of the Short Claim, and disputes the amounts claimed for "less pay" and for commission "for the Inglewood Stadium Construction Project." Short Objection at 1. Alternatively, the Debtor asserts that the claim does not have the right to priority of "at least 100%," and to the extent the Short Claim asserts that the Claimant has a lien on "real estate," Claim No. 13 at 2, the Debtor does not own any real estate and, therefore, the Short Claim cannot be secured. Short Objection at 1.

The Short Objection explains that the Claimant was employed by the Debtor during two different periods. The first period lasted from July 19, 2010 when the Claimant was first hired by the Debtor as "Director of Business Development," through December 31, 2013 when the Claimant's employment was terminated as a lay-off (the "First Employment Period"). *Id.* at 4; "Declaration of Michael Anderson"

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("Anderson Declaration") [Doc. No. 95] at ¶ 2. The terms of the employment agreement for the First Employment Period included, among other things, an annual salary of \$60,000, an auto allowance of \$6,000, and a performance bonus based on the value of contracts the Claimant secured for the Debtor. Anderson Declaration at ¶ 2; *see also id.* at Exhibit A; Claim No. 13 at 5–8 ("Offer of Employment"). The Short Objection states that the Claimant's salary was paid in full for the First Employment Period and, additionally, the Claimant was paid the agreed upon commission for two contracts which the Claimant secured for the Debtor. Short Objection at 4; Anderson Declaration at ¶ 2.

The second period lasted from January 1, 2015 when the Claimant was rehired for "Business Development," through March 3, 2017 (the "Second Employment Period"). Anderson Declaration at ¶ 3. During the Second Employment Period, the Claimant purportedly agreed to a bi-weekly salary of approximately \$1,750 for an annual salary of \$45,000 with the same commission rate as the First Employment Period. *Id.* The Claimant was terminated on March 3, 2017 in part because the Debtor could not afford his position and in part because he was not acquiring any new business. *Id.* The Short Objection states that the Claimant was paid in full for the First Employment Period including accrued vacation pay. Short Objection at 4; Anderson Declaration at ¶ 3.

The Short Objection contends that no additional salary or commissions are owed to the Claimant for work performed by the Claimant during either the First or Second Employment Periods. *See* Short Objection at 5; Anderson Declaration at ¶ 4. The Short Objection further argues that the Claimant did not earn commission on the Inglewood Stadium Construction Project. Mr. Anderson explains:

The Debtor was seeking a subcontract on the project with a construction management company, Airware LLC, that was to provide elevator operator services on the stadium project. The construction management company was proposing a subcontract to the prime construction company, Turner Construction. Airware, LLC was not awarded a contract and thus the Debtor was not awarded a subcontract under it. The Debtor never negotiated or received a contract to work on the stadium project and does not anticipate doing so.

Anderson Declaration at ¶ 4. The Short Objection contends that the Short Claim

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should be disallowed under § 502(b)(1). Alternatively, if the Short Claim is allowed: (1) the Short Claim exceeds the maximum of \$12,850 for priority claims under § 502(a)(4) and must, therefore, be reduced to that amount; and (2) that under § 502(a)(4) only the portion earned within 180 days of the Petition Date (*i.e.* the period from January 18, 2017 through July 17, 2017) is entitled to priority.

Opposition to the Short Objection

As of the date of this tentative ruling, no opposition to the Short Objection has been filed.

II. Findings of Fact and Conclusions of Law

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. The "'basic federal rule' in bankruptcy is that state law governs the substance of claims." *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner v. United States*, 440 U.S. 48, 57 (1979)). Under § 502(b)(1), the court shall disallow a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatuired [.]"

As a preliminary matter, the Court finds that the Short Objection was properly

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served upon the Claimant, Tod Short, at 512 E. Claremont Street, Pasadena, CA 91104, via U.S. Mail on January 18, 2018. *See* "Proof of Service of Document" [Doc. No. 95]; *see also* Claim No. 13 at 1.

The Court finds that the Debtor has provided sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Lundell*, 223 F.3d at 1039 (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The evidence submitted in support of the Short Claim includes among other things: certain correspondence between the Claimant and Mr. Anderson regarding "payrate," *see* Claim No. 13 at 9; Pay stubs for various pay periods, *see id.* at 10–11; a purported record (emailed from the Claimant to himself) of the contents of a text message that was allegedly sent from Mr. Anderson to the Claimant, *see id.* at 12; and certain documents which appear to the Court to be handwritten time sheets for the Claimant for various pay periods, *id.* at 13–18. Additionally, the Claimant states that he is owed commission for the Inglewood Stadium Project based on the testimony of the CEO of the Debtor at the 341(a) meeting; however, the Claimant does not provide any record of these purported statements by the CEO of the Debtor. In support of the Short Objection, the Debtor submits, among other things, the Declaration of Michael Anderson—the CEO and custodian of records of the Debtor—who states that the Claimant was paid in full for all work performed by the Claimant during both the First and Second Employment Periods, including any commission owed to the Claimant and accrued vacation pay. Anderson Declaration at ¶¶ 2–3. Additionally, the Debtor submits a letter dated August 23, 2017 that was sent to the Claimant by Mr. Anderson, in which Mr. Anderson explains the circumstances of the Claimant's employment, the wages that were paid to the Claimant, and the commissions which the Claimant was paid, and states which concludes that the Claimant was paid in full pursuant to the terms of the employment agreement. *See* Short Objection Exhibit B; Anderson Declaration at ¶ 5. Furthermore, Mr. Anderson denies that any contract was entered into related to the Inglewood Stadium Construction Project and that he does not anticipate entering to any contract related to that project in the future, Anderson Declaration at ¶ 4, which directly undermines the amount of the Short Claim for commission from this project. Thus, while the Claimant's evidence is sufficient to support the *prima facie* validity of the amount of the Short Claim, it is not sufficient, in light of the admissible evidence submitted in support of the Short Objection, to "prove the validity of the claim by a preponderance of the evidence." *Lundell*, 223 F.3d at 1039. The Claimant received notice of the Short Objection pursuant to FRBP 9019 and had an opportunity to

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respond and submit further evidence to establish the amount of his claim; however, no opposition to the Short Objection has been filed.

Therefore, the Court finds that the Debtor has carried its burden as the objecting party and that the Claimant has not satisfied its burden to establish the validity or amount of the claim by a preponderance of the evidence.

III. Conclusion

Based on the foregoing, the Debtor's Objection to Claim No. 13 filed by Tod Short in the amount of \$51,499.81 is SUSTAINED. Claim No. 13 is disallowed in its entirety.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#101.00 Status Hearing RE: [91] Disclosure Statement Describing Chapter 11 Plan of Reorganization, with Proof of Service

Docket 91

Tentative Ruling:

2/20/2018

2/20/2018

Hearing on the Debtor's Motion for Approval of the Disclosure Statement to **April 10, 2018 at 10:00 a.m.** in order to further address the objection filed by the IRS and to provide for the appropriate treatment of the claim based on tax penalties. The deadline for the Debtor to file and serve the Amended Disclosure Statement is **March 13, 2018**, so as to provide parties in interest with the notice required under Fed. R. Bankr. P. 2002(b).

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC et

#102.00 Hearing
RE: [18] Defendant's Motion to Set Aside Default [Federal Rule of Bankruptcy
Procedure 55(c)] -

fr. 1-23-18

Docket 18

Tentative Ruling:

2/20/2018

For the reasons set forth below, the Motion is GRANTED and Soundside's default is set aside.

Pleadings Filed and Reviewed:

- 1) Defendant's Motion to Set Aside Default (the "Motion") [Doc. No. 18]
 - a) Declaration of Harry Gibson in Support of Defendant's Motion to Set Aside Default [Doc. No. 19]
- 2) Chapter 7 Trustee's Opposition to Defendant's Motion to Set Aside Default (the "Opposition") [Doc. No. 33]
- 3) [Defendant's] Evidentiary Objections to February 2, 2018 Declaration of Jeffrey S. Kwon and Exhibit "A" Thereto [Doc. No. 37]
- 4) Chapter 7 Trustee's Reply to Evidentiary Objections to February 2, 2018 Declaration of Jeffrey S. Kwong and Exhibit "A" Thereto [Doc. No. 38]
- 5) Defendant's Reply in Support of Motion to Set Aside Default (the "Reply") [Doc. No. 36]

I. Facts and Summary of Pleadings

On August 28, 2017, the Chapter 7 Trustee (the "Trustee") commenced this preference action against Soundside Holdings, Inc. ("Soundside"). On October 20, 2017, the Clerk of the Court entered Soundside's default.

Soundside moves to set aside the default and makes the following arguments in support of the Motion:

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Blue Global, LLC

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- 1) Good cause exists to set aside the default. Soundside's president, Harry Gibson, is not an attorney. When Mr. Gibson received the Summons and Complaint via first class mail, he was suspicious, believing that the paperwork was an effort to strong-arm a payment. Mr. Gibson thought that real litigation would involve more formalities, such as personal service, and was confused because the Complaint named Soundside Holdings, Inc. (when the Defendant's correct name is Soundside Holdings, LLC). Upon receiving the Notice of Default, Soundside promptly retained counsel and filed the instant Motion to set aside the default.
- 2) Soundside has a meritorious defense. The payments at issue were made in the ordinary course of business and Soundside provided new value in exchange for the payments. In addition, one of the six payments at issue may have been made to an entity other than the Debtor.

The Chapter 7 Trustee opposes the Motion and makes the following arguments in support of his Opposition:

- 1) Soundside has failed to demonstrate good cause to set aside the default. In *Pena v. Seguros La Commercial SA*, 770 F.2d 811, 815 (9th Cir. 1985), the Ninth Circuit found that a defendant's failure to respond was culpable, even though the defendant did not have actual notice of the Complaint, because the defendant had constructive knowledge of the action through the service of process to the Arizona Department of Insurance, and the defendant had failed to provide its correct address to the parties with whom it did business. Here, the facts are even stronger because Soundside has acknowledged it had actual notice of the Complaint.
- 2) Soundside's conclusory statements that it has a meritorious defense are insufficient. Soundside has not presented any specific facts showing that it made payments in the ordinary course of business or provided new value. The Debtor's bank statements show that the preferential payments at issue were made from Soundside's accounts.
- 3) Soundside has not shown that vacating the default would not prejudice the Trustee. Here, the prejudice to the Trustee is greater because Soundside has not demonstrated that it has a meritorious defense. *See Cielinski v. Kitchen (In re Tires & Terms of Columbus, Inc.)*, 262 B.R. 885, 889 (Bankr. M.D. Ga. 2000) ("Courts have generally found that the threat of prejudice is much greater when no factual basis for a meritorious defense exists.").

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Soundside makes the following arguments in its Reply in support of the Motion:

- 1) The Trustee does not accurately state the standard for when a default is culpable. “[A] defendant’s conduct is culpable if he has received actual or constructive notice of the filing of the action and intentionally failed to answer. As we have previously explained, in this context the term ‘intentionally’ means that a movant cannot be treated as culpable simply for having made a conscious choice not to answer; rather, to treat a failure to answer as culpable, the movant must have acted with bad faith, such as an intention to take advantage of the opposing party, interfere with judicial decision-making, or otherwise manipulate the legal process.” *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) (internal citations and quotation marks omitted). Here, Mr. Gibson’s failure to respond to the Complaint was the result of a misunderstanding and was not in bad faith.
- 2) The bank account statements attached to the Kwong Declaration, purporting to show that Soundside made preferential payments, are inadmissible as hearsay. Mr. Kwong has no knowledge of the records or the contents and cannot authenticate the bank records of the Debtor. The business records exception does not apply given the Trustee’s lack of personal knowledge as to the authenticity of the records.

In a reply submitted to the evidentiary objections submitted by Soundside, the Trustee asserts that the bank records attached to the Kwong Declaration are admissible under Evidence Rule 901(b), which permits authentication based upon the “appearance, contents, substance, internal patterns, or other distinctive characteristics of the item.” According to the Trustee, the bank records have been properly authenticated because they have the appearance of bank records, such as the insignia of the banks.

II. Findings and Conclusions

Civil Rule 55(c)—made applicable to these proceedings by Bankruptcy Rule 7055—provides: “The court may set aside an entry of default for good cause.” “The ‘good cause’ standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b).” *Franchise Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir.

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2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

The Court finds it appropriate to set aside the default. First, the Trustee is not prejudiced by the setting aside of the default. "To be prejudicial, the setting aside of a [default] must result in greater harm than simply delaying resolution of the case. Rather, 'the standard is whether [plaintiff's] ability to pursue his claim will be hindered.'" *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001). The non-defaulting party's ability to pursue its claim may be hindered if the delay has caused tangible harm such as "loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." *Id.*

Here, default was entered on October 20, 2017. Soundside moved to set aside the default on November 21, 2017. There is no indication that this relatively short delay has resulted in any tangible harm to the Trustee.

Second, Soundside may have a meritorious defense. As the Ninth Circuit has explained:

"A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense. But the burden on a party seeking to vacate a default judgment is not extraordinarily heavy." All that is necessary to satisfy the "meritorious defense" requirement is to allege sufficient facts that, if true, would constitute a defense: "the question whether the factual allegation [i]s true" is not to be determined by the court when it decides the motion to set aside the default. *Id.* Rather, that question "would be the subject of the later litigation."

United States v. Signed Pers. Check No. 730 of Yubran S. Mesle, 615 F.3d 1085, 1094 (9th Cir. 2010) (internal citations omitted).

Here, Soundside has alleged specific facts sufficient to constitute a defense. Soundside has alleged that the payments at issue were made in the ordinary course of business and that Soundside provided new value in exchange for the payments. Because the Court finds that Soundside has established that it may have a meritorious defense, the Court does not reach the evidentiary dispute with respect to the bank

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statements attached to the Kwong Declaration.

Third, Soundside's initial failure to respond to the Complaint was not culpable. "[A] defendant's conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). Here, Mr. Gibson's testimony shows that he did not cause Soundside to respond to the Complaint because he believed that litigation required greater formality than service by first class mail, thought that the paperwork was an attempt to extort money from Soundside, and was confused because the paperwork was addressed to "Soundside Holdings, Inc.," rather than Defendant's correct name, "Soundside Holdings, LLC." Soundside's failure to respond was not devious or in bad faith.

Based upon the foregoing, the Motion is GRANTED and the default is set aside. The following deadlines will apply to this action:

- 1) Defendant must respond to the Complaint by no later than **March 7, 2018**.
- 2) The last day to amend pleadings and/or join other parties is **April 12, 2018**.
- 3) The last day to disclose expert witnesses and expert witness reports is **June 26, 2018**.
- 4) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **July 26, 2018**.
- 5) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **August 14, 2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 6) The last day for dispositive motions to be heard is **August 21, 2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 7) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **August 25, 2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

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- 8) A Pretrial Conference is set for **September 11, 2018** at 11:00 a.m. By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 9) Trial is set for the week of **September 24, 2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order and an order setting aside the default. The Trustee shall submit the order referring the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

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Soundside Holdings, LLC

Represented By
J Scott Bovitz

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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2:17-10900 Blue Global, LLC

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Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#103.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr, 12-12-17

fr. 1-23-18

Docket 1

Tentative Ruling:

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See Cal. No. 102, above, incorporated in full by reference.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

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Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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2:18-10261 Dion Latimore

Chapter 7

#1.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against an Individual. Kim S.)
Additional attachment(s) added on 1/9/2018 (Collins, Kim S.). Additional attachment(s)
added on 1/9/2018 (Collins, Kim S.).

Docket 1

Tentative Ruling:

2/21/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

Based upon the foregoing, the involuntary petition is DISMISSED. The Court will enter an appropriate order.

Party Information

Debtor(s):

Dion Latimore

Pro Se

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2:17-22539 Nafiz Kadir and Nighat Sultana

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#2.00 HearingRE: [28] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) / Chapter 7 Trustee's Motion For Entry Of An Order: (A) Approving Sale Of Certain Assets Of The Debtors' Estate; (B) Approving Overbid Procedures; (C) Approving The Assumption And Assignment Of Real Property Lease; And (D) Granting Related Relief; Memorandum Of Points And Authorities; Declaration Of Timothy J. Yoo In Support Thereof. (Oh, Juliet)

Docket 28

Tentative Ruling:

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Grant motion, subject to overbids. The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Syed M.G. Hossain
- 2) Property for Sale: (a) the Estate's right, title, and interest in in the Lease, certain inventory, machinery, equipment, fixtures, furniture, and other personal property owned by the Debtors, and certain other assets (collectively, the "Property"); (b) Pre-paid deposits and security deposits totaling \$2,300.00 paid by the Debtors to the Landlord under the terms of the Lease; and (c) all permits, licenses, authorizations, registrations, and approvals relating to the Premises and/or KNS Market, including the certain beer and wine license number 543129 (the "Liquor License"). A complete description of the Property for Sale is set forth in Article 1 of the APA, which is attached as "Exhibit 1" to the Yoo Declaration [Doc. No. 28].
- 3) Purchase price: \$53,800.00
- 4) Overbids: The initial overbid shall be \$55,000.00. Subsequent overbids will be increments of \$1,000.00, with the increments subject to adjustment by the Court depending upon the bidding.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Entry of An Order: (a) Approving Sale of Certain

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Assets of the Debtor's Estate; (b) Approving Overbid Procedures; (c) Approving the Assumption and Assignment of Real Property Lease; and (d) Granting Related Relief (the "Sale Motion") [Doc. No. 28]

- a) Notice of the Sale Motion [Doc. No. 29]
- 2) Debtors' Limited Opposition to the Sale Motion (the "Opposition") [Doc. No. 36]
 - a) Debtors' Limited Opposition to the Notice of the Sale Motion [Doc. No. 35]

I. Facts and Summary of Pleadings

Nafiz Kadir and Nighat Sultana (the "Debtors") filed a voluntary Chapter 7 petition on October 12, 2017 (the "Petition") [Doc. No. 1]. Timothy J. Yoo accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtors' bankruptcy case.

The Debtors' Schedules list, among other assets, a 100% sole proprietorship interest in a retail store business ("KNS Market") which is operated from the leased premises located at 1549 Glendale Boulevard, Los Angeles, CA 90057 (the "Premises"). The Debtors are parties to the written lease agreement for the Premises (the "Lease") with Ana B. Haydar (the "Landlord"). See "Declaration of Timothy J. Yoo" ("Yoo Declaration") [Doc. No. 28] at Exhibit 2. According to the Debtors' Schedules, KNS Market has assets with a total estimated value of \$26,300.00 and has liabilities in the total amount of \$11,846.00. The Debtors have claimed an exemption of \$14,454.00 for KNS Market pursuant to Cal. Code Civ. P. § 703.140(b)(5). See "Amended Schedule C" [Doc. No. 32]. The Landlord has represented to the Trustee and his counsel that the rent amounts that remain unpaid for the Lease, through January 31, 2018, total \$6,125.00. Yoo Declaration at ¶ 8. Rent in the additional amount of \$1,225.00 will be due for the month of February 2018. *Id.* Based on this, the Trustee believes that the amount required to be paid to cure defaults under the Lease, through February 28, 2018, is \$7,350.00 (the "Cure Amount"). *Id.*

On February 1, 2018, the Trustee filed the "Chapter 7 Trustee's Motion for Entry of An Order: (a) Approving Sale of Certain Assets of the Debtor's Estate; (b) Approving Overbid Procedures; (c) Approving the Assumption and Assignment of Real Property Lease; and (d) Granting Related Relief" (the "Sale Motion") [Doc. No. 28]. The Trustee has received an offer from Syed M.G. Hossain (the "Buyer") to purchase certain assets associated with KNS Market. Sale Motion at 10. The Trustee seeks to sell the Estate's right, title, and interest in the Lease, certain inventory, machinery, equipment, fixtures, furniture, and other personal property owned by the

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Debtors, and certain other assets (collectively, the "Property"), *see* Yoo Declaration at Exhibit 1 ("Asset Purchase Agreement" or "APA"), all in "as is, where is" condition, with no representation or warranty, for cash in the sum of \$53,800.00 (the "Purchase Price"), Sale Motion at 10. The Trustee has received a good faith deposit in the amount of \$26,900.00 from the Buyer in accordance with the terms of the APA. The Trustee has also been advised by counsel for the Buyer, Sunil Brahmhatt, that he is currently holding the balance of the Purchase Price (\$26,900.00) in a client trust account. Yoo Declaration at ¶ 11.

The key sale terms are as follows:

- 1) Proposed purchaser: Syed M.G. Hossain;
- 2) Property for Sale: (a) the Estate's right, title, and interest in in the Lease, certain inventory, machinery, equipment, fixtures, furniture, and other personal property owned by the Debtors, and certain other assets (collectively, the "Property"); (b) Pre-paid deposits and security deposits totaling \$2,300.00 paid by the Debtors to the Landlord under the terms of the Lease; and (c) all permits, licenses, authorizations, registrations, and approvals relating to the Premises and/or KNS Market, including the certain beer and wine license number 543129 (the "Liquor License"). A complete description of the Property for Sale is set forth in Article 1 of the APA, which is attached as "Exhibit 1" to the Yoo Declaration [Doc. No. 28].
- 3) Purchase price: \$53,800.00;
- 4) Condition of Property: the Property is purchased in "as is, where is" condition without any representations or warranties of any kind;
- 5) Overbids: The initial overbid shall be \$55,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders interested in submitting an Overbid for the Property must, no later than 4:00 p.m. PST on February 19, 2018 (the "Overbid Deadline"), deliver such Overbid in writing to Counsel for the Trustee (Juliet Y. Oh, Esq., Levene, Neale, Bender, Yoo & Brill LLP, 10250 Constellation Blvd., Suite 1700, Los Angeles, CA 90067). Overbidders must deliver: (a) a deposit in the amount of \$27,500.00 in the form of a cashier's check to the Trustee by the Overbid Deadline; (b) deliver proof of committed funds to the Counsel for the Trustee; and (c) information to demonstrate adequate assurance of future performance of the Lease by such bidder.

The Trustee estimates that the proposed sale will result in a sum sufficient to cure

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all defaults under the Lease and make a distribution to creditors of the Estate other than the Landlord. The Trustee anticipates net sale proceeds in the amount of \$17,056.00.

The Trustee requests an Order:

- (1) Finding that the "Notice of the [Sale Motion]" [Doc. No. 29] is adequate;
- (2) Granting the Sale Motion in its entirety;
- (3) Approving the Overbid Procedures;
- (4) Authorizing the Trustee to sell the Property to the Buyer (or to a successful overbidder), pursuant to the terms and conditions set forth in the APA;
- (5) Approving the assumption and assignment of the Lease to the Buyer (or a successful overbidder), and establishing the Cure Amount which must be paid in connection therewith;
- (6) Authorizing the Trustee to execute and deliver, on behalf of the Estate, all documents necessary to consummate the sale of the Property and the assignment of the Lease; and
- (7) Waiving the 14-day stay periods set forth in FRBP 6004(h) and 6006(d).

The Opposition

On February 7, 2018, the Debtors filed the "Debtors' Limited Opposition to the [Sale Motion]" (the "Opposition") [Doc. No. 36]¹ [Note 1]. The Opposition states that the Debtors do not oppose the relief sought by the Sale Motion. Rather, the Opposition seeks to "assert and confirm" that the Debtors will receive their full exemption under Cal. Code Civ. P. § 703.140(b)(5) (the "Wildcard Exemption") in the amount of \$25,169.00 as scheduled by the Debtors in their Amended Schedule C [Doc. No. 32]. The Opposition explains that the Debtors initially claimed a Wildcard Exemption in the amount of \$14,454.00 based on a good faith valuation of the Property. Upon learning that there may be proceeds available from the sale of the Property, the Debtors confirmed that the Trustee was aware of the unused portion of the Debtors' Wildcard Exemption and that the Debtors would assert such unused

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portion to maximize their Wildcard Exemption. "Declaration of William J. Smyth" ("Smyth Declaration") [Doc. No. 36] at ¶ 6. The Trustee anticipates that the sale of the Property will result in net proceeds available for distribution "Even if the Debtors are permitted to amend their Schedules to increase their claim of exemption for the Property to include the unused portion of their 'wildcard exemption'" Sale Motion at 10 n.1; Yoo Declaration at ¶ 15 n.3.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Property is in the best interest of the Estate, and furthermore, that the sale price represents the fair and reasonable value of the Property. *See* Yoo Declaration at ¶ 15. The sale of the Property will enable the Trustee to pay all administrative expenses and make a distribution to creditors of the Estate. *Id.* Additionally, the sale is subject to overbids, which allows any party wishing to purchase the Property at a higher price to do so. The purchase offer of \$53,800.00 was obtained by the Trustee through arm's length negotiations. *Id.* at ¶ 19.

The Debtors' Wildcard Exemption

Rule 1009(a) of the Federal Rules of Bankruptcy Procedure provides:

A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

Here, the Court finds that the Debtors' "Amended Schedule C" [Doc. No. 32] was

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properly filed and that the Debtors served notice of the amendment on all interested parties. Therefore, the Court finds that the Debtors claim, and are entitled to, the full exemption under Cal. Code Civ. P. § 703.140(b)(5) in the amount of \$25,169.00.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$55,000.00. Subsequent overbids will be increments of \$1,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than Syed M.G. Hossain prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of §363 (m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Trustee shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: A duplicate of the Opposition (the "Duplicate Opposition") [Doc. No. 35] was filed by the Debtors concurrently with the Opposition. The Duplicate Opposition was linked on ECF to the "Notice of the Sale Motion" [Doc. No. 29] and was, therefore, docketed as an opposition thereto.

Party Information

Debtor(s):

Nafiz Kadir

Represented By
Stephen S Smyth
William J Smyth

Joint Debtor(s):

Nighat Sultana

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Timothy Yoo (TR)

Represented By
Juliet Y Oh

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2:17-10897 Christopher Kim Kay

Chapter 7

#100.00 HearingRE: [127] Application for Compensation First Interim Application for Fees and Reimbursement of Expenses of the Law Office of Thomas H. Casey, Inc., Attorney for Chapter 7 Trustee (January 27, 2017 through January 26, 2018); Declaration of Thomas H. Casey in Support Thereof with Exhibits and Proof of Service for Thomas H Casey, Trustee's Attorney, Period: 1/27/2017 to 1/26/2018, Fee: \$281,909.50, Expenses: \$13,630.61.

Docket 127

Tentative Ruling:

2/21/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards on an interim basis the fees and expenses set forth below. These fees and expenses shall be subject to a final order.

Fees: \$281,909.50

Expenses: \$13,630.61

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01540 Liberty Asset Management Corporation v. Pan

#101.00 HearingRE: [16] Motion for Default Judgment

Docket 16

Tentative Ruling:

2/21/2018

For the reasons set forth below, the Motion for Default Judgment is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Slander of Title; (2) Disallowance of Claim; (3) Avoidance of Lien; (4) Declaratory Relief; (5) Violation of Cal Civ. Code §2943; (6) Punitive Damages; and Attorneys' Fees and Costs (the "Complaint") [Doc. No. 1]
- 2) Plaintiff's Motion for Default Judgment Under LBR 7055-1 (the "Motion") [Doc. No. 16]
 - a) Memorandum of Points and Authorities and Declaration of Lawrence R. Perkins in Support of Motion for Default Judgment [Doc. No. 17]
 - b) Notice of Errata Re: Motion for Default Judgment [Doc. No. 20]
- 3) No opposition from the Defendant

I. Facts and Summary of Pleadings

On November 17, 2017, Liberty Asset Management Corporation ("Liberty") commenced the instant action against Yonggan Pan. The Complaint alleges that Defendant improperly asserts liens against property belonging to Liberty. The Complaint seeks removal of the liens, voiding of the liens, declaratory relief that no amount is owing on the notes underlying the disputed liens, disallowance of any claims against Liberty asserted by Defendant, statutory damages, punitive damages, and attorneys' fees and costs. The properties against which the liens are asserted have been sold; the disputed liens now attach to the sales proceeds of those properties. On January 11, 2018, the Clerk of the Court entered default against the Defendant. Liberty now seeks entry of default judgment in its favor. No opposition to the Motion

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, February 22, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation
is on file.

Chapter 11

II. Findings and Conclusions

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). The Complaint's allegations, as well as the supporting declaration of Lawrence R. Perkins submitted in connection with the Motion for Default Judgment, establish that Liberty is entitled to judgment that:

- 1) The Short Form Deed of Trust and Assignment of Rents for the benefit of Defendant, recorded with respect to real property located at 1001 East Road, La Habra Heights, CA 90631 (the "La Habra Property"), is void and of no force and effect.
- 2) The Short Form Deed of Trust and Assignment of Rents for the benefit of Defendant, recorded with respect to real property located at 3808 Hollins Avenue, Claremont, CA 91711 (the "Claremont Property"), is void and of no force and effect.
- 3) The liens asserted by Defendant against the La Habra Property (the "La Habra Lien") and Claremont Property (the "Claremont Lien") are void and of no force and effect.
- 4) The La Habra Lien and Claremont Lien shall not attach to any proceeds resulting from the sale or other disposition of the La Habra Property and/or Claremont Property.
- 5) Defendant shall not be entitled to a claim in Liberty's Chapter 11 bankruptcy on account of the La Habra Lien and/or Claremont Lien.
- 6) Defendant shall not be entitled to any distribution in Liberty's Chapter 11 bankruptcy on account of the La Habra Lien and/or Claremont Lien.
- 7) Liberty shall have the right to record this Default Judgment with the Los Angeles County Recorder or any other appropriate agency as proof and evidence of the foregoing.

Liberty shall submit a conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, February 22, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Yonggan Pan

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#1.00 Trial Date Set: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 8-26-13; 3-27-17; 7-31-17; 9-25-17, 11-27-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

UNION BANK, N.A., a national Pro Se

Plaintiff(s):

JASON M. RUND Represented By
Ronald P Abrams

Trustee(s):

Jason M Rund (TR) Pro Se
Jason M Rund (TR) Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:13-32201 Darra Cleveland

Chapter 7

Adv#: 2:17-01167 Cleveland v. Educational Credit Management Corp. et al

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01167. Complaint by Darra Cleveland against Educational Credit Management Corp., Deutsche Bank ELT Navient & SLM Trusts, JP Morgan Chase N.A., CITIBANK ELT STUDENT LOAN CORP, Wells Fargo ELT Navient Student Loan Trust, U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

FR. 8-15-17

Docket 1

***** VACATED *** REASON: CONTINUED 4-17-18 AT 11:00 A.M.**

Party Information

Debtor(s):

Darra Cleveland

Represented By
Jennifer Ann Aragon
Christine A Kingston

Defendant(s):

U.S. Department of Education	Pro Se
Wells Fargo ELT Navient Student	Pro Se
CITIBANK ELT STUDENT LOAN	Pro Se
JP Morgan Chase N.A.	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
Educational Credit Management	Pro Se

Plaintiff(s):

Darra Cleveland

Represented By
Christine A Kingston

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

CONT... Darra Cleveland

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:13-32201 Darra Cleveland

Chapter 7

Adv#: 2:17-01167 Cleveland v. Educational Credit Management Corp. et al

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01167. Complaint by Darra Cleveland against Educational Credit Management Corp., Deutsche Bank ELT Navient & SLM Trusts, JP Morgan Chase N.A., CITIBANK ELT STUDENT LOAN CORP, Wells Fargo ELT Navient Student Loan Trust, U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

FR. 8-15-17

Docket 1

***** VACATED *** REASON: CONTINUED 4-30-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Darra Cleveland

Represented By
Jennifer Ann Aragon
Christine A Kingston

Defendant(s):

Educational Credit Management	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
JP Morgan Chase N.A.	Pro Se
CITIBANK ELT STUDENT LOAN	Pro Se
Wells Fargo ELT Navient Student	Pro Se
U.S. Department of Education	Pro Se

Plaintiff(s):

Darra Cleveland

Represented By
Christine A Kingston

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

CONT... Darra Cleveland

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01115 Goodrich v. Shanghai Jingtong International Trading Co.

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: CONTINUED 2-25-19 AT 9:00 AM.**

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:17-11911 Dicran Garo Kuftedjian

Chapter 7

Adv#: 2:17-01287 Parts Network, Inc. v. Kuftedjian et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01287. Complaint by Parts Network, Inc. against Dicran Garo Kuftedjian, Linda Torikian Kuftedjian. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Avanesian, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED TO 3-26-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Defendant(s):

Dicran Garo Kuftedjian

Pro Se

Linda Torikian Kuftedjian

Pro Se

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Plaintiff(s):

Parts Network, Inc.

Represented By
Michael Avanesian

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#7.00 Trial Date Set

RE: [193] **SECOND AMENDED COUNTERCLAIM** by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, ROES 21 through 40 -

Docket 193

***** VACATED *** REASON: CONTINUED 5-29-18 TA 9:00 A.M.**

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#8.00 Trial Date Set

RE: [158] First Amended-, Counterclaim by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, Roes 1 through 20, inclusive (Yan, James)

FR. 1-29-18

Docket 158

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#9.00 Trial Date Set

RE: [142] Second Amended Complaint by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against HCL 2011, LLC a California limited liability company. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian))

FR. 10-30-17

Docket 142

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#10.00 Trial Date Set

RE: [143] Amended Cross-claim by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk, ROES 21 through 40. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian) CORRECTION: Complaint not signed. Attorney to file Original Signature; Modified on 1/19/2016 (Lomeli, Lydia R.). (Landsberg, Ian)

FR. 10-30-17

Docket 143

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#11.00 Trial Date Set

RE: [176] CRYSTAL WATERFALLS LLCS SECOND AMENDED CROSSCLAIM AGAINST BENJAMIN KIRK AKA BENNY KIRK AND TSAI-LUAN HO AKA SHELBY HO by Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk (Landsberg, Ian)

Docket 176

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 AM..**

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#12.00 Trial Date Set
RE: [52] Counterclaim by Trueerp, INC against BBeautiful, LLC

Docket 52

***** VACATED *** REASON: AMENDED COUNTERCLAIM FILED 6-1
-17 [D.E. 63]**

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

Defendant(s):

Trueerp, INC

Represented By
Jonathan L Gerber
Maxwell M Blecher

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Jonathan L Gerber

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#13.00 TRIAL

RE: [1] Adversary case 2:16-ap-01403. Complaint by BBeautiful, LLC against Trueerp, INC . (Fee Not Required). Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Cowan, Sarah)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-5-18**

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger

Defendant(s):

Trueerp, INC

Pro Se

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Maxwell M Blecher

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:16-10799 BBeautiful, LLC, a California limited liability co

Chapter 11

Adv#: 2:16-01403 BBeautiful, LLC v. Trueerp, INC

#14.00 Trial Date Set

RE: [63] AMENDED COUNTERCLAIM by Trueerp, INC against BBeautiful, LLC

Docket 63

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-5-18**

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

Defendant(s):

Trueerp, INC

Represented By
Jonathan L Gerber
Maxwell M Blecher

Plaintiff(s):

BBeautiful, LLC

Represented By
Maxwell M Blecher
Jonathan L Gerber

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, February 26, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#15.00 TRIAL

RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17

Docket 1

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 27, 2018

Hearing Room 1568

10:00 AM

2:17-23527 Maria Julia Villafana Licon

Chapter 7

#1.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 NISSAN PATHFINDER, VIN 5N1AR2MN3EC707171 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

2/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 27, 2018

Hearing Room 1568

10:00 AM

CONT... Maria Julia Villafana Licon

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Julia Villafana Licon

Represented By
Francis Guilardi

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 27, 2018

Hearing Room 1568

10:00 AM

2:17-24045 Tynisha A Brooks

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 DODGE AVENGER, VIN 1B3BD4FB1BN590665 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

2/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, February 27, 2018

Hearing Room 1568

10:00 AM

CONT... Tynisha A Brooks

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Tynisha A Brooks

Pro Se

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, February 28, 2018

Hearing Room 1568

9:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#1.00 Trial Date Set re [15] Amended Complaint (FIRST) Objecting To Discharge of Debt and Requesting Determination of Nondischargeability

fr: 7-31-17

Docket 0

***** VACATED *** REASON: PRETRIAL 4-17-18 AT 11:00 A.M.**

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Nadeen AbouZanad Dorian

Represented By
Raymond H. Aver

Robert Bassem Dorian

Represented By
Raymond H. Aver

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

Plaintiff(s):

Wissam Elbayoud

Represented By
David J Habib Jr

Walid Chaaban

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#1.00 Status Hearing

RE: [16] Amended Complaint (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service by Robert G Uriarte on behalf of Rudy E. Fuentes against all plaintiffs. (RE: related document(s)1 Adversary case 2:17-ap-01475. Complaint by Rudy E. Fuentes against David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes. (Fee Not Required). for (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)), (72 (Injunctive relief - other)) filed by Plaintiff Rudy E. Fuentes). (Uriarte, Robert)

Docket 16

***** VACATED *** REASON: DISMISSED 2-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Represented By
Robert A Hessling

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

CONT... Rudy Eberto Fuentes

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

2:14-31581 Rosales Meat Distributors Inc

Chapter 11

#2.00 POST Confirmation status conference re chapter 11 plan

fr. 8-2-16; 3-13-17

Docket 222

***** VACATED *** REASON: CONTINUED 3-7-18 AT 10:00 A.M.**

Tentative Ruling:

3/10/2017

No appearance required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to March 6, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

Rosales Meat Distributors Inc

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01277 10TH STREET SANTA MONICA PROJECT, LLC et al v. MAXWELL

#3.00 Hearing
STATUS CONFERENCE RE: [70] Motion for Leave to File Counterclaim to Debtor's Second Amended Complaint in Adversary Proceeding and Combine Claim Therein; Memorandum of Points and Authorities

FR. 5-17-17; 8-15-17; 12-13-17

Docket 70

Tentative Ruling:

3/5/2018

For the reasons set forth below, a continued status conference will be conducted on **June 5, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion Pursuant to Bankruptcy Rule 9019(a) for an Order Approving Settlement Between Debtor and Maxwell Defendants [Doc. No. 419, Case No. 2:16-bk-13575-ER]
- 2) Order Granting Motion Pursuant to Bankruptcy Rule 9019(a) for an Order Approving Settlement Between Debtor and Maxwell Defendants [Doc. No. 433, Case No. 2:16-bk-13575-ER]
- 3) Joint Status Report [Doc. No. 89, Adv. No. 2:16-ap-01277-ER]

On September 14, 2017, the Court approved a settlement agreement (the "Settlement Agreement") resolving this action. *See* Doc. Nos. 419, 428, and 433, Case No. 2:16-bk-13575-ER. The material terms of the Settlement Agreement are as follows:

- 1) Defendants shall pay Liberty Asset Management Corporation ("Liberty") \$1 million (the "Settlement Payment"). Settlement Agreement at ¶1 [Doc. No. 419 at Ex. A, Case No. 2:16-bk-13575]. Upon full payment of the Settlement Amount, Liberty "will promptly file a notice or stipulation of dismissal of the action." *Id.* at ¶6.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

CONT...

Liberty Asset Management Corporation

Chapter 11

- 2) Defendants shall execute and deliver to Liberty a Stipulated Judgment against Defendants and in favor of Liberty in the amount of \$1.5 million. Liberty shall not record the Stipulated Judgment unless Defendants fail to make the Settlement Payment. Settlement Agreement at ¶2.
- 3) Defendants shall use their best efforts to sell property located at 17634 Bellflower Boulevard, CA (the "Bellflower Property") to a third party within twelve months (the "Sale Period"). Settlement Agreement at ¶3. Defendants shall receive the first \$150,000 of the sales proceeds (net of certain costs), with Liberty to receive the balance. If the Bellflower Property is not sold within the Sale Period, Liberty shall have the option, subject to Bankruptcy Court approval, to purchase the Bellflower Property from Defendants for \$150,000. *Id.* at ¶5.

Defendants have made the Settlement Payment. Defendants state that issues remain regarding the sale of the Bellflower Property:

Defendant wants to sell the [Bellflower Property] but has not yet received approval by [Liberty] (although Defendant has the right to sell the property, without such written approval). If the matter cannot be resolved between the parties it will require Defendant to file a Motion with the Court seeking approval of the sale of the dilapidated [Bellflower Property] to an adjoining landowner for its fair market value as provided to [Liberty], in writing, by Defendant. Therefore, the case should not be dismissed and a further status conference [should be] set out for 75 days.

Joint Status Report at ¶G.

Liberty states that because the Settlement Amount has been paid, it has "circulated a stipulation for dismissal ... and will file [the] stipulation once it is signed by Defendant." *Id.* at ¶G.

The Court will conduct a continued Status Conference on **June 5, 2018, at 10:00 a.m.** In the Court's view, dismissal of the action at this juncture would be premature, given that the issues regarding the Bellflower Property have not been resolved and given that Defendants have not consented to execution of a stipulation for dismissal. However, on the present record, there is no compelling reason why consummation of the Settlement Agreement's provisions regarding sale of the Bellflower Property should require Court intervention. Those provisions are straightforward and the Court expects the parties to negotiate and resolve any issues regarding the sale in good faith.

Liberty shall submit an order continuing the status conference within seven days

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation
of the hearing.

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

CHUNBO ZHANG a/k/a GEORGE

Represented By
Julie A Esposito

CHENHAN WU a/k/a CHENG

Represented By
Julie A Esposito

Movant(s):

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Plaintiff(s):

10TH STREET SANTA MONICA

Represented By
Jeffrey S Kwong
David B Golubchik

LIBERTY ASSET

Represented By
Jeffrey S Kwong
David B Golubchik
John-Patrick M Fritz
Lindsey L Smith
Eve H Karasik
Irving M Gross

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#4.00 Pre-Trial Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18; 2-21-18

Docket 234

***** VACATED *** REASON: PER ORDER ENTERED 2-17-18**

Tentative Ruling:

2/20/2018

The Court has entered an order vacating the Pretrial Conference and setting a continued Status Conference for May 15, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 06, 2018

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

#1.00 Hearing

RE: [825] Motion RE: Objection to Claim Number by Claimant CIT Bank, N.A. fka OneWest Bank, N.A.. Notice of Motion and Chapter 7 Trustee's Motion Objecting to Claim of CIT Bank, N.A., f/k/a OneWest Bank, N.A.; Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

FR. 9-19-17; 10-3-2017; 1-10-18

Docket 825

***** VACATED *** REASON: PER ORDER ENTERED 3-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. This matter has been assigned to mediation and litigation deadlines have been set. This continued status conference was set at the parties' request because the exchange of initial disclosures had not been completed.

The parties have requested an additional 60-day continuance of the litigation deadlines set by the Court, based upon the fact that "Defendant's Counsel is still in the process of obtaining all relevant Initial Disclosures for review by Plaintiff and his Counsel and Forensic Accountant which will require additional time." Status Report at ¶G.

The Court will continue the litigation deadlines by 60-days as requested by the parties, but will not grant any further continuances absent exceptionally compelling circumstances. The deadlines previously set are amended as follows:

- 1) The last day to amend pleadings and/or join other parties is **6/14/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

reports is **9/27/2018**.

- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-scheduling dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-scheduling, the deadline for hearings on expert discovery motions is the next closest date which is available for self-scheduling.)
- 5) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-scheduling, the deadline for dispositive motions to be heard is the next closest date which is available for self-scheduling.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)
- 7) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

A continued status conference will be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. This matter has been assigned to mediation and litigation deadlines have been set. This continued status conference was set at the parties' request because Plaintiff's counsel had still not received all of Defendant's initial disclosures.

The parties have requested an additional 60-day continuance of the litigation deadlines set by the Court, because "Plaintiff's counsel has requested Defendant's Initial Disclosure Documents in defense of the Complaint for review for the Court-ordered Mediation," and "Defense counsel is working in good faith with the Defendant to produce same for review." Status Report at ¶G.

The Court will continue the litigation deadlines by 60-days as requested by the parties, but will not grant any further continuances absent exceptionally compelling circumstances. The deadlines previously set are amended as follows:

- 1) The last day to amend pleadings and/or join other parties is **6/14/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

reports is **9/27/2018**.

- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-scheduling dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-scheduling, the deadline for hearings on expert discovery motions is the next closest date which is available for self-scheduling.)
- 5) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-scheduling, the deadline for dispositive motions to be heard is the next closest date which is available for self-scheduling.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)
- 7) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

A continued status conference will be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. This matter has been assigned to mediation and litigation deadlines have been set. This continued status conference was set at the parties' request because Plaintiff's counsel had still not received all of Defendant's initial disclosures.

The parties have requested an additional 60-day continuance of the litigation deadlines set by the Court, because "Plaintiff's counsel has requested Defendant's Initial Disclosure Documents in defense of the Complaint for review for the Court-ordered Mediation," and "Defense counsel is working in good faith with the Defendant to produce same for review." Status Report at ¶G.

The Court will continue the litigation deadlines by 60-days as requested by the parties, but will not grant any further continuances absent exceptionally compelling circumstances. The deadlines previously set are amended as follows:

- 1) The last day to amend pleadings and/or join other parties is **6/14/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

reports is **9/27/2018**.

- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

A continued status conference will be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. This matter has been assigned to mediation and litigation deadlines have been set. This continued status conference was set at the parties' request because Plaintiff's counsel had still not received all of Defendant's initial disclosures.

The parties have requested an additional 60-day continuance of the litigation deadlines set by the Court, because "Plaintiff's counsel has requested Defendant's Initial Disclosure Documents in defense of the Complaint for review for the Court-ordered Mediation," and "Defense counsel is working in good faith with the Defendant to produce same for review." Status Report at ¶G.

The Court will continue the litigation deadlines by 60-days as requested by the parties, but will not grant any further continuances absent exceptionally compelling circumstances. The deadlines previously set are amended as follows:

- 1) The last day to amend pleadings and/or join other parties is **6/14/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/27/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

A continued status conference will be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Represented By
Kelly F Ryan

Henry A. Hakopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. The parties represented that the action had settled; this continued Status Conference was set to monitor the consummation of the Settlement Agreement.

Plaintiff states that the filing of a Bankruptcy Rule 9019 Motion has been delayed as a result of a family emergency and requests a 45-day continuance of the Status Conference and litigation deadlines.

The Court will conduct a continued Status Conference on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. If the Rule 9019 Motion has been resolved by that date, the continued Status Conference will go off calendar. The litigation deadlines previously ordered by the Court, *see* Scheduling Order [Doc. No. 3], shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Vineland Sunshine Properties, LLC,	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#7.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court conducted an initial Status Conference in this matter on December 12, 2017. The parties represented that the action had settled; this continued Status Conference was set to monitor the consummation of the Settlement Agreement. The parties request a continuance of the Status Conference for 60 days to enable the filing of a Bankruptcy Rule 9019 Motion.

The Court will conduct a continued Status Conference on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. If the Rule 9019 Motion has been resolved by that date, the continued Status Conference will go off calendar. The litigation deadlines previously ordered by the Court, *see* Scheduling Order [Doc. No. 26], shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

SVH Travel Tours and Travel	Represented By Sevan Gorginian
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01431 Gonzalez, Chapter 7 Trustee v. The Board of Trustees of the California State

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01431. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against The Board of Trustees of the California State University. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED 2-16-18**

Tentative Ruling:

12/11/2017

Defendant has agreed to pay the full amount demanded in the Chapter 7 Trustee's complaint, whereupon the Trustee will dismiss this action. This status conference is CONTINUED to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

The Board of Trustees of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01437 Gonzalez, Chapter 7 Trustee v. EHC, LLC, a California Limited Liability

#9.00 Status Hearing RE: [1] Adversary case 2:17-ap-01437. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against EHC, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17

Docket 0

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 1-17-18**

Tentative Ruling:

12/11/2017

Default was entered against the Defendant on December 1, 2017, Doc. No. 15. The Chapter 7 Trustee's deadline to file a motion for default judgment is January 26, 2018. A continued status conference will be held on March 7, 2018, at 10:00 a.m. In the event judgment is entered prior to that date, the continued status conference will go off calendar.

The Trustee shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

EHC, LLC, a California Limited

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:16-16315 Karl H. Schmidt

Chapter 7

#10.00 APPLICANT: Trustee: Peter J. Mastan

Hearing re [60] and [61] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,536.80

Total Expenses: \$135.71

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Karl H. Schmidt

Represented By
Sanaz S Bereliani

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:16-23384 Diego G Rodriguez and Maria E Rodriguez

Chapter 7

#11.00 APPLICANT: ELISSA D. MILLER, Trustee

Hearing re [55] and [56] re Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

3/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,142.75

Total Expenses: \$34.04

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Diego G Rodriguez Pro Se

Joint Debtor(s):

Maria E Rodriguez Pro Se

Trustee(s):

Elissa Miller (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:16-25740 QUIGG LA11, LLC

Chapter 7

#12.00 HearingRE: [305] Application for Compensation Application for Payment of Final Fees and/or Expenses for Daniel A Lev, Special Counsel, Period: 12/20/2016 to 1/13/2017, Fee: \$2,733.75, Expenses: \$.

Docket 305

Tentative Ruling:

3/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,733.75

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

QUIGG LA11, LLC

Represented By
David M Reeder

Trustee(s):

Elissa Miller (TR)

Represented By
Daniel A Lev
Asa S Hami
Jessica Vogel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01426 TIMOTHY J. YOO, Chapter 7 Trustee v. ACE FUNDING SOURCE, LLC

#13.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01426. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ACE FUNDING SOURCE, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

This action has settled. Plaintiff's deadline to file a Bankruptcy Rule 9019 Motion is **April 11, 2018**. A continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. If the Rule 9019 Motion has been resolved, the continued Status Conference will go off calendar.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ACE FUNDING SOURCE, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01429 TIMOTHY J. YOO, Chapter 7 Trustee v. ALLIANCE MARKETING

#14.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01429. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ALLIANCE MARKETING PARTNERS. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 2-5-18**

Tentative Ruling:

12/11/2017

Appearances required. Defendant has timely demanded a jury trial in this preference action, and has not filed a proof of claim against the estate. Therefore, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial.").

Neither Plaintiff or Defendant has filed a Statement of Consent, pursuant to Local Bankruptcy Rule 9015-2(b), specifying whether each party consents to having the jury trial conducted by the Bankruptcy Court. The parties must appear to advise the Court whether they consent to having the Bankruptcy Court preside over the jury trial or whether they wish the jury trial to take place before the District Court.

The dates previously ordered by the Court are confirmed as follows (except that the Pretrial Conference is rescheduled from June 12, 2018 to June 5, 2018):

- 1) The last day to amend pleadings and/or join other parties is **1/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **3/27/2018**.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT...

Blue Global, LLC

Chapter 7

- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **4/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **5/15/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **5/22/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **5/31/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **6/05/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

This matter shall be referred to the Mediation Panel. Plaintiff shall lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

A continued status conference will take place on March 7, 2018, at 10:00 a.m. A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

The Court will enter a Scheduling Order.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ALLIANCE MARKETING

Represented By
Katalina Baumann

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01430 TIMOTHY J. YOO, Chapter 7 Trustee v. EIN CAPITAL

#15.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01430. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against EIN CAPITAL. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

This action has settled. Plaintiff's deadline to file a Bankruptcy Rule 9019 Motion is **April 11, 2018**. A continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. If the Rule 9019 Motion has been resolved, the continued Status Conference will go off calendar. In view of the settlement, Plaintiff is no longer required to submit an order assigning this matter to the Mediation Panel.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

EIN CAPITAL

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01432 TIMOTHY J. YOO, Chapter 7 Trustee v. STARTERVINE

#16.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01432. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against STARTERVINE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED 3/2/18**

Tentative Ruling:

12/11/2017

For the reasons set forth in the concurrently issued order, this status conference is CONTINUED to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

STARTERVINE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#17.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 17, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Represented By
John Du Wors

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01438 TIMOTHY J. YOO, Chapter 7 Trustee v. B TWO DIRECT, LLC

#18.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01438. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against B TWO DIRECT, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 12-12-17

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 3-2-18**

Tentative Ruling:

12/11/2017

This action has settled and Plaintiff intends to file a motion seeking approval of the settlement agreement. The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

B TWO DIRECT, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01440 TIMOTHY J. YOO, Chapter 7 Trustee v. COMPANY RESPONDER INC

#19.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01440. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against COMPANY RESPONDER INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED
2/23/18**

Tentative Ruling:

12/11/2017

The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m., and requiring Plaintiff to file a motion for default judgment by no later than January 26, 2018. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

COMPANY RESPONDER INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01441 TIMOTHY J. YOO, Chapter 7 Trustee v. FLEX MARKETING GROUP

#20.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01441. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against FLEX MARKETING GROUP. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

Default was entered against the Defendant on October 19, 2017. Doc. No. 11. The initial Status Conference was continued based upon the parties' representation that they were engaged in settlement negotiations. Doc. No. 14. Plaintiff states that it is still seeking to settle this action. Status Report at ¶G.

Plaintiff's deadline to file a Bankruptcy Rule 9019 Motion is **April 11, 2018**. In the event that a settlement cannot be reached by that date, the deadline for Plaintiff to file a Motion for Default Judgment is also **April 11, 2018**. A continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The continued Status Conference will go off calendar if the matter has been resolved.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

FLEX MARKETING GROUP

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA et al

#21.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court has set litigation deadlines and has entered an order assigning this matter to mediation. The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 16, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Represented By
Sarah de Diego

UNION SQUARE MEDIA GROUP,

Represented By
Sarah de Diego

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01445 TIMOTHY J. YOO, Chapter 7 Trustee v. GREEN CAPITAL FUNDING

#22.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01445. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GREEN CAPITAL FUNDING. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court has set litigation deadlines and has entered an order assigning this matter to mediation. The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 16, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GREEN CAPITAL FUNDING

Represented By
Johnny White

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Wednesday, March 07, 2018

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10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01446 TIMOTHY J. YOO, Chapter 7 Trustee v. INBOX MEDIA LLC

#23.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01446. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INBOX MEDIA LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

Appearances required. The Joint Status Report was submitted on behalf of Defendant, Inbox Media LLC, by Tam Nguyen. There is no indication upon the Status Report whether Tam Nguyen is an attorney admitted to practice law. As a corporation, Inbox Media LLC can appear only through counsel.

Default was entered against the Defendant on October 19, 2017. Doc. No. 11. Defendant asserts that the entry of default was improper due to a lack of proper process. Both parties state that they are in settlement discussions and have exchanged several offers and counteroffers.

Entry of a defendant's default cuts off the defendant's right to appear in the action or present evidence. *Horton v. Sierra Conservation Ctr.*, No. 1:09-CV-01441-AWI-SMS, 2010 WL 743849, at *1 (E.D. Cal. Mar. 1, 2010) *report and recommendation adopted*, No. 1:09-CV-01441AWISMS, 2010 WL 1267743 (E.D. Cal. Mar. 31, 2010); *Great Am. Ins. Co. v. M.J. Menefee Const., Inc.*, No. F06-0392 AWIDLB, 2006 WL 2522408, at *2 (E.D. Cal. Aug. 29, 2006); *see also* Hon. A. Wallace Tashima and James M. Wagstaffe, California Practice Guide: Federal Civil Procedure Before Trial at 6:43 (if Defendant files an answer after default, the court should not accept the answer for filing; if the clerk accepts the answer, the court will order it stricken). The only procedure available to a defaulted defendant is to file a motion to

**United States Bankruptcy Court
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CONT... **Blue Global, LLC**

Chapter 7

set aside the default under Rule 55(c).

In the event this action cannot be settled, Defendant must obtain a stipulation from Plaintiff to set aside the default or file a motion to set aside the default. However, the Court anticipates that a settlement can be reached, particularly in view of the small amount of money at stake in this action, and encourages the parties to work diligently toward that end.

Plaintiff's deadline to file a Bankruptcy Rule 9019 Motion is **April 11, 2018**. In the event that a settlement cannot be reached by that date, the deadline for Plaintiff to file a Motion for Default Judgment is also **April 11, 2018**. A continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The continued Status Conference will go off calendar if the matter has been resolved.

The Court will enter an appropriate order.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INBOX MEDIA LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01447 TIMOTHY J. YOO, Chapter 7 Trustee v. INTERLINCX MEDIA

#24.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01447. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INTERLINCX MEDIA CORPORATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 3-2-18**

Tentative Ruling:

12/11/2017

This action has settled and Plaintiff intends to file a motion seeking approval of the settlement agreement. The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INTERLINCX MEDIA

Represented By
Gregory M Salvato

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Blue Global, LLC

Chapter 7

Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01448 TIMOTHY J. YOO, Chapter 7 Trustee v. IOVATION

#25.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01448. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against IOVATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 3-2-18**

Tentative Ruling:

12/11/2017

This action has settled and Plaintiff intends to file a motion seeking approval of the settlement agreement. The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IOVATION

Represented By
Michael B Brown

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01449 TIMOTHY J. YOO, Chapter 7 Trustee v. LEADSMARKET

#26.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01449. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against LEADSMARKET. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 3-2-18**

Tentative Ruling:

12/11/2017

This action has settled and Plaintiff intends to file a motion seeking approval of the settlement agreement. The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

LEADSMARKET

Represented By
Jeffrey J Hagen

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01450 TIMOTHY J. YOO, Chapter 7 Trustee v. POWERUP LENDING

#27.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01450. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against POWERUP LENDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court has set litigation deadlines and has entered an order assigning this matter to mediation. The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 20, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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10:00 AM

CONT... Blue Global, LLC

Chapter 7

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

POWERUP LENDING

Represented By
Scott A Schiff
Roland Gary Jones

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#28.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

Tentative Ruling:

3/6/2018

The Court has set litigation deadlines and has entered an order assigning this matter to mediation. The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 21, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01453 TIMOTHY J. YOO, Chapter 7 Trustee v. W4 LLC

#29.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01453. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against W4 LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED 3/2/18**

Tentative Ruling:

12/11/2017

This action has settled and Plaintiff intends to file a motion seeking approval of the settlement agreement. The Court has issued an order continuing this status conference to March 7, 2018, at 10:00 a.m. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

W4 LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, March 07, 2018

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10:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:14-31581 Rosales Meat Distributors Inc

Chapter 11

#30.00 HearingRE: [387] Motion for 2004 Examination Motion For Order Pursuant To Rule 2004 Authorizing: The Examination Of The Person Most Knowledgeable Of The Debtor; And The Production Of Documents From The Debtor

Docket 387

Tentative Ruling:

3/6/2018

For the reasons set forth below, Bank of America's Motions for authorization to conduct Rule 2004 examinations of the Liquidating Trustee and the Debtor are GRANTED IN PART AND DENIED WITHOUT PREJUDICE IN PART.

Pleadings Filed and Reviewed:

- 1) Order Setting Hearings on Bank of America's Motions Seeking Rule 2004 Examinations of the Debtor and the Liquidating Trustee [Doc. No. 392]
- 2) Motion for Order Pursuant to Rule 2004 Authorizing: (1) the Examination of the Person Most Knowledgeable of the Liquidating Trustee; and (2) the Production of Documents from the Liquidating Trustee [Doc. No. 382]
 - a) Notice of Motion [Doc. No. 383]
 - b) Declaration of Sheri Kanesaka in Support of Rule 2004 Motion Requiring: (1) the Examination of the Person Most Knowledgeable of the Debtor; (2) the Production of Documents from the Debtor; (3) the Examination of Charles G. Klaus of CMA Adjustments, the Liquidating Trustee for the Estate; and (4) the Production of Documents from the Liquidating Trustee [Doc. No. 385]
- 3) Motion for Order Pursuant to Rule 2004 Authorizing: (1) the Examination of the Person Most Knowledgeable of the Debtor; and (2) the Production of Documents from the Debtor [Doc. No. 387]
 - a) Notice of Motion [Doc. No. 388]
 - b) Request for Judicial Notice in Support of Motion for Order Pursuant to Rule 2004 Authorizing: (1) the Examination of the Person Most Knowledgeable of the Debtor; and (2) the Production of Documents from the Debtor [Doc. No. 389]
 - c) Declaration of Sheri Kanesaka in Support of Rule 2004 Motion Requiring: (1)

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CONT...

Rosales Meat Distributors Inc

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the Examination of the Person Most Knowledgeable of the Debtor; and (2) the Production of Documents from the Debtor [Doc. No. 390]

- 4) Declaration of Charles G. Klaus in Response to Motion for Order Pursuant to Rule 2004 Authorizing: (1) the Examination of the Person Most Knowledgeable of the Liquidating Trustee; and (2) the Production of Documents from the Liquidating Trustee [Doc. No. 396]
- 5) Reply of Movant, Ban of America, N.A., to Declaration of Liquidating Trustee to Motion for Order Pursuant to Rule 2004 Authorizing (1) Examination of PMK [of] the Debtor and (2) Production of Documents from the Debtor [Doc. No. 400]

I. Facts and Summary of Pleadings

Bank of America, N.A. ("Bank of America") seeks to conduct Rule 2004 examinations of (1) the person most knowledgeable of the Debtor, Rosales Meat Distributors, Inc. and (2) the person most knowledgeable of the Liquidating Trustee for the estate of Rosales Meat Distributors, Inc.

Bank of America holds a deed of trust against property located at 321–323 East Belmont Street, Ontario, CA 91761 (the "Property"). Bank of America's deed of trust is currently in junior position to a deed of trust recorded against the Property to secure an outstanding obligation of \$41,983.92 that was owed to the Debtor by Raul S. Lara (the "Lara DOT"). The Debtor is the beneficiary of the Lara DOT.

The Debtor's assets are currently being administered by a Liquidating Trustee pursuant to the Debtor's confirmed Plan of Liquidation. On March 30, 2017, the Liquidating Trustee advised creditors that he had no record of any obligation secured by the Lara DOT and lacked any information confirming whether the \$41,983.92 secured by the Lara DOT was ever paid. *See* Liquidating Trustee's Notice of Resolution of Deed of Trust [Doc. No. 372]. The Liquidating Trustee further advised creditors that in view of the absence of any information confirming payment, the Liquidating Trustee would not agree to a release of the Lara DOT except upon payment of the \$41,983.92 amount at issue. *Id.*

Bank of America subsequently furnished the Liquidating Trustee with documentation purporting to show that the indebtedness secured by the Lara DOT had been satisfied. The Liquidating Trustee did not deem the documentation sufficient to show satisfaction of the debt and declined to reconvey the Lara DOT. Bank of America seeks to examine the Liquidating Trustee and the Debtor to obtain additional information establishing that the indebtedness secured by the Lara DOT has been satisfied.

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On February 8, 2018, the Court set this hearing on Bank of America's Rule 2004 Motions, and directed the Liquidating Trustee to submit a declaration explaining what information it would deem satisfactory to conclude that the indebtedness secured by the Lara DOT had been satisfied. *See* Order Setting Hearings on Bank of America's Motions Seeking Rule 2004 Examinations of the Debtor and the Liquidating Trustee [Doc. No. 392]. The Court stated that the "declaration should address the feasibility of obtaining such information, in view of the fact that the escrow company that handled the previous sale of the Property is no longer in business and the transaction took place more than ten years ago." *Id.*

The declaration submitted by the Liquidating Trustee provides in relevant part:

I have requested that the Bank provide me with proof of payment of the lien, as I do not have any documentation from the Debtor's records showing payment of the lien. The Debtor's former principal says that he recalls the underlying debt on the lien being paid some years ago, and that it was by check, which check would have been deposited in the Debtor's bank account. The Bank served a subpoena on the Debtor's bank, and the Debtor's bank has no record of the payment. The Bank was able to obtain a document called a "Closing Ledger" from Gateway Title Company. That ledger discusses amounts to be paid to "Rosales Meat Dust, Inc." I am inferring that the Rosales Meat Dust, Inc. reference is the misspelling of Rosales Meat Dist., Inc., but, as with everything else regarding the Deed of Trust, I am only inferring.

The issue I am running into is that I have no record of the payment actually being received by the Debtor on the Deed of Trust. The Debtor's books and records are with a postconfirmation purchaser of its assets. By all accounts, those books and records do not include any reference to payment on the Deed of Trust. The lack of any documentation is likely linked to how long ago the transaction would have taken place. The Debtor's bank has no record of the payment being deposited. All I have at my disposal to release a \$43,000 Deed of Trust is an escrow statement of an out-of-business escrow company that misspells the Debtor's name and the principal of the Debtor's recollection of receipt of payment from eleven (11) years ago. In my estimation, I do not have sufficient proof that this amount was paid to allow me to voluntarily release the lien on behalf of the Debtor's estate. If I had a cancelled check or bank statement showing a deposit of the amount listed in the escrow, or a ledger from the Debtor showing receipt of the check, I believe I would feel

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CONT...

Rosales Meat Distributors Inc

Chapter 11

comfortable filing a motion to obtain an order to release the Deed of Trust. I do not have anything close to that at the moment.

One of the problems with the Motion is that I also do not have any documentation to provide the Bank. I do not believe the Debtor, or the purchaser of the Debtor's assets has any documentation that they could provide the Bank regarding the Deed of Trust that the Bank does not already have.

Other than obtaining an order from the Court, I am unsure of how this lien can be resolved. Again, I do not want to release a lien without the Court's order based on the lack of documentation at my disposal.

One resolution would be a deposit of the Deed of Trust amount in the Court's registry pending this Court's order on a motion from the Bank requesting the same, on notice to all creditors.

Klaus Decl. at ¶¶4–8.

Bank of America filed a Reply to the Liquidating Trustee's declaration, in which it makes the following arguments:

Bank of America has been advised by Rosendo Gonzalez, counsel to the Debtors, that the Debtor used Bank of the West while it was operating. However, the Debtor's principals could not provide an account number or other information. Bank of the West was unable to locate any documents in response to a subpoena issued upon it by Bank of America. Bank of America should be able to ask the Debtor which banks it used, which branch, and so forth. The Trustee's statements that he does not believe that the Debtor has documentation regarding the Deed of Trust are pure speculation.

II. Findings and Conclusions

Bankruptcy Rule 2004(a) authorizes the Court to "order the examination of any entity." The scope of a Rule 2004 examination is as follows:

The examination of an entity under this rule ... may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

Bankruptcy Rule 2004(b).

"It is well established that the scope of a Rule 2004 examination is exceptionally broad and provides few of the procedural safeguards found in Federal Rule of Civil Procedure 26.... Examinations under Rule 2004 are allowed for the 'purpose of discovering assets and unearthing frauds' and have been compared to a 'fishing

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CONT... Rosales Meat Distributors Inc

Chapter 11

expedition." *Dynamic Finance Corp. v. Chapter 11 Trustee Richard Kipperman (In re N. Plaza, LLC)*, 395 B.R. 113, 122 (S.D. Cal. 2008).

Here, the examination sought by Bank of America of the Debtor's principal seeks to elicit information relevant to the administration of the estate—namely, whether the indebtedness secured by the Lara DOT, an asset held by the Liquidating Trustee, has been paid. The contemplated examination of the Debtor's principal clearly falls within the scope of Rule 2004. It is hereby GRANTED.

Considering the extensive declaration filed herein, the Court finds that the examination of the Liquidating Trustee should be denied and sought again by motion only if the Debtor's principal cannot provide meaningful testimony and/or documents with regard to the payoff and if it clear that the Liquidating Trustee is likely to have documents sought by Movant. Therefore, this examination is DENIED WITHOUT PREJUDICE.

Lastly, the court is not entirely convinced that discovery from the Bank of the West has been diligently pursued. The Bank of the West subpoena should be reissued, this time with the Debtor's principal named as an account holder.

Bank of America shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rosales Meat Distributors Inc

Represented By
Rosendo Gonzalez

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Wednesday, March 07, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#31.00 Hearing
RE: [61] Motion to Dismiss Adversary Proceeding on Behalf of all Defendants

Docket 61

***** VACATED *** REASON: CONTINUED 4-4-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Blue Sky Communications, Inc., a

Represented By
Cynthia Futter

Lantern Brands, Inc., a California

Represented By
Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By
Cynthia Futter

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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10:00 AM

2:14-31581 Rosales Meat Distributors Inc

Chapter 11

#32.00 POST Confirmation status conference re chapter 11 plan

fr. 8-2-16; 3-13-17; 3-6-18

Docket 222

Tentative Ruling:

3/6/2018

No appearances required. This is a post-confirmation status conference. The Debtor will shortly be filing a motion for entry of a discharge and final decree. The Court continues the status conference to **June 6, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. If a discharge and final decree have been entered prior to that date, the status conference will go off calendar.

Party Information

Debtor(s):

Rosales Meat Distributors Inc

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
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Wednesday, March 07, 2018

Hearing Room 1568

11:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#100.00 HearingRE: [63] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances; Memorandum of Points and Authorities, and Declaration of Edward M. Wolkowitz in Support Thereof with Proof of Service. (Wolkowitz (TR), Edward)

Docket 63

Tentative Ruling:

3/6/2018

Hearing required.

Key Sale Terms:

- 1) Proposed purchaser: Oak Point Partners, Inc.
- 2) Property for Sale: The "Remnant Assets"
- 3) Purchase price: \$5,000.00
- 4) Overbids: The initial overbid shall be \$9,000.00; subsequent overbids shall be in the amount of \$1,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders must deliver a deposit to the Trustee in the amount of such interested bidder's initial overbid.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances (the "Sale Motion") [Doc. No. 63]
- 2) No Opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Nextar, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on October 11, 2011 (the "Petition") [Doc. No. 1]. Edward M. Wolkowitz accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case. The Trustee

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CONT... Nextar Inc.

Chapter 7

has administered the Debtor's Estate, and is now in the process of winding down administration of this case.

On January 18, 2018, the Trustee filed the "Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances" (the "Sale Motion") [Doc. No. 63]. The Trustee has determined that there may exist property of the Estate, consisting of known or unknown claims, property rights, or assets, which have not been previously sold, assigned, or transferred (collectively, the "Remnant Assets"). The trustee has determined that the cost of pursuing the Remnant Assets will likely exceed the benefit that the Estate would possibly receive on account of the Remnant Assets. Therefore, the Trustee seeks an order: (a) authorizing the sale of the Remnant Assets to Oak Point Partners, Inc. ("Oak Point") free and clear of all liens, claims, interests, and encumbrances; and (b) approving the terms of the negotiated agreement between the Trustee and Oak Point for the sale of the Remnant Assets (the "Purchase Agreement"). The Trustee additionally requests that the 14-day stay under FRBP 6004 (h) be waived. The key sale terms are as follows:

- 1) Proposed purchaser: Oak Point;
- 2) Property for Sale: The Remnant Assets (the Remnant Assets do not include: (i) cash held by the Trustee for distribution to creditors and professionals; and (ii) the Purchase Price for the Remnant Assets);
- 3) Purchase price: \$5,000.00;
- 4) Overbids: The initial overbid shall be \$9,000.00; subsequent overbids shall be in the amount of \$1,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders must deliver a deposit to the Trustee in the amount of such interested bidder's initial overbid.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

However, the court does have a couple of questions: What is the Court approving the sale of? Since at least some of the elements of the Remnant Assets are known to

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CONT... Nextar Inc.

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the trustee, why have they not been identified? Also, how can an overbid which is almost 100% above the opening bid be justified?

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Thursday, March 8, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#1.00 HearingRE: [53] Motion to Avoid Lien JUDICIAL LIEN with POWELL INDUSTRIES

Docket 53

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Motion is DENIED without prejudice.

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien of Powell Industries (the "Motion") [Doc. No. 53]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of Powell Industries [Doc. No. 31]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of Powell Industries without Prejudice [Doc. No. 42], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

On February 13, 2018, the Debtor filed the Renewed Motion to Avoid Judicial Lien of Powell Industries (the "Renewed Motion") [Doc. No. 53]. The "Proof of Service of Document" attached to the Renewed Motion shows that the Debtor mailed

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CONT... Jeannette Dore Broberg

Chapter 7

a copy of the Renewed Motion to: Powell Industries Inc., 13353 202nd Avenue, Issaquah, WA 98027.

II. Findings of Fact and Conclusions of Law

The Renewed Motion is DENIED without prejudice. The Court finds that the Debtor failed to serve the Renewed Motion upon the Powell Industries (the “Lienholder”) in a manner authorized under FRBP 7004(b). Additionally, the Debtor did not comply with the Court’s instructions in the Order Denying the First Motion Avoid Judicial Lien of Powell Industries without Prejudice [Doc. No. 42] for the Debtor to file the Renewed Motion pursuant to LBR 9013-1(o). The Debtor shall file and serve a second renewed motion consistent with the Court’s instructions set forth below. Failure to file and serve the second renewed motion consistent with the Court’s instructions will result in the Court denying the second renewed motion with prejudice.

- (1) The Debtor shall file the second renewed motion *on negative notice* pursuant to LBR 9013-1(o) (“Motions and Matters Determined After Notice of Opportunity to Request Hearing”). An electronic copy of the Local Bankruptcy Rules is available on the Court’s website:
<http://www.cacb.uscourts.gov/local-rules>
- (2) Pursuant to FRBP 7004(b)(3), the Debtor shall serve the second renewed motion upon the Lienholder by mailing via first class mail a copy of the notice and second renewed motion to the Lienholder’s Agent for Service of Process:

Powell Industries, Inc. (dba Washington Powell Industries, Inc.)
ATTN: Julie Brazil
14359 San Pasqual Way
Escondido, CA 92025
- (3) Further, the Renewed Motion must be on file by no later than May 31, 2018. If not on file the case shall be reclosed without further notice or hearing.

The Debtor shall lodge a conforming order within 7 days of the hearing.

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Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#2.00 HearingRE: [52] Motion to Avoid Lien JUDICIAL LIEN with LA FINANCIAL FCU

Docket 52

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Motion is GRANTED as set forth below.

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien of LA Financial Federal Credit Union (the "Motion") [Doc. No. 52]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of LA Financial Federal Credit Union ("LA Financial") [Doc. No. 34]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of LA Financial without Prejudice [Doc. No. 45], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

Consistent with the Court's Order Denying the First Motion to Avoid the Judicial Lien of LA Financial [Doc. No. 45], on February 13, 2018, the Debtor filed the

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Chapter 7

Renewed Motion to Avoid Judicial Lien of LA Financial (the "Renewed Motion") [Doc. No. 52]. The Debtor is the owner of certain real property located at 7651 Kyle Street, Tujunga, CA 91042 (the "Property"). Renewed Motion at 2; "Declaration of Jeannette Broberg" ("Broberg Declaration") [Doc. No. 50] at ¶ 3. The Debtor claimed an exemption in the Property as her principal residence under Cal. Code Civ. P. § 703.140(b)(1). Petition, Schedule C. According to the Debtor's Schedule A, the Property has a fair market value of \$250,000.00. The Property is encumbered by a First Deed of Trust held by Wells Fargo Bank N.A. in the amount of \$352,818.00. The Renewed Motion seeks to avoid the judicial lien of LA Financial in the amount of \$37,422.07, recorded on March 4, 2010. *See* Renewed Motion, Exhibit D. The Renewed Motion contends that the above-described judicial lien of LA Financial impairs exemptions to which the Debtor would be entitled under 11 U.S.C. § 522(b).

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; *see also In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the pleadings and supporting declarations filed and reviewed, the Court finds that the Debtor has satisfied the requirements of § 522(f) and GRANTS the Renewed Motion.

The calculation of impairment is as follows: \$250,000 (FMV) - \$1.00 (the Debtor's Exemption) - \$352,818.00 (Wells Fargo First Mortgage) = (\$102,819.00).

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CONT... Jeannette Dore Broberg

Chapter 7

Thus, the Court finds that the Judicial Lien of LA Financial impairs the Debtor's Exemption. Based on the foregoing, the Court GRANTS the Debtor's Motion. The Judicial Lien of LA Financial is avoided pursuant to 11 U.S.C. § 522(f) in its entirety.

The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
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2:10-26084 Jeannette Dore Broberg

Chapter 7

#3.00 HearingRE: [51] Motion to Avoid Lien JUDICIAL LIEN with FINANCIAL PACIFIC LEASING

Docket 51

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Motion is DENIED without prejudice.

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien of Financial Pacific Leasing LLC (the "Motion") [Doc. No. 51]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of Financial Pacific Leasing LLC [Doc. No. 33]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of Financial Pacific Leasing LLC without Prejudice [Doc. No. 44], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

On February 13, 2018, the Debtor filed the Renewed Motion to Avoid Judicial Lien of Financial Pacific Leasing LLC (the "Renewed Motion") [Doc. No. 51]. The

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"Proof of Service of Document" attached to the Renewed Motion shows that the Debtor mailed a copy of the Renewed Motion to: Financial Pacific Leasing LLC, 3455 S. 344th Way #300, Auburn, WA 98001.

II. Findings of Fact and Conclusions of Law

The Renewed Motion is DENIED without prejudice. The Court finds that the Debtor failed to serve the Renewed Motion upon the Financial Pacific Leasing LLC (the "Lienholder") in a manner authorized under FRBP 7004(b). Additionally, the Debtor did not comply with the Court's instructions in the Order Denying the First Motion Avoid Judicial Lien of Financial Pacific Leasing LLC without Prejudice [Doc. No. 44] for the Debtor to file the Renewed Motion pursuant to LBR 9013-1(o). The Debtor shall file and serve a second renewed motion consistent with the Court's instructions set forth below. Failure to file and serve the second renewed motion consistent with the Court's instructions will result in the Court denying the second renewed motion with prejudice.

- (1) The Debtor shall file the second renewed motion *on negative notice* pursuant to LBR 9013-1(o) ("Motions and Matters Determined After Notice of Opportunity to Request Hearing"). An electronic copy of the Local Bankruptcy Rules is available on the Court's website:
<http://www.cacb.uscourts.gov/local-rules>
- (2) Pursuant to FRBP 7004(b)(3), the Debtor shall serve the second renewed motion upon the Lienholder by mailing via first class mail a copy of the notice and second renewed motion to the Lienholder's Agent for Service of Process:

Financial Pacific Leasing, Inc.
ATTN: CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

- (3) Further, the Renewed Motion must be on file by no later than May 31, 2018. If not on file the case shall be reclosed without further notice or hearing.

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The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:10-26084 Jeannette Dore Broberg

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#4.00 HearingRE: [50] Motion to Avoid Lien JUDICIAL LIEN with EMAHN COUNTS

Docket 50

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien of Emahn Counts (the "Motion") [Doc. No. 50]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of Emahn Counts [Doc. No. 32]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of Emahn Counts without Prejudice [Doc. No. 43], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

Consistent with the Court's Order Denying the First Motion to Avoid the Judicial Lien of Emahn Counts [Doc. No. 43], on February 13, 2018, the Debtor filed the Renewed Motion to Avoid Judicial Lien of Emahn Counts (the "Renewed Motion")

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[Doc. No. 50]. The Debtor is the owner of certain real property located at 7651 Kyle Street, Tujunga, CA 91042 (the "Property"). Renewed Motion at 2; "Declaration of Jeannette Broberg" ("Broberg Declaration") [Doc. No. 50] at ¶ 3. The Debtor claimed an exemption in the Property as her principal residence under Cal. Code Civ. P. § 703.140(b)(1). Petition, Schedule C. According to the Debtor's Schedule A, the Property has a fair market value of \$250,000.00. The Property is encumbered by a First Deed of Trust held by Wells Fargo Bank N.A. in the amount of \$352,818.00. The Renewed Motion seeks to avoid the judicial lien of Emahn Counts in the amount of \$1,340.00, recorded on March 2, 2011. *See* Renewed Motion, Exhibit D. The Renewed Motion contends that the above-described judicial lien of Emahn Counts impairs exemptions to which the Debtor would be entitled under 11 U.S.C. § 522(b).

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; *see also In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the pleadings and supporting declarations filed and reviewed, the Court finds that the Debtor has satisfied the requirements of § 522(f) and GRANTS the Renewed Motion.

The calculation of impairment is as follows: \$250,000 (FMV) - \$1.00 (the Debtor's Exemption) - \$352,818.00 (Wells Fargo First Mortgage) = (\$102,819.00). Thus, the Court finds that the Judicial Lien of Emahn Counts impairs the Debtor's

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Exemption. Based on the foregoing, the Court GRANTS the Debtor's Motion. The Judicial Lien of Emahn Counts is avoided pursuant to 11 U.S.C. § 522(f) in its entirety.

The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:17-22786 Beach Dans, Inc.

Chapter 11

#5.00 HearingRE: [86] Motion Debtors Motion For Order Surcharging Disputed Secured Creditors Pursuant To 11 U.S.C. § 506(c); Memorandum Of Points And Authorities; And Declarations In Support Thereof with proof of service

Docket 86

Tentative Ruling:

3/7/2018

The Motion is DENIED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion for Order Surcharging Disputed Secured Creditors Pursuant to 11 U.S.C. §506(c) (the "Motion") [Doc. No. 86]
 - a) Debtor's Notice of Motion for Order Surcharging Disputed Secured Creditors Pursuant to 11 U.S.C. §506(c) [Doc. No. 87]
- 2) Stipulation Between Debtor and United Community Bank Concerning Motion for Order Surcharging Disputed Secured Creditors Pursuant to 11 U.S.C. §506(c) [Doc. No. 89]
- 3) Stipulation Re Debtor's Motion for Order Surcharging Disputed Secured Creditors Pursuant to 11 U.S.C. §506(c) [Doc. No. 92]
 - a) Order Approving Stipulation Re Debtor's Motion for Order Surcharging Disputed Secured Creditors Pursuant to 11 U.S.C. §506(c) [Doc. No. 95]
- 4) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The Debtor's principal asset was a Denny's-franchised restaurant located at 601 Long Beach Blvd., Long Beach, CA 90802 (the "Restaurant"). On December 8, 2017, the Court approved the sale of the Restaurant for \$1,010,000. *See* Doc. No. 57. The sale closed on December 28, 2017.

The Debtor's counsel, Goe & Forsythe, LLP ("G&F"), currently holds \$997,454 in sales proceeds in its client trust account. National Franchise Sales ("NFS"), Denfood # 2, Inc. ("Denfood"), Meadowbrook Meat Company ("Meadowbrook"), and the

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Employment Development Department ("EDD") assert a security interest in the sales proceeds. Debtor moves to surcharge the liens asserted by the secured creditors, pursuant to §506(c), in the amount of \$138,585.68, for the purpose of paying its counsel, G&F. Debtor asserts that the efforts of G&F have benefitted secured creditors because the auction of the Restaurant orchestrated by G&F increased the ultimate sale price by \$310,000.

The Debtor initially indicated that United Community Bank ("UCB") asserted a security interest in the sales proceeds. Subsequent to the filing of the Motion, the Debtor and UCB entered into a stipulation, under which UCB disclaims any security interest in the sales proceeds and states that it does not oppose the Motion.

The Debtor has entered into a stipulation with NFS and Denfood. That stipulation provides that to the extent that the security interests of NFS and Denfood are enforceable, the collateral securing such interests has a value of \$100,000. Based upon G&F's agreement to maintain \$100,000 in its client trust account on account of the security interests asserted by NFS and Denfood, NFS and Denfood do not oppose the Motion.

No other entities asserting a security interest in the sales proceeds have filed an opposition to the Motion.

II. Findings and Conclusions

Section 506(c) provides:

The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim, including the payment of all ad valorem property taxes with respect to the property.

As explained by the Ninth Circuit Bankruptcy Appellate Panel, the purpose of §506(c) is as follows:

"Section 506(c) was intended by Congress as a codification of ... the equitable principle that a lienholder may be charged with the reasonable costs and expenses incurred by the ... trustee which are required to preserve or dispose of the property subject to lien to the extent the lien-holder derives a benefit therefrom." 3 *Collier's on Bankruptcy*, ¶ 506.06. "The underlying rationale for charging a lienholder with the costs and expenses of preserving or disposing of the secured collateral is that the general estate and unsecured creditors should not be required to bear the cost of protecting what is not theirs." *In re Codesco, Inc.*, 6 C.B.C.2d 395, 18 B.R. 225 ([Bankr.]S.D.N.Y.1982).

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Security Leasing Partners, LP v. ProAlert, LLC (In re Proalert, LLC), 314 B.R. 436, 442 (B.A.P. 9th Cir. 2004) (internal citations omitted).

To recover under §506(c), the Debtor must "demonstrate that the expenses it seeks to surcharge against the [secured creditors] were reasonable, necessary, and beneficial to the [secured creditors'] recovery, or that the [secured creditors] caused or consented to those expenses." *Compton Impressions, Ltd. v. Queen City Bank, N.A. (In re Compton Impressions, Ltd.)*, 217 F.3d 1256, 1260 (9th Cir. 2000). The necessity and reasonableness of expenses incurred by the Debtor are measured "against the benefits obtained for the secured creditor and the amount that the secured creditor would have necessarily incurred through foreclosure and disposal of the property," the threshold inquiry being "whether the services for which a surcharge is sought were necessary to the secured creditor." *Id.*

To satisfy the benefit prong of the test, the Debtor "must establish in quantifiable terms that it expended funds directly to protect and preserve the collateral." *Id.* "Section 506(c) is not intended as a substitute for the recovery of administrative expenses normally the responsibility of the debtor's estate," and "[a]dministrative expenses or the general costs of reorganization may not generally be charged against secured collateral." *Cascade Hydraulics & Util. Serv., Inc. v. Central Bank of Montana (In re Cascade Hydraulics & Util. Serv., Inc.)*, 815 F.2d 546, 548 (9th Cir. 1987); *see also United Jersey Bank v. Miller (In re C.S. Assocs.)*, 29 F.3d 903, 906 (3d Cir. 1994) ("Section 506(c) was not intended to encompass ordinary administrative expenses that are attributable to the general operation and dissolution of an estate in bankruptcy. Rather, it was designed to extract from a particular asset the cost of preserving or disposing of that asset.").

Here, the costs the Debtor seeks to surcharge are garden variety costs of reorganization routinely accrued in Chapter 11 cases. The Debtor incurred attorneys' fees in connection with the sale of the Restaurant on a shortened time frame. Rapid sale of assets is common practice in Chapter 11. Surcharge might be justified had the Debtor spent money outside the ordinary course of administering the estate that directly benefitted the secured creditors' collateral—such as by repairing the Restaurant's roof to protect it from water damage or buying food so that the Restaurant could continue operating and be sold as a going concern. None of the costs sought by the Debtor are of such a nature.

The Debtor asserts that "the Disputed Creditors were well aware of Debtor's and G&F's actions in monetizing the estate's assets and did not oppose and were obviously aware that substantial attorneys' fees were being incurred to bring

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approximately one million dollars into the estate, thus giving rise to ‘consent’ to the fees and expenses." Motion at 10. However, "mere cooperation with the debtor does not make the secured creditor liable for all expenses of administration," because such liability shifting would make it "difficult, if not impossible, to induce new lenders to finance a chapter 11 operation" and "would discourage ... the debtor in possession from taking reasonable steps to expedite the reorganization and encourage negligence." *Cascade Hydraulics*, 815 F.2d at 548-49.

Finally, the Debtor’s contention that it was primarily responsible for boosting the sale price of the Restaurant by more than \$310,000 is belied by the record. As the audio recording of the sale motion hearing will confirm, the winning bidder at the December 5 auction stated that he learned the Restaurant was for sale because he operated Denny’s restaurants in the surrounding area, and was informed by his customers that the Restaurant was struggling. Thus, nothing the Debtor did facilitated the higher bid.

Based upon the foregoing, the Motion is DENIED. The Court will enter an appropriate order.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

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2:15-21624 Harry Roussos

Chapter 7

#100.00 HearingRE: [924] Motion Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreement; Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

Docket 924

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Trustee is directed to make the final payment called for under the Settlement Agreement to SMB Investors Associates, LP.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreements (the "Motion") [Doc. No. 924]
 - a) Notice of Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreements [Doc. No. 925]
- 2) Statement Re Trustee's Motion for Order Clarifying Settlement Agreements [filed by Harry and Christine Roussos] [Doc. No. 935]
- 3) Settling Parties' Statement Regarding Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreements [Doc. No. 936]
- 4) Response of Theodosios Roussos to Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreements [Doc. No. 937]
- 5) Chapter 7 Trustee's Omnibus Reply Re Responses to Chapter 7 Trustee's Motion for Order Clarifying Settlement Agreements [Doc. No. 939]

I. Facts and Summary of Pleadings

This litigation involved the Chapter 7 Trustee's ("Trustee") attempt to recover, on behalf of the estates of Harry and Theodosios Roussos (the "Roussos Brothers"), a (1) 20-unit apartment building located at 2727-2741 Abbot Kinney Boulevard, Venice, CA (the "Abbot Kinney Property") and (2) a 30-unit building located at 153 San Vicente Boulevard, Santa Monica, CA (the "San Vicente Property") (collectively, the "Properties").

The Roussos Brothers commenced voluntary Chapter 11 petitions on June 14,

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1993. The cases were jointly administered. On August 5, 1994, the Bankruptcy Court entered an order (the "1994 Sale Order") approving the sale of the Abbot Kinney Property to O.F. Enterprises, LP ("OF"), and approving the sale of the San Vicente Property to S.M.B. Investors Associates, LP ("SMB"). On October 19, 1994, the Roussos Brothers executed a grant deed conveying title to the Abbott Kinney Property to OF. On November 29, 1994, the Roussos Brothers executed a grant deed conveying title to the San Vicente Property to SMB. The Roussos Brothers' Chapter 11 cases were converted to Chapter 7 on May 2, 1995. **[Note 1]** Both Harry and Theodosios received discharges on January 2, 1996. **[Note 2]** The cases were closed on June 27, 2002.

On July 23, 2015, the cases were reopened upon the motion of the United States Trustee. On August 4, 2015, the Trustee filed two complaints, both of which seek to recover the Properties. The complaints are identical; one was filed in Harry's Chapter 7 case (Adv. No. 2:15-ap-01406-ER), the other in Theodosios' Chapter 7 case (Adv. No. 2:15-ap-01404-ER). Throughout the prosecution of this litigation, the motions filed and the orders entered in each adversary proceeding have been identical. **[Note 3]**

The complaints were filed against Harry Roussos, Christine Roussos (Harry's spouse), Theodosios Roussos, Paula Roussos (Theodosios' spouse, who passed away in December 2016), OF, Liro, Inc. (the general partner of OF), SMB, SMB Management, Inc. (the general partner of SMB), Chase Bank, N.A., and CIT Bank, N.A. (formerly known as OneWest Bank, N.A.). The complaints alleged that the Roussos Brothers procured the 1994 Sale Order by committing fraud on the court, and sought to invalidate the 1994 Sale Order so that title to the Properties would be revested in the Roussos Brothers' bankruptcy estates. Specifically, the complaints alleged that to obtain the Sale Order, the Roussos Brothers submitted to the Bankruptcy Court declarations falsely stating that the sale was at arm's length and that they had no interest in the purchaser entities OF and SMB, when in fact the Roussos Brothers secretly controlled OF and SMB.

On October 9, 2015, the Court imposed a temporary ninety-day stay of an arbitration action captioned *Harry Roussos and Christine Roussos v. Theodosios Roussos and Paula Roussos* (the "Arbitration"). See Bankruptcy Doc. No. 424. The Arbitration, which was being conducted by Judge Shook (the "Arbitrator"), involved a dispute over the management and ownership of the Properties. The Court stayed the Arbitration to the extent that it affected, directly or indirectly, title to or ownership of the Properties. On December 21, 2015, the Court entered a preliminary injunction (the

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"Arbitration Injunction") which continued indefinitely the previously-ordered stay of the Arbitration. *See* Adv. Doc. No. 92 (the "Preliminary Injunction Order"). Theodosios appealed the Preliminary Injunction Order; on June 27, 2016, the District Court affirmed the issuance of the preliminary injunction. *See* Adv. Doc. No. 318. Theodosios appealed the District Court's affirmance of the preliminary injunction to the Ninth Circuit. On January 4, 2017, after this Court had approved an agreement settling the litigation, the Ninth Circuit dismissed Theodosios' appeal of the Preliminary Injunction Order as moot. *See* Adv. Doc. No. 436.

Appointment of Sarah Daly as Managing Director

On May 25, 2016, the Court entered an order permitting Judge Shook, who was conducting the Arbitration stayed by the Preliminary Injunction Order, to appoint a director to manage the affairs of OF, Liro, SMB, and SMB Management (collectively, the "Four Entities"). *See* Order Confirming that the Automatic Stay and the Court's Previous Order Enjoining the Arbitration Do Not Apply to Bar the Arbitrator from Appointing a Managing Director of S.M.B. Investors Associates, L.P.; S.M.B. Management, Inc.; O.F. Enterprises, Ltd.; and Liro, Inc. (the "Management Order") [Bankruptcy Doc. No. 551]. The Management Order provides in relevant part:

The Court confirms that neither the Arbitration Injunction nor the automatic stay arising in the jointly-administered Chapter 7 bankruptcy cases of Harry and Theodosios Roussos bar the Arbitrator, Judge John H. Shook, Ret., from taking the following actions:

- 1) Appointing a managing director who will manage the affairs of S.M.B. Investors Associates, L.P.; S.M.B. Management, Inc.; O.F. Enterprises, Ltd.; and Liro, Inc. (the "Purchaser Entities"), and who will have the following responsibilities:
 - a) Hiring counsel to represent the Purchaser Entities in Adv. No. 2:15-ap-01406-ER and 2:15-ap-01404-ER (the "Adversary Proceedings") and in the jointly-administered Chapter 7 bankruptcy cases of Harry and Theodosios Roussos (Case Nos. 2:15-bk-21624-ER and 2:15-bk-21626-ER).
 - b) Hiring counsel to represent Harry and Theodosios Roussos in the Adversary Proceedings and the related Chapter 7 bankruptcy cases. **[footnote omitted]**
 - c) For the purpose of paying counsel for the Purchaser Entities and for

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Theodosios and Harry Roussos in the Adversary Proceedings and the related Chapter 7 bankruptcy cases, borrowing funds against the following properties:

- i) 39 Paloma Avenue, Venice, CA 90291 ("Paloma Property");
 - ii) 2209 Ocean Front Walk, Venice, CA 90291 ("Ocean Front Property");
 - iii) 580 West E. Street, Colton, CA 92324 ("Colton Property").
- d) Paying new counsel for the Purchaser Entities and for Theodosios and Harry in the Adversary Proceedings and the related Chapter 7 cases from the net revenue of the Paloma, Ocean Front, and Colton properties. To the extent that any profits are paid to the record title owners of the San Vicente and Abbott Kinney Properties as provided in ¶2.G of the Order Continuing Hearing on Motion to Appoint Receiver, Etc. and Approving Oral Stipulation Re Property Management ("Property Management Order"), [footnote omitted] such profits may be used to pay counsel; provided, however, that nothing in this order authorizes either the Arbitrator or the managing director to interfere with the Chosen Manager's [footnote omitted] operation of the San Vicente and Abbott Kinney Properties; and further provided that the terms of the Property Management Order remain controlling with respect to the management and operation of the San Vicente and Abbott Kinney Properties.

Management Order at 1–2.

On June 6, 2016, Judge Shook appointed Sarah Daly ("Ms. Daly") as the managing director of S.M.B. Management, Inc. and Liro, Inc. Judge Shook's order provides:

PLEASE TAKE NOTICE that pursuant to the authority granted to me by all of the above-referenced parties in this binding arbitration, and in accordance with the attached Order of the Honorable Ernest M. Robles, United States Bankruptcy Judge, authorizing the Arbitrator to select a director for Liro, Inc. and S.M.B. Management, Inc., Sarah Daley is hereby appointed as the managing director to manage the affairs for Liro, Inc. and S.M.B. Management, Inc., effective immediately. A copy of the Order from Judge Robles dated May 25, 2016 authorizing the Arbitrator to select this new

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managing director and setting forth the scope of the new managing director's authority is attached hereto as Exhibit "A".

Order No. Twenty-Seven (27) Re: Appointment of Managing Director [for] S.M.B. Management, Inc. and Liro, Inc. (the "Order Appointing Managing Director") [Bankruptcy Doc. No. 571, Ex. B].

Harry and Christine's Emergency Motion to Limit Ms. Daly's Authority as Managing Director

On May 15, 2017, Harry and Christine filed an emergency motion seeking to limit Ms. Daly's ability to borrow funds against various properties in her capacity as Managing Director. *See* Doc. No. 447, Adv. No. 2:14-ap-01406-ER. Harry and Christine asserted that absent relief, Ms. Daly was likely to misappropriate funds for her personal benefit. On May 18, 2017, the Court issued a *Memorandum of Decision Denying Emergency Motion Filed by Harry and Christine Roussos* [Doc. No. 448, Adv. No. 2:14-ap-01406] (the "Daly Memorandum"). The Court stated:

The Court declines to adopt the narrow construction of the Management Order advocated by Harry and Christine. The Management Order provides that the managing director "will manage the affairs" of the Four Entities. It then provides that the managing director will have certain responsibilities, and sets forth a list of those responsibilities. But nothing in the Management Order provides that the managing director's authority is limited to the specific responsibilities described in the order. The narrow construction advocated by Harry and Christine renders certain of the Management Order's language superfluous. If the managing director had authority only to perform the responsibilities that were specifically described therein, the more generalized grant of authority to "manage the affairs" of the Four Entities would have been unnecessary. That is, rather than stating that Judge Shook was not barred from "[a]ppointing a managing director who will manage the affairs of [the Four Entities], and who will have the following responsibilities . . .," the Management Order could have simply stated that Judge Shook was not barred from "[a]ppointing a manager director who will have the following responsibilities . . ."

Harry and Christine's construction is also inconsistent with the interpretation the Court has previously accorded the Management Order. For

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example, in approving the Settlement Agreement, the Court found that the Management Order bestowed upon Ms. Daly the authority to settle these actions, even though there is no provision in the Management Order specifically stating that Ms. Daly has settlement authority.

Daly Memorandum at 6.

The Court further found that Harry and Christine had failed to demonstrate that there was an imminent risk that Ms. Daly was likely to loot the Four Entities for her personal gain, and found that Harry and Christine had not shown that they were entitled to injunctive relief against Ms. Daly. *See generally* Daly Memorandum at 7–8.

Approval of the Settlement Agreement

On October 6, 2016, the Court approved a settlement agreement (the "Settlement Agreement") between the Trustee, on the one hand, and the Four Entities and Harry and Christine Roussos, the other hand. *See* Order Approving Settlement Agreement (the "Settlement Approval Order") [Bankruptcy Doc. No. 591]. The Settlement Agreement provided that the Properties were property of the Roussos Brothers' estates and authorized the Trustee to sell the San Vicente Property and, if necessary, the Abbot Kinney Property in order to fund a settlement amount of \$11 million (the "Settlement Amount"). Concurrently with approval of the Settlement Agreement, the Court entered judgments which provided, among other things, that the Preliminary Injunction Order was vacated.

Sale of the San Vicente Property and Distribution of the Proceeds

On May 24, 2017, the Court approved the sale of the San Vicente Property for \$23.8 million. *See* Doc. No. 785. On September 25, 2017, the Court approved a settlement between the Trustee and Theodosios. *See* Doc. No. 857 (the "Theodosios Settlement Approval Order").

The Settlement Agreement (as supplemented by the Theodosios Settlement Approval Order) provided that proceeds from the sale of the San Vicente Property in excess of the Settlement Amount were to be distributed as follows:

- 1) First, to pay the costs of sale (include brokerage commissions and escrow costs);
- 2) Second, to satisfy any liens against the San Vicente Property;
- 3) Third, to pay the estate's capital gains tax liability;
- 4) Fourth, to pay the estate the Settlement Amount;

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- 5) Fifth, to Harry and Theodosios, *pari passu*, as follows:
 - a) \$1.5 million to Harry under §726(a)(6); and
 - b) \$1.5 million to Theodosios under §726(a)(6), with \$750,000 of the \$1.5 million amount to be paid by the Trustee to Lula Michaelides; and
- 6) Sixth, to SMB.

The Trustee has paid all costs of sale; all liens against the San Vicente Property; all capital gains taxes [Note 4]; the Settlement Amount; and the amounts owing to Harry, Theodosios, and Ms. Michaelides. The Trustee is prepared to make the final payment to SMB, but the parties disagree over whether that payment can or should be made. Because the sale proceeds of the San Vicente Property were sufficient to satisfy the Settlement Amount, the Trustee conveyed the estate's interest in the Abbott Kinney Property to OF on August 4, 2017, pursuant to the §8(b) of the Settlement Agreement. See Doc. No. 827 at ¶3 (declaration of Trustee Ehrenberg).

Judge Shook's Partition Award and Harry and Christine's Attempts to Confirm the Partition Award

The Court's vacatur of the Preliminary Injunction Order, followed by the estate's conveyance of its interest in the Abbott Kinney Property to OF, permitted Harry and Christine to take actions to attempt to enforce a *Statement of Decision and Judgment in Binding Arbitration* (the "Partition Award") issued by Judge Shook. In the Partition Award, Judge Shook found that limited partners SMB and OF were incapable of functioning because they were controlled by the Roussos Brothers, who "have developed major and substantive differences of opinion concerning the management and general operation of the family business." Partition Award at 2–3. Judge Shook ruled that "partition by sale appears to be the only answer and must be granted." *Id.* at 3. Judge Shook recognized that the OF and SMB Partnership Agreements contained provisions prohibiting partition, but held that he had the authority to modify the Partnership Agreements "as needed to further the goals of equity, including excusal or modification of contractual terms." *Id.* at 6. Accordingly, Judge Shook modified the Partnership Agreements "to strike and delete the waivers to the right to partition in order to equitably remedy the dissension among the co-owners of the properties." *Id.* Judge Shook ordered that the "Properties shall be partitioned for sale" and "marketed to third parties to obtain the great values for the parties." *Id.* at 11.

On October 21, 2016, Harry and Christine commenced Case No. BS165997 in the Los Angeles Superior Court (the "State Court") by filing a petition to confirm the

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Partition Award. SMB, acting through Sarah Daly and represented by Daniel J. McCarthy, opposed confirmation of the Partition Award. On January 12, 2018, the State Court issued a *Ruling Re: Motion of Petitioners to Confirm the Arbitration Award and Issue Judgment Thereon, and Request for Attorney's Fees in the Amount of \$15,912.50* (the "Jan. 12 Order"). The Jan. 12 Order provides that the "[a]rbitration awards [a reference to the Partition Award] are confirmed only as made." SMB and Harry and Christine dispute the precise meaning and scope of the Jan. 12 Order. Specifically, Harry and Christine maintain that the Jan. 12 Order granted the request for appointment of a partition referee to oversee the sale of the properties subject to the arbitration, while SMB asserts that appointment of a partition referee was not ordered. *Cf.* Notice of Ruling on Petitioners' Motion to Confirm the Arbitration Awards, and Issue Judgment Thereon with Objection to Petitioners' Notice of Ruling on Petitioners' Motion to Confirm the Arbitration Awards, and Issue Judgment Thereon.

SMB asserts that the State Court erred in confirming the Partition Award. SMB's theory is that there is no admissible evidence that the corporate entities ever executed any agreement to be subject to arbitration before Judge Shook. SMB intends to file a motion for a new trial before the State Court once judgment confirming the Partition Award is entered.

Harry and Christine have filed a motion seeking sanctions against Mr. McCarthy; that motion is set for hearing on March 8, 2018, at 8:30 a.m.

Theodosios has appealed the Jan. 12 Order. Theodosios asserts that his appeal stays all proceedings in Case No. BS165997. *See* Notice of Stay of Proceedings (filed Feb. 14, 2018).

Summary of the Trustee's Motion; the Responses of Harry and Christine, Theodosios, and SMB; and the Trustee's Supporting Reply

The Trustee seeks clarification from the Bankruptcy Court regarding discharge of his obligation to pay the balance of the net sales proceeds of the San Vicente Property to SMB. The Trustee takes no position regarding the manner of payment.

Harry and Christine assert that SMB has been hijacked by Ms. Daly and Mr. McCarthy. Harry and Christine's position is that the payments owing to SMB should be made to the party appointed by the State Court to oversee the partition and sale of the properties. According to Harry and Christine, Ms. Daly and Mr. McCarthy have been managing SMB (and entities related thereto) in a manner designed to maximize their fees, and have not acted in SMB's best interests. Harry and Christine's argument

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is that because Harry, Christine, and Theodosios hold all beneficial interests in SMB, it is appropriate for Harry and Christine to dictate the manner of the SMB payment.

Theodosios agrees that Ms. Daly and Mr. McCarthy have not properly administered SMB's assets. Theodosios wants the SMB payment to be made to the probate registry of the Superior Court in Case No. 17STPB08818. In the alternative, Theodosios states that the payment should be made directly to the SMB Trust, as follows: 50% to Theodosios, as co-trustee of the SMB Trust, and 50% to Harry, as co-trustee of the SMB Trust.

SMB disputes the allegations that Ms. Daly and Mr. McCarthy have not properly managed its affairs. Mr. McCarthy submits a detailed declaration disputing Harry and Christine's allegations that his representation of SMB before the State Court has breached the bounds of ethical behavior.

II. Findings and Conclusions

Given this case's history, it is striking that Theodosios has the temerity to assert that "Sarah Daly is an unbonded rogue officer that has no proper stake in the funds at issue who has pillaged and defrauded the Brothers and their children of countless dollars in her self-serving and fraudulent administration of their assets." Doc. No. 937 at p. 3. All the evidence of fraud in this matter points to Harry and Theodosios, not to Sarah Daly. As the District Court has summarized the facts:

In July 2015, the bankruptcy cases of the Roussos Brothers were reopened when a creditor, Lula Michaelides, discovered that the Roussos Brothers had committed a fraud on the Bankruptcy Court in 1994.... The Roussos Brothers' fraud was discovered by Michaelides as a result of evidence produced in an arbitration proceeding between the Roussos Brothers to resolve their disputes regarding the ownership and management of various properties and entities.... The settlement agreement [approved by the Bankruptcy Court] provided that the two fraudulently sold apartment buildings would be returned to the Roussos Brothers' bankruptcy estates.

Order Affirming Bankruptcy Court's Orders [Case No. 2:16-cv-08643-JFW, Doc. No. 38; signed April 20, 2017] at 3-4.

Theodosios and Harry are hardly in a position to complain about Ms. Daly and Mr. McCarthy's management of SMB. The circumstances under which Ms. Daly was appointed as SMB's Managing Director are worth restating. As a result of the internecine dispute between Harry and Theodosios, serious issues regarding the management of the Properties arose. Harry and Theodosios' inability to agree upon

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the selection of a successor property management company resulted in the Properties going without professional management between January 16, 2016 and approximately May 25, 2016. The property management issues were resolved only after the Trustee filed a motion seeking to appoint a receiver to take control of the Properties. It was against this backdrop of chaos and dysfunction that the Court entered its order finding that neither the automatic stay or the Arbitration Injunction barred Judge Shook from appointing a managing director.

After Judge Shook appointed Sarah Daly as Managing Director, both Harry and Theodosios have, at various times, taken issue with various decisions she has made. Theodosios vigorously opposed Ms. Daly's decision to cause SMB and other entities involved in the litigation to enter into the Settlement Agreement. On September 22, 2016, Theodosios sent Ms. Daly an e-mail stating: "I will pursue every available legal remedy against you no matter how long it takes if you continue to act against the best interest of the entities by ... trying to sign a settlement agreement that you know you are not authorized to sign." *See* Doc. No. 582, Case No. 2:15-bk-21624, at Ex. B. One of Theodosios' attorneys asserted that Ms. Daly risked substantial personal liability in connection with the Settlement Agreement:

My clients want Ms. Daly to know they will seek all legal and equitable remedies against her if you withdraw due to her failure to honor the fee agreement she approved and signed and the terms of the limited partnership agreements, including, but not limited to, filing a lawsuit against her to recover the millions of dollars they will have lost because Ms. Daly decided not to honor her fiduciary and contractual duties to protect the best interests of the entities. If she dares to act in this manner or enters into an illegitimate settlement with the bankruptcy trustee, she would be wise to make sure the bankruptcy trustee agrees to fully indemnify her from the legal fees she will incur defending herself and any resulting judgment, which could include punitive damages which, by law, I don't think the bankruptcy trustee can even indemnify her against. She is playing a risky game, and if she knows anything, she knows that Ted will never give up until his dying breath in his pursuit of Ms. Daly.

Id.

Harry and Christine supported the actions Ms. Daly took on behalf of SMB and the related entities in connection with the Settlement Agreement. But soon thereafter they too became dissatisfied with Ms. Daly's performance as Managing Director. As discussed previously, Harry and Christine filed a motion seeking to circumscribe Ms.

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Daly's management authority, in which they accused Ms. Daly of violating her fiduciary duties and engaging in "egregious conduct." *See* Doc. No. 447, Adv. No. 2:15-ap-01406-ER, at 3. The Court found that there was no merit to Harry and Christine's allegations. *See generally* Daly Memorandum.

The foregoing provides important context for understanding the accusations of impropriety asserted against Ms. Daly and Mr. McCarthy by Theodosios, Harry, and Christine. After orchestrating the fraud against the Bankruptcy Court in 1994, Theodosios and Harry fought for years between themselves over management of the Properties. They eventually turned to private arbitration in an attempt to resolve their disputes. After Theodosios and Harry's inability to cooperate placed management of the Properties into disarray, Judge Shook, the arbitrator, appointed Ms. Daly as Managing Director to resolve the deadlock. Depending upon the issue at hand, either Theodosios or Harry and Christine protested vociferously against Ms. Daly's actions. Against this backdrop the Court hardly finds it surprising to see Harry, Christine, and Theodosios return with a slew of vitriolic allegations against Ms. Daly and Mr. McCarthy.

As has been the case in the past, none of the allegations are supported by competent evidence. Harry and Christine point to the sale of the Abbott Kinney Property as an example of the bad faith of Ms. Daly and Mr. McCarthy. Harry and Christine maintain that the Abbott Kinney Property was sold for only \$6.8 million when it was worth \$8 million. They offer no admissible evidence in support of this contention. Nor was it improper for Ms. Daly to market the Abbott Kinney Property for sale. As explained in the Daly Memorandum, the Management Order bestowed upon Ms. Daly broad authority to direct the affairs of the Four Entities. Certainly selling property in which the entities hold an interest falls within the scope of that authority.

Harry, Christine, and Theodosios also maintain that Ms. Daly and Mr. McCarthy are paying themselves excessive fees. Once again, these allegations are conclusory. Further, it would not be unexpected for fees to be substantial in view of the complexity and contentiousness of these matters.

There is no merit to Theodosios' contention that Ms. Daly and Mr. McCarthy cannot appear because SMB Management—which is SMB's general partner—is suspended. First, it is SMB Management that has been suspended; the instant Motion involves a payment to SMB. Second, the Court has already determined that Theodosios has waived his right to contest SMB Management's ability to participate in this litigation by reason of its suspension. *See generally* Memorandum of Decision

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Granting Emergency Motion to Approve Settlement Agreement [Doc. No. 590] at 7-9.

There is no dispute that the Settlement Agreement provides that the remaining funds are to be paid to SMB. Harry, Christine, and Theodosios have failed to establish that SMB is under rogue management or that the SMB cannot be entrusted to receive the SMB payment. To the extent that Harry, Christine, and Theodosios object to the decisions made by SMB, they have only themselves to blame for their current predicament. The plain language of the Settlement Agreement provides that the Trustee is to make the final payment to SMB. The Court will authorize the Trustee to make the payment to SMB so that the administration of these estates can be completed.

III. Conclusion

Based upon the foregoing, the Court directs the Trustee to make the final payment called for under the Settlement Agreement to SMB Investors Associates, LP. The Trustee shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

See Doc. No. 34, Case No. 2:15-bk-21624-ER (order denying confirmation of Harry and Theodosios' joint consolidated second amended plan of reorganization and converting the cases to chapter 7); Doc. No. 12, Case No. 2:15-bk-21626-ER (same order in Theodosios' jointly-administered case).

Note 2

See Doc. No. 101, Case No. 2:15-bk-21624-ER (discharge of Harry); Doc. No. 48, Case No. 2:15-bk-21626-ER (discharge of Theodosios).

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Note 3

For ease of reference, orders entered in the adversary proceedings are generally referred to in the singular.

Note 4

The Trustee has been advised that additional tax penalties and interest may be due and has set aside a reserve to account for any such additional amounts.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:17-25543 Norlaine, Inc,

Chapter 7

#101.00 HearingRE: [26] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Chapter 7 Trustees Motion for an Order Authorizing the Trustee to: (1) Conduct an Auction Sale of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code Sections 363(b) and (f); (2) Van Horn Auction Group, LLC as Auctioneer and Pay Compensation and Expenses to the Auctioneer; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay for Actual Costs Incurred; Memorandum of Points and Authorities and Declarations of David M. Goodrich and Scott R. Van Horn in Support (with proof of service). (Bui, Lynda)

Docket 26

Tentative Ruling:

3/7/2018

For the reasons set forth below, the Motion is GRANTED in its entirety. The 14-day stay under FRBP 6004(h) is WAIVED.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Authorizing the Trustee to: (1) Conduct an Auction Sale of Personal Property Assets of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and 363(f); (2) Employ Van Horn Auction Group, LLC as Auctioneer and Pay Compensation and Expenses to the Auctioneer; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay Actual Costs Incurred (the "Sale Motion") [Doc. No. 26]
- 2) No Opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Norlaine, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on December 22, 2017 (the "Petition") [Doc. No. 1]. David M. Goodrich accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case.

On February 14, 2018, the Trustee filed the "Chapter 7 Trustee's Motion for Order Authorizing the Trustee to: (1) Conduct an Auction Sale of Personal Property Assets

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of the Estate Free and Clear of Liens Pursuant to Bankruptcy Code §§ 363(b) and 363(f); (2) Employ Van Horn Auction Group, LLC as Auctioneer and Pay Compensation and Expenses to the Auctioneer; and (3) Granting Related Relief Including Use of Sale Proceeds to Pay Actual Costs Incurred (the "Sale Motion") [Doc. No. 26]. The Trustee has determined that the sale of certain of the Debtor's personal property assets through an auction will provide the most benefit for the Estate and its creditors. The personal property assets to be included in the auction are generally described as machinery and equipment used in the operations of the Debtor's mannequin production operations including: three forklifts; seven Mannetron rotational casting machines; MJ Maillis pallet wrapping machine; pallet jacks; stock ladders and carts; welding and woodworking equipment; hand tools; drill presses; spray booths; pallet racking; molds; and office furniture, fixtures and equipment (collectively, the "Assets"). The Trustee believes that some of the mannequins and molds listed on the Debtor's Schedules may not constitute property of the Estate. Thus, excluded from the Assets are: (i) any mannequins or molds owned by Destination Maternity, Inc. ("Destination") or Disney Stores USA, LLC ("Disney"); and (ii) any other mannequin inventory of the Debtor pending the Trustee's determination as to whether proceeds therefrom might be encumbered by a lien in favor of Caisse Regionale De Credit Agricole as scheduled on the Debtor's Schedule D. The majority of the Assets are located on premises located at 1449 West Industrial Park Street, Covina, CA 91722 leased by the Debtor (the "Leased Premises") under a prepetition lease agreement between the Debtor and Trietsch Property Enterprises, LP that provides for monthly rental payments in the amount of \$20,000.00 (the "Lease"). The Sale Motion states that the Trustee needs to liquidate the assets in order to pay rent as agreed under the terms of the "Stipulation for Occupancy and Payment of Rent" [Doc. No. 18], which was approved by the Court on February 6, 2018 [Doc. No. 21]. The Trustee seeks to sell the Assets at a public auction free and clear of liens under § 363(f), and additionally seeks authorization to employ Van Horn Auction Group, LLC as auctioneer (the "Auctioneer"). The key sale terms are as follows:

- 1) Proposed purchaser: Public Auction;
- 2) Property for Sale: The Assets, including: three forklifts; seven Mannetron rotational casting machines; MJ Maillis pallet wrapping machine; pallet jacks; stock ladders and carts; welding and woodworking equipment; hand tools; drill presses; spray booths; pallet racking; molds; and office furniture, fixtures and equipment (excluded from the Assets are: (i) any mannequins or molds owned by Destination Maternity, Inc. ("Destination") or Disney Stores USA,

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LLC ("Disney"); and (ii) any other mannequin inventory of the Debtor pending the Trustee's determination as to whether proceeds therefrom might be encumbered by a lien in favor of Caisse Regionale De Credit Agricole as scheduled on the Debtor's Schedule D);

- 3) Purchase price: The Auctioneer estimates that the Assets have a total liquidation value of approximately \$50,000.00 to \$53,000.00 through a piece meal auction sale, *see* "Declaration of Scott R. Van Horn" ("Van Horn Declaration") [Doc. No. 26] at ¶ 4;
- 4) Auction Sale Terms: The Assets will be liquidated by auction to the highest bidder. The Auction will be scheduled for approximately thirty (30) days after the date of entry of the Order approving the Sale Motion. Onsite viewing of the items to be auctioned will be held no later than one day prior to the auction at the auction viewing location of 1449 West Industrial Park Street, Covina, CA 91722. The sale will be without limit and without reserve. The Assets will be offered to the buyers in "As-Is, Where-Is" condition.

The Trustee requests authorization to employ the Auctioneer to coordinate the auction and authorization to pay the Auctioneer's compensation and expenses pursuant to the terms of the "Auction Services Proposal," which is attached to the "Declaration of David M. Goodrich" ("Goodrich Declaration") [Doc. No. 26] as Exhibit 2. Attached as Exhibit 4 to the Van Horn Declaration is a copy of the Auctioneer's blanket bond in favor of the United States of America for coverage in the aggregate amount of \$50,000.00, and an additional single auction performance bond in the amount of \$53,000.00. The Auctioneer's costs will be billed at actual cost and shall not exceed a total amount of \$8,500.00. A 13% Buyer's Premium will be charged to each purchaser and will be collected by the Auctioneer and turned over to the Trustee. The Auctioneer shall provide the Trustee with a Report of Auctioneer within 21 days after the conclusion of the auction. The Trustee requests authorization to use the proceeds of the sale to make approved disbursements to the Auctioneer pursuant to the terms of the Sale Motion.

The Trustee additionally requests authorization to use funds of the Estate in the amount of \$1,643.00 to pay for an insurance policy for the auction sale.

Lastly, the Trustee requests authorization to terminate and reject the Lease effective as of five business days after the auction sale has concluded and directing that any proofs of claim arising from the termination and rejection of the Lease must

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be filed with the Court not later than April 23, 2018. The Sale Motion states that once the auction sale has concluded, the Lease will have no benefit for the Estate and creditors.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Assets is in the best interest of the Estate, and furthermore, that the projected sale price represents the fair market value of the Assets. The sale of the Assets will be by public auction, thus ensuring competitive bidding.

The Trustee has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3) and 363(f)(4). The Trustee believes that the price at

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which the Assets are to be sold is greater than the aggregate value of any liens on the Assets. Goodrich Declaration at ¶ 11. The Trustee does not believe that there are any liens impacting the Assets and, based on this, any unresolved liens will be the subject of a bona fide dispute. *Id.*

Authorization to Employ Auctioneer

The Court finds that the employment of the Auctioneer is appropriate, and that the terms set forth in the Auction Services Proposal are fair and reasonable. The Trustee is authorized to employ the Auctioneer consistent with the terms set forth in the Auction Services Proposal.

III. Conclusion

Based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The 14-day stay under FRBP 6004(h) is WAIVED.

The Trustee shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Norlaine, Inc,

Represented By
James R Selth

Trustee(s):

David M Goodrich (TR)

Represented By
Leonard M Shulman
Brandon J Iskander

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Hearing Room 1568

10:00 AM

2:17-20662 Sun & Stars Lighting, Inc.

Chapter 7

#1.00 HearingRE: [16] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM.

Docket 16

Tentative Ruling:

3/9/2018

The Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against Debtors or estate property.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 16]
- 2) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Sun & Stars Lighting, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on August 30, 2017 (the "Petition") [Doc. No. 1]. On February 7, 2018, Emporium Hardwoods Operating Company, LLC and Emporium Real Estate, LLC (the "Movants") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 16].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movants may proceed under applicable nonbankruptcy law to enforce their remedies to proceed to final judgment in the nonbankruptcy forum in an action currently pending in the Pennsylvania Court of Common Pleas, County of Cameron, captioned *Emporium*

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Hardwoods Operating Company, LLC et al. v. Energy Efficient, Inc. et al., Case No. 2017-932 (the "State Court Action"). The State Court Action was filed on May 19, 2017. Trial is estimated to require 7 days of trial/hearings. The Complaint in the State Court Action asserts claims for: property damage as a result of negligence; products liability; and breach of warranty.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The Movants seek recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.
- (2) The State Court Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources. "Declaration of Stephen M. Winning" ("Winning Declaration") [Doc. No. 16] at ¶ 5(d)

The Motion is incomplete insofar as the Movants did not complete the section of the Motion titled "Movant requests the following relief."

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract

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CONT...

Sun & Stars Lighting, Inc.

Chapter 7

underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing the Movants to continue the intended state court complaint will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

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CONT... Sun & Stars Lighting, Inc.

Chapter 7

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movants will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

The Movants shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:17-20662 Sun & Stars Lighting, Inc.

Chapter 7

#2.00 HearingRE: [16] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM.

Docket 16

Tentative Ruling:

3/9/2018

See Cal. No. 1 above, which is incorporated by reference.

Party Information

Debtor(s):

Sun & Stars Lighting, Inc.

Represented By
Maria W Tam

Trustee(s):

Elissa Miller (TR)

Pro Se

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10:00 AM

2:17-25342 Michael Angel Castaneda

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1130 Rose Circle, Corona, California 92882 .

Docket 8

Tentative Ruling:

3/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

On February 14, 2018, the Debtor filed the Nonopposition to the Motion [Doc. No. 10]. The Debtor does not oppose the relief sought by the Movant.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on May 17, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867,

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CONT... **Michael Angel Castaneda**
876 (Bankr. C.D. Cal. 2002).

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Michael Angel Castaneda

Represented By
Sundee M Teeple

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:17-25665 Ruby Pineda

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Chevrolet Camaro .

Docket 9

Tentative Ruling:

3/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Ruby Pineda

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlager, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ruby Pineda

Represented By
Michael H Colmenares

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:18-11299 Cathy Ann Serrato

Chapter 7

#5.00 HearingRE: [12] Amended Motion (related document(s): 10 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1123 South Walnut Avenue, West Covina, CA 91790 with proof of service. filed by Interested Party Shangjin Chen) with proof of service (Daniels, Luke)

Docket 12

Tentative Ruling:

3/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on January 30, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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CONT...

Cathy Ann Serrato

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cathy Ann Serrato

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:17-15458 Alex Trevor Hooper and Sharon Rena Hooper

Chapter 7

#6.00 HearingRE: [20] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Kia Rio VIN#KNADM4A31E6332777 with proof of service. (Hanawalt, Jamie)

Docket 20

Tentative Ruling:

3/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Alex Trevor Hooper and Sharon Rena Hooper Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alex Trevor Hooper

Represented By
Bradley J Yourist

Joint Debtor(s):

Sharon Rena Hooper

Represented By
Bradley J Yourist

Trustee(s):

Richard K Diamond (TR)

Pro Se

**United States Bankruptcy Court
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2:18-10376 Maria Victoria Retamar De Hill

Chapter 7

#7.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA CIVIC, VIN: 2HGF B2F9 8EH5 56535 .

Docket 9

Tentative Ruling:

3/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Maria Victoria Retamar De Hill

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Victoria Retamar De Hill	Pro Se
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Trustee(s):

David M Goodrich (TR)	Pro Se
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10:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#8.00 HearingRE: [80] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1151 Virginia Street, Berkeley, California 94702 . (Wilkinson, Reilly)

Docket 80

Tentative Ruling:

3/9/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 ("Motion") [Doc. No. 80]
- 2) No Opposition has been filed as of the date of this tentative ruling.
- 3) Non-Opposition filed by the Debtor [Doc. No. 83].

I. Facts and Summary of Pleadings

Red Booth, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on October 23, 2017 (the "Petition") [Doc. No. 1]. On February 28, 2018, Civic Holdings V-N Trust (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362" (the "Motion") [Doc. No. 80], set for hearing on shortened notice pursuant to the Court's calendaring procedures.

The Motion

The Motion seeks relief from the automatic stay under §§ 362(d)(1), (d)(2), and (d)(4), in relation to the certain real property located at 1151 Virginia Street, Berkeley, CA 94702 (the "Property"). The Movant holds a first deed of trust that encumbers the Property. The Motion asserts that relief from stay should be granted because: (1) under § 362(d)(1), the Movant's interest in the Property is not adequately protected, and cause exists for relief from the automatic stay; (2) under § 362(d)(2), the Debtor has no equity in the Property and the Property is not necessary to an

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CONT... Red Booth, Inc.

Chapter 11

effective reorganization; and (3) under § 362(d)(4), the filing of the Petition was part of a scheme to delay, hinder, or defraud creditors that involved the transfer of all or part ownership of, or other interest in, the Property without the consent of the Movant or court approval. "Declaration of Brian Sindell" ("Sindell Declaration") [Doc. No. 37] at ¶¶ 11, 18. The Debtor did not list the Property on the Debtor's schedules.

On October 30, 2017, a fraudulent deed of trust was recorded in the San Francisco Recorder's Office prior to the Movant's trustee's sale of the Property. Sindell Declaration at ¶ 18, Continuation Page. The fraudulent deed of trust was executed on October 30, 2017, and was recorded that same day at 12:42 p.m. *Id.* The deed of trust lists the Debtor as one of several beneficiaries. *Id.* The Property is owned by Maud Alarbesh ("Alarbesh"). *Id.* This is the second time that Alarbesh has employed the use of a fraudulent deed of trust to stop a trustee's sale of the Property. On January 25, 2018, a hearing on relief from stay was held before the Honorable Rene Lastreto II, United States Bankruptcy Judge, in the bankruptcy case of *In re SAC Development, Inc.*, Case No. 17-12857 (Bankr. E.D. Cal., Fresno Div.). *Id.* On January 30, 2018, the bankruptcy court in *Sac Development* entered an order granting relief from stay, including under § 362(d)(4), with respect to the Property in favor of the Movant. *Id.*

II. Findings of Fact and Conclusions of Law

The Court finds that the filing of the bankruptcy petition was part of scheme to delay, hinder, or defraud creditors that involved a transfer of an interest in the Property to the Debtor. The scheme also involved the filing of multiple bankruptcy cases affecting the Property. The Motion is GRANTED pursuant to §§ 362(d)(1), (d) (2) and (d)(4). The Court finds that the Property is not necessary to an effective reorganization in this case. The Court makes no findings with respect to whether the Debtor was involved in the fraudulent scheme.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move

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CONT... Red Booth, Inc.

Chapter 11

for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

As this is the latest relief from stay filed in connection with this Debtor who has no connection to the subject Property, the court finds that this case has been "highjacked" by entities acting in bad faith and with no connection to the Debtor. Hereafter, relief from stay will be granted in this case upon 24 hour's notice and with a declaration from the Debtor or its counsel that disclaims any interest in the subject property. No hearing will be held.

The Movant shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

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10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01074 Goodrich v. Lucent Product, Inc., a California corporation, d/

#1.00 Status Conference

RE: [1] Adversary case 2:17-ap-01074. Complaint by David M. Goodrich against Lucent Product, Inc., a California corporation, d/b/a Lunette Eye. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 7-18-17; 10-17-17; 1-16-18

Docket 1

***** VACATED *** REASON: DISMISSED 1-25-18**

Tentative Ruling:

1/12/2018

No appearances are required. Pursuant to a settlement agreement which has been approved by the Court, the Trustee intends to dismiss this action upon receipt of the settlement payment. A continued status conference to monitor the consummation of the settlement shall be held on March 13, 2018, at 10:00 a.m. A Joint Status Report is due by no later than fourteen days prior to the hearing.

Within seven days of this hearing, the Trustee shall submit an order continuing the Status Conference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Lucent Product, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By

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CONT... Shasa USA LLC

Chapter 7

Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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10:00 AM

2:16-11563 Elma Fernandez

Chapter 7

Adv#: 2:16-01217 Garcia et al v. Fernandez

#2.00 Status Hearing

RE: [17] Amended Complaint by Adrian M Baca on behalf of Maria Francisco , Zeferino Garcia against Elma Fernandez . (RE: related document(s)1 Adversary case 2:16-ap-01217. Complaint by Zeferino Garcia , Maria Francisco against Elma Fernandez - willful and malicious injury)) filed by Plaintiff Zeferino Garcia, Plaintiff Maria Francisco).

fr: 10-18-16; 2-13-16; 2-14-17; 5-9-17; 8-15-17

Docket 17

Tentative Ruling:

3/12/2018

Appearances required.

On February 13, 2018, Defendant's counsel filed a motion seeking leave to withdraw from representation (the "Motion to Withdraw"). The Motion to Withdraw states that counsel has not been in contact with Defendant since November 2017 and that counsel has reason to believe that Defendant has moved out of the country. Counsel did not set the Motion to Withdraw for hearing, has not lodged any order in connection with the Motion to Withdraw, and has taken no action with respect to the Motion to Withdraw since filing it. The Joint Status Report filed by the parties on February 26, 2018 contains no mention of Defendant's counsel's inability to contact her client. The Court requires an update as to whether counsel has been able to establish contact with the Defendant and whether counsel intends to continue seeking leave to withdraw from representation.

On November 29, 2016, the Court entered an order staying this dischargeability action pending completion of litigation concerning the underlying indebtedness proceeding before the Los Angeles Superior Court (the "State Court Action"). The Court also vacated the dates that had been set for the pretrial conference and trial. On February 15, 2018, judgment in the amount of \$52,000 was entered against the Defendant in the State Court Action.

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CONT... Elma Fernandez

Chapter 7

The State Court Complaint alleged that Defendant conspired with several people to destroy Plaintiffs' reputation by publishing defamatory statements on Facebook. According to the most recent Joint Status Report, the State Court found that Defendant's conduct was willful and oppressive, and the State Court Judgment included punitive damages of \$2,000.

The Court has reviewed the Minute Orders entered by the State Court describing the trial that was conducted during February 2018. The State Court has made findings of fact and has entered judgment regarding Defendant's defamatory statements. The State Court's factual findings are possibly entitled to preclusive effect; if that is the case, and once the underlying judgment has become final, the only remaining issue for this Court to determine is whether the indebtedness arising as a result of those defamatory statements is non-dischargeable. That issue can be adjudicated most efficiently by way of a motion for summary judgment to determine the preclusive effect of the judgment.

Plaintiff is HEREBY ORDERED to file a motion for summary judgment (the "Motion") by no later than **May 14, 2018**. The Minute Order entered by the State Court on February 15, 2018 states that the State Court's "ruling is fully reflected in the official notes of the Court reporter." So that this Court is fully aware of the findings made by the State Court, the Motion shall include as a supporting exhibit a reproduction of the State Court's ruling as reflected in the notes of the Court reporter. The Motion shall also include whatever other portions of the State Court record as are necessary to fully apprise this Court of the findings made by the State Court.

The Court FURTHER ORDERS that all discovery in this action must be completed by no later than **April 14, 2018**; this deadline applies to both expert and non-expert discovery.

The Court will enter a Scheduling Order.

Party Information

Debtor(s):

Elma Fernandez

Represented By
Juan Castillo-Onofre
Alla Tenina

Defendant(s):

Elma Fernandez

Represented By
Alla Tenina

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CONT... Elma Fernandez

Chapter 7

Plaintiff(s):

Zeferino Garcia

Represented By
Adrian M Baca

Maria Francisco

Represented By
Adrian M Baca

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#3.00 Status Hearing RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

Tentative Ruling:

3/12/2018

The Court approved the parties' initial stipulation extending the Defendant's deadline to respond to the Complaint to January 30, 2018. Doc. No. 12. The Joint Status Report indicates that the parties have stipulated to an additional extension of Defendant's time to respond to the Complaint; however, no such stipulation has been filed with the Court, and the Status Report does not state the timeframe of the stipulated extension. Defendants have not answered or otherwise responded to the Complaint.

A stipulation providing an extension of time to respond to a complaint is not effective unless and until approved by the Court. Such stipulations are subject to review by the Court because pursuant to Civil Rule 1, the Court has an obligation to secure the speedy adjudication of every action. The Court appreciates that the parties are endeavoring to settle this action and expects positive results from the settlement discussions. However, in the Court's experience, settlements are most likely to be achieved against the backdrop of litigation deadlines.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this action:
 - a) Defendant's deadline to respond to the Complaint is **4/17/2018**.
 - b) The last day to amend pleadings and/or join other parties is **6/14/2018**.
 - c) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
 - d) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/27/2018**.
 - e) The last date to complete discovery relating to expert witnesses (e.g.,

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CONT...

Christopher Kim Kay

Chapter 7

depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- f) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - g) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - h) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - i) Trial is set for the week of **11/26/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
 - 3) A continued Status Conference is set for **5/15/2018 at 10:00 a.m.** A Joint Status Report must be filed by no later than fourteen days prior to the

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2:17-10897 Christopher Kim Kay

Chapter 7

Adv#: 2:17-01568 Rund v. Barclays Bank Delaware, a Delaware Corporation

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01568. Complaint by Jason M. Rund against Barclays Bank Delaware, a Delaware Corporation. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: DISMISSED 2-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Barclays Bank Delaware, a

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#5.00 Status Hearing RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

Tentative Ruling:

3/12/2018

The Court approved the parties' initial stipulation extending the Defendant's deadline to respond to the Complaint to January 30, 2018. Doc. No. 12. The Joint Status Report indicates that the parties have stipulated to an additional extension of Defendant's time to respond to the Complaint; however, no such stipulation has been filed with the Court, and the Status Report does not state the timeframe of the stipulated extension. Defendants have not answered or otherwise responded to the Complaint.

A stipulation providing an extension of time to respond to a complaint is not effective unless and until approved by the Court. Such stipulations are subject to review by the Court because pursuant to Civil Rule 1, the Court has an obligation to secure the speedy adjudication of every action. The Court appreciates that the parties are endeavoring to settle this action and expects positive results from the settlement discussions. However, in the Court's experience, settlements are most likely to be achieved against the backdrop of litigation deadlines.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this action:
 - a) Defendant's deadline to respond to the Complaint is **4/17/2018**.
 - b) The last day to amend pleadings and/or join other parties is **6/14/2018**.
 - c) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
 - d) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/27/2018**.
 - e) The last date to complete discovery relating to expert witnesses (e.g.,

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CONT...

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depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- f) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - g) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - h) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - i) Trial is set for the week of **11/26/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
- 3) A continued Status Conference is set for **5/15/2018 at 10:00 a.m.** A Joint Status Report must be filed by no later than fourteen days prior to the

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10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

fr. 1-16-18; 1-17-18

Docket 1

***** VACATED *** REASON: CONTINUED 5/15/2018 AT 10:00 AM..**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

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CONT... Green Jane Inc

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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10:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#7.00 Status Hearing RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

Docket 1

Tentative Ruling:

3/12/2018: No default to be taken for the reasons set forth below. Dates as ordered - court to prepare order.

Defendant's deadline to respond to the Complaint was **February 5, 2018**. Defendant filed an Answer on February 20, 2018, fifteen days late. Prior to the filing of Defendant's Answer, Plaintiff filed a Request for Entry of Default on February 9, 2018, Doc. No. 9. The Clerk of the Court did not enter default because Plaintiff failed to attach the declaration required by Local Bankruptcy Rule 7055-1(a).

On February 20, 2018, Defendant filed an Answer to the Complaint. Because Defendant is proceeding in *pro se* and cannot file documents electronically, Defendant's Answer was not viewable on the CM/ECF docket until 12:14 p.m. on February 21, 2018. Apparently before Defendant's Answer became viewable upon the docket, Plaintiff filed a second Request for Entry of Default.

The Court, upon its own motion, will direct the Clerk of the Court to take no action with respect to Plaintiff's second Request for Entry of Default. Although Defendant filed the Answer fifteen days late, entry of default would result only in needless delay, because Defendant would be entitled to an order setting aside the default under the circumstances. The discussion below illustrates why the Court would be required to set aside a hypothetical default entered against the Defendant.

Civil Rule 55(c)—made applicable to these proceedings by Bankruptcy Rule 7055—provides: "The court may set aside an entry of default for good cause." "The 'good cause' standard that governs vacating an entry of default under Rule 55(c) is the same standard that governs vacating a default judgment under Rule 60(b)." *Franchise Holding II, LLC. v. Huntington Restaurants Grp., Inc.*, 375 F.3d 922, 925 (9th Cir.

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CONT... Paul William Martin

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2004). The Court may deny a motion to vacate a default for any of the following reasons: "(1) the plaintiff would be prejudiced if the judgment is set aside, (2) defendant has no meritorious defense, or (3) the defendant's culpable conduct led to the default." *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000), *as amended on denial of reh'g* (Nov. 1, 2000). Because "[t]his tripartite test is disjunctive," Plaintiff is required to demonstrate only that one of the factors applies in order for the Court to deny the motion to vacate default. *Id.*

Here, none of the reasons supporting denial of a motion to set aside default apply. First, Plaintiff is not prejudiced by the setting aside of the default. "To be prejudicial, the setting aside of a [default] must result in greater harm than simply delaying resolution of the case. Rather, 'the standard is whether [plaintiff's] ability to pursue his claim will be hindered.'" *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 701 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001). The non-defaulting party's ability to pursue its claim may be hindered if the delay has caused tangible harm such as "loss of evidence, increased difficulties of discovery, or greater opportunity for fraud or collusion." *Id.* No such tangible harm could conceivably have resulted from Defendant's filing of the Answer a mere fifteen days late.

Second, by filing an Answer in which he denies the Complaint's allegations, Defendant has shown at least the possibility of a meritorious defense.

Third, there is no indication that Defendant's fifteen-day delay in filing the Answer was culpable. "[A] defendant's conduct [is] culpable for ... where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Employee Painters' Trust v. Ethan Enterprises, Inc.*, 480 F.3d 993, 1000 (9th Cir. 2007). Filing an Answer fifteen days late is not devious, deliberate, or in bad faith.

Having found that Plaintiff is not entitled to entry of default, and having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

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Paul William Martin

Chapter 7

expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

- e) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order; Plaintiff shall submit the order assigning the matter to mediation.

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CONT... Paul William Martin

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee v.

#8.00 Status Hearing RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

Tentative Ruling:

3/12/2018

The Summons was issued on December 19, 2017. Plaintiff mailed the Summons and Complaint to the Defendants on December 29, 2017. Doc. No. 10. Pursuant to Bankruptcy Rule 7004(e), Plaintiff was required to deposit the Summons and Complaint in the mail "within 7 days after the summons is issued." That is, Plaintiff was required to mail the Summons and Complaint by no later than **December 26, 2017**.

The Clerk of the Court entered default against the Defendants on February 27, 2018. Doc. No. 15. Because the summons was not timely served, default should not have been entered. Pursuant to Civil Rule 60(a), the Clerk of the Court's entry of default is HEREBY VACATED. Plaintiff shall obtain and serve an alias summons by no later than **March 20, 2018**. Concurrently with the issuance of the Alias Summons, the Clerk of the Court will issue an updated Scheduling Order setting forth new dates that will govern the course of this action.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Lorenzo Arteaga

Chapter 7

Debtor(s):

Lorenzo Arteaga Pro Se

Defendant(s):

Angelica Maria Arteaga Pro Se

Lorenzo Arteaga Pro Se

Joint Debtor(s):

Angelica Maria Arteaga Pro Se

Plaintiff(s):

FIDELITY NATIONAL TITLE Represented By
Karen A Ragland

Trustee(s):

Howard M Ehrenberg (TR) Pro Se

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Hearing Room 1568

10:00 AM

2:17-22344 Jihee Byun

Chapter 7

Adv#: 2:18-01010 Travelers Express Company, Inc nka Moneygram Payme v. Byun

#9.00 Status Hearing RE: [1] Adversary case 2:18-ap-01010. Complaint by Travelers Express Company, Inc. against Jihee Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

Tentative Ruling:

3/12/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery

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Jihee Byun

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cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order; Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jihee Byun

Represented By
Kelly K Chang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Jihee Byun

Chapter 7

Defendant(s):

Jihee Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:17-22345 Youngjae Byun

Chapter 7

Adv#: 2:18-01011 Travelers Express Company, Inc nka Moneygram Payme v. Youngjae Byun

#10.00 Status Hearing RE: [1] Adversary case 2:18-ap-01011. Complaint by Travelers Express Company, Inc. against Youngjae Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

Tentative Ruling:

3/12/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **4/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT...

Youngjae Byun

Chapter 7

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order; Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Youngjae Byun

Represented By
Kelly K Chang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Youngjae Byun

Chapter 7

Defendant(s):

Youngjae Byun aka Young Jae Byun Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:18-10926 Walker Family Trust

Chapter 7

Adv#: 2:18-01021 Walker Family Trust et al v. Thrower et al

#11.00 Status Hearing RE: [1] Adversary case 2:18-ap-01021. Notice of Removal by Kenneth Adler, Trustee Walker Family Trust - Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)),(01 (Determination of removed claim or cause)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Milano, Sonny)

Docket 1

Tentative Ruling:

3/12/2018

Tentative Ruling:

Plaintiff has failed to file a Unilateral Status Report in response to the Court's Order to Comply. Pursuant to the Order to Comply, Plaintiff is sanctioned in the amount of \$250.00.

By separate order, the Court will require Plaintiff to appear and show cause why this probate action should not be remanded to the Los Angeles Superior Court.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Walker Family Trust

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Walker Family Trust

Chapter 7

Defendant(s):

Nicole Renee Thrower Pro Se

Gregory William Walker Pro Se

Plaintiff(s):

Kenneth Adler, Trustee Represented By
Joseph C Rosenblit

Walker Family Trust Represented By
Joseph C Rosenblit

Trustee(s):

Rosendo Gonzalez (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#12.00 Status Hearing re post confirmation status conference
fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17

Docket 0

Tentative Ruling:

3/12/2018

No appearances are required. This is a post-confirmation status conference. The Debtor will be filing a motion for entry of a discharge and final decree once the Debtor has concluded the repairs on the Debtor's Lawndale, CA property. A continued post-confirmation Status Conference will be held on June 12, 2018, at 10:00 a.m. If a discharge and final decree have been entered prior to that date, the status conference will go off calendar.

Within seven days of the hearing, the Debtor shall submit an order continuing the status conference.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#13.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452 (A)

fr: 3-21-17; 9-12-17

Docket 0

Tentative Ruling:

3/12/2018

This hearing is vacated and no appearances are required. All parties agree that this litigation should not proceed until property located at 119 Furlong Lane, Bradbury, CA 91008 is sold. A continued status conference will be held on **July 17, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

Within seven days of the hearing, Liberty Asset shall submit an order continuing the status conference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

HANDING HOLDING	Pro Se
TLH REO MANAGEMENT LLC	Pro Se
BRADBURY FURLONG LLC	Pro Se
OAK RIVER ASSET	Pro Se

**United States Bankruptcy Court
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

LIBERTY ASSET	Represented By Jeffrey S Kwong David B Golubchik John-Patrick M Fritz Eve H Karasik
PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

YCJS 2012 LLC	Represented By David S Henshaw
AHA 2012 LLC	Represented By David S Henshaw
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
RICHBEST HOLDING LLC	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#14.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) (Richards, Jeremy)

FR. 12-12-17; 1-16-18; 2-13-18

Docket 1

***** VACATED *** REASON: DISMISSED 2-28-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Pro Se

Lantern Brands, Inc., a California

Pro Se

TT Investment Los Angeles Fund I,

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT...

Liberty Asset Management Corporation

Gail S Greenwood

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#15.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For
Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17

Docket 14

***** VACATED *** REASON: RESCHEDULED 3-14-18 AT 11:00 A.M.**

Tentative Ruling:

12/18/2017

For the reasons set forth below, the Debtor is authorized to use cash collateral through and including March 31, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. The Court, having received no objection or further stipulation, extends the terms of the Second IRS Stipulation through and including March 31, 2018. A hearing on whether the Debtor may use cash collateral subsequent to March 31, 2018 will take place on March 13, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by February 20, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by February 27, 2018. Any reply may be filed and served by March 6, 2018.

Pleadings Filed and Reviewed:

- 1) Supplemental to Motion for Authority to Use Cash Collateral (the "Motion") [Doc. No. 81]
 - a) Notice of Motion and Motion for Authority to Use Cash Collateral [Doc. No. 14]
- 2) Third Stipulation Regarding Interim Use of Cash Collateral and Adequate Protection [between the Debtor and Citizens Business Bank] (the "Bank Stipulation") [Doc. No. 85]
- 3) Second Stipulation Between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection [Doc. No. 62]
- 4) Stipulation Regarding Interim Use of Cash Collateral and Adequate Protection [between the Debtor and Citizens Business Bank] [Doc. No. 61]
- 5) United States' Status Report Regarding Stipulation for Adequate Protection and

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Base Architecture Planning & Engr Inc.
Use of Cash Collateral [Doc. No. 37]

Chapter 11

I. Facts and Summary of Pleadings

Base Architecture Planning & Engr Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on July 14, 2017. The Debtor is an urban design, architecture, planning, and civil engineering firm located in Los Angeles. The Debtor specializes in designing and constructing airport facilities, transit projects, municipal and civic facilities, schools, and commercial offices. The Debtor has 22 active contracts with different property owners and government agencies, which it expects to assume. The immediate cause of the petition was the entry of a judgment against the Debtor in the amount of \$70,000 on May 25, 2017.

On November 28, 2017, the Debtor filed the "Supplemental to Motion for Authority to Use Cash Collateral" (the "Motion") [Doc. No. 81]. The Debtor seeks authorization to use cash collateral in accordance with: (1) the stipulation executed between the Debtor and Citizens Business Bank (the "Bank Stipulation") [Doc. No. 85]; and (2) the stipulation executed between the Debtor and the Internal Revenue Service (the "First IRS Stipulation") [Doc. No. 26]. The Debtor states that it owes Citizens Business Bank (the "Bank") \$212,120.15 as of the petition date; that the Debtor owes the IRS \$500,000; that the indebtedness of the Bank is senior to the indebtedness of the IRS; that both the Bank and the IRS hold blanket liens on all the Debtor's assets; and that the Bank holds a personal guaranty against the Debtor's primary shareholder, Michael H. Anderson, as well as liens against two real properties. The Debtor seeks to extend the two stipulations through and including March 31, 2018.

The material terms of the Bank Stipulation are as follows:

- 1) The Debtor acknowledges and agrees (a) that it is liable to the Bank in the amount of \$212,120.15; (b) that the Bank's indebtedness is secured by a valid, perfected security interest on substantially all assets of the Debtor; (c) and that the Bank's indebtedness constitutes an allowed claim under the Bankruptcy Code.
- 2) Solely during the operative period of the Bank Stipulation, the Debtor waives the rights (a) to surcharge the Bank's collateral pursuant to §506(c) or (b) to incur financing or indebtedness from any party other than the Bank that includes the granting by the Debtor of liens, claims, or interests

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT...

Base Architecture Planning & Engr Inc.

Chapter 11

in favor of such other party that are senior to or *pari passu* with the liens, claims, and interests in favor of the Bank.

- 3) The Debtor will make monthly adequate protection payments to the Bank in the amount of \$5,000.00, commencing on November 1, 2017. As further adequate protection, the Bank will receive a replacement lien on the rents, proceeds, and profits of its collateral, with such replacement lien having the same validity, extent, and priority as the Bank's prepetition lien. In addition, if the foregoing protection is insufficient to satisfy in full the Bank's claim, the Bank will be granted a superpriority administrative claim pursuant to §507(b).
- 4) The Bank Stipulation authorizes the Debtor to use cash collateral through April 30, 2018.

The material terms of the First IRS Stipulation, which were incorporated by the Second IRS Stipulation, are as follows:

- 1) The Debtor will make monthly adequate protection payments to the United States in the amount of \$500.00, retroactive to the petition date, with payments to commence within seven calendar days after the Court approves the IRS Stipulation.
- 2) As further adequate protection, the IRS will receive a replacement lien on the Debtor's post-petition accounts receivable and on all other property acquired by the Debtor subsequent to the petition, with such replacement lien having the same validity, extent, and priority as the IRS' pre-petition lien. To the extent that the foregoing protection proves insufficient, the IRS will be granted a superpriority administrative claim pursuant to §507 (b).
- 3) The Debtor must remain current on its post-petition tax obligations, including its obligation to timely make federal payroll tax deposits and estimated income tax payments.

The "Second Stipulation between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection" (the "Second IRS Stipulation") [Doc. No. 62] was filed on October 16, 2017. The Second IRS Stipulation incorporates the material terms of the First IRS Stipulation, and stipulates that the Debtor may continue to use cash collateral in accordance with the terms of the

**United States Bankruptcy Court
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10:00 AM

CONT... Base Architecture Planning & Engr Inc.

Chapter 11

First IRS Stipulation until December 31, 2017. The Motion seeks to extend the Second IRS Stipulation through March 31, 2018.

No opposition has been filed.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court finds the terms of the Bank Stipulation, including the Debtor's acknowledgment of the validity of the Bank's indebtedness and its acknowledgment that the Bank holds an allowed claim under the Bankruptcy Code, to be acceptable. The terms of the Second IRS Stipulation are also acceptable. The Court, therefore, authorizes the continued use of cash collateral provided that the Debtor continues to comply with the terms of both Stipulations, including making the adequate protection payments required under the Bank Stipulation and the First IRS Stipulation.

Conclusion

In conclusion, for the reasons set forth above, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including March 31, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. Furthermore, having received no objection or further stipulation, the Court extends the terms of the Second IRS Stipulation through and including March 31, 2018. A hearing on whether the Debtor may use cash collateral subsequent to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

10:00 AM

CONT... Base Architecture Planning & Engr Inc. Chapter 11

March 31, 2018 will take place on March 13, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by February 20, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by February 27, 2018. Any reply may be filed and served by March 6, 2018.

The Debtor shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

2:07-14287 Frank Apraku

Chapter 7

Adv#: 2:17-01325 Amoah v. Apraku

#100.00

Pre-Trial Conference

RE: RE: [7] Adversary case 2:17-ap-01325. Amended Complaint by Ofori Amoah against Frank Apraku - false pretenses, false representation, actual fraud))

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED ON 2-28-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Frank Apraku

Represented By
Andrew Edward Smyth
William J Smyth

Defendant(s):

Frank Apraku

Pro Se

Plaintiff(s):

Ofori Amoah

Pro Se

Trustee(s):

John P Pringle (TR)

Represented By
John P Pringle

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#101.00 Pre-Trial Conference RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-11-17, 9-12-17; 10-17-17

Docket 0

*** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01401 Yoo v. Gardner et al

#102.00 Status Conference

RE: [1] Adversary case 2:16-ap-01401. Complaint by Timothy J Yoo against Tamara Nicole Gardner. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Yoo (TR), Timothy)

FR. 5-16-17; 6-13-17; 9-12-17; 11-14-17; 1-16-18

Docket 1

***** VACATED *** REASON: DISMISSED 3-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Tamara Nicole Gardner

Represented By
Stella A Havkin

Tamara Nicole Gardner

Represented By
Stella A Havkin

Plaintiff(s):

Timothy J Yoo

Represented By
Timothy J Yoo
Carmela Pagay

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:16-01478 Yoo v. Del Real et al

#103.00 Status Conference

RE: [1] Adversary case 2:16-ap-01478. Complaint by Timothy J. Yoo against Luz Angelica Del Real, Sergio Arellano, Tamara Nicole Gardner. (Charge To Estate). (Attachments: # 1 Adversary Coversheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(11 (Recovery of money/property - 542 turnover of property)) (Pagay, Carmela)

fr: 6-13-17; 9-12-17; 11-14-17; 1-16-18

Docket 1

***** VACATED *** REASON: DISMISSED 3-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Luz Angelica Del Real

Represented By
Stella A Havkin

Sergio Arellano

Represented By
Stella A Havkin

Tamara Nicole Gardner

Represented By
Stella A Havkin

Plaintiff(s):

Timothy J. Yoo

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

CONT... Tamara Nicole Gardner

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, March 13, 2018

Hearing Room 1568

11:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#104.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

Docket 1

Tentative Ruling:

3/12/2018

Appearances required.

Plaintiff and Defendant were unable to agree upon a Joint Pretrial Stipulation. The Court has reviewed the separate proposed Pretrial Orders submitted by Plaintiff and the Defendant. In the Court's view, the differences between the parties are not so great as to preclude the submission of a Joint Pretrial Stipulation. The Court will hold a continued Pretrial Conference on **April 17, 2018, at 11:00 a.m.** The Court expects the parties to agree upon and submit a proposed Joint Pretrial Stipulation by no later than fourteen days prior to the continued hearing. In negotiating the Joint Pretrial Stipulation, the parties should consult the Court's views regarding the material issues of law and fact presented by this action, set forth below.

The Defendant, Wendy Tejada, asserts that Plaintiff Sorayda Velasquez has failed to supply to Defendant a copy of Plaintiff's Exhibit 1, a Lease Agreement dated September 1, 2012 (the "Lease"). As noted below, the Lease is a key issue in these proceedings. The Court requires an update regarding whether the discovery dispute regarding the Lease has been resolved.

Material Issues of Law and Fact

The Complaint alleges that Wendy Tejada was the landlord of Sorayda Velasquez between September 2012 and February 2016. The gravamen of the Complaint is that Ms. Tejada purposefully disconnected Ms. Velasquez's water service in order to induce Ms. Velasquez to vacate the property. Ms. Tejada asserts that she never entered into a rental or lease agreement with Ms. Velasquez. Ms. Tejada further asserts that she never received any rental payments from Ms. Velasquez at any time.

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Los Angeles
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11:00 AM

CONT... Wendy Tejada

Chapter 7

In the Court's view, a key issue is the authenticity of Plaintiff's Exhibit 1, a lease agreement dated September 1, 2012 (the "Lease"). The Joint Pretrial Stipulation should set forth with specificity the parties' respective positions regarding the Lease. For example: Is it Ms. Tejada's position that there was a verbal rental agreement that was never formalized in lieu of the Lease? Does Ms. Tejada contend that Ms. Velasquez was a squatter or was otherwise occupying the property unlawfully?

There is no dispute that Ms. Tejada terminated her account with Golden State Water Company ("GSWC") in January 2013. The Joint Pretrial Stipulation must set forth with greater specificity the parties' positions regarding the facts surrounding Ms. Tejada's termination of the GSWC account. Specifically, why did Ms. Tejada close the account? To what extent were tenants at this multi-unit property informed of the closure? How did Ms. Tejada contemplate that tenants would receive water service upon closure of the account?

Ms. Tejada's proposed Pretrial Order contemplates extensive testimony regarding interactions between GSWC and tenants at the building subsequent to Ms. Tejada's closure of her GSWC account. For example, Ms. Tejada proposes to present testimony showing that (1) tenants at the property established their own accounts with GSWC but failed to timely remit payments, causing GSWC to terminate water service; (2) tenants unlawfully tampered with the water meter to steal water after GSWC terminated service; and (3) Ms. Tejada was advised that she could not open a new GSWC account in her own name until a delinquent water bill in the name of one of the tenants was brought current. Such issues are of minimal relevance to this action. What is most relevant is whether Ms. Tejada agreed to rent the property to Ms. Velasquez; whether the rental agreement contemplated the provision of water service; why Ms. Tejada closed her account with GSWC in January 2013; and what information Ms. Tejada conveyed to Ms. Velasquez regarding the closure of the GSWC account.

The Court notes that Ms. Tejada's proposed Pretrial Order also references certain decisions made by the Los Angeles Superior Court (the "State Court") in the action captioned *Sorayda Velasquez v. Golden State Water Company, Wendy Tejada, et al.* (the "State Court Action"). Ms. Tejada places particular weight upon findings made by the State Court in its *Order Denying Plaintiffs' Motion for Preliminary Injunction* (the "Preliminary Injunction Order"). In particular, Ms. Tejada points to the State Court's finding that Ms. Velasquez's testimony was not credible and would be accorded little weight. Credibility determinations made by a different tribunal are not relevant to this proceeding.

Party Information

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CONT... Wendy Tejada

Chapter 7

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

2:17-11911 Dicran Garo Kuftedjian

Chapter 7

Adv#: 2:17-01287 Parts Network, Inc. v. Kuftedjian et al

#105.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01287. Complaint by Parts Network, Inc. against Dicran Garo Kuftedjian, Linda Torikian Kuftedjian. false pretenses, false representation, actual fraud)), (68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Avanesian, Michael)

Docket 1

Tentative Ruling:

The parties have failed to file a Joint Pretrial Stipulation and have failed to otherwise respond to the Court's Order to Comply. Pursuant to the Order to Comply, counsel for Plaintiff and counsel for Defendant are both sanctioned in the amount of \$250.00. By separate order, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute. The Court notes that in addition to failing to take any action in preparation for the Pretrial Conference, Plaintiff has failed to submit an order assigning this matter to mediation (such order, the "Mediation Order"). This failure is particularly egregious given that after Plaintiff initially failed to submit the Mediation Order, the Court issued an additional order requiring Plaintiff to submit the Mediation Order, which Plaintiff likewise ignored.

The Court will enter an appropriate order.

Party Information

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Defendant(s):

Dicran Garo Kuftedjian

Pro Se

Linda Torikian Kuftedjian

Pro Se

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

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CONT... Dicran Garo Kuftedjian

Chapter 7

Plaintiff(s):

Parts Network, Inc.

Represented By
Michael Avanesian

Trustee(s):

Jason M Rund (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

Docket 1

***** VACATED *** REASON: CONTINUED 5-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of

Pro Se

Navient Corporation

Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:17-12783 Terry W. Rindal

Chapter 7

Adv#: 2:17-01305 Richards v. Rindal

#107.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01305. Complaint by Dean Richards , Assignee of Creditor 4.1, , Identified as Andy Savas against Terry W Rindal . (false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Serrano, Vera)

Docket 1

Tentative Ruling:

3/12/2018

This action has settled. The trial date is VACATED. The deadline for the parties to file papers memorializing the Settlement Agreement is **April 17, 2018**. A continued Status Conference to monitor implementation of the settlement will be held on **May 15, 2018, at 10:00 a.m.** The continued Status Conference will go off calendar if the settlement has been finalized.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Terry W. Rindal

Represented By
Allan S Williams

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11:00 AM

CONT... Terry W. Rindal

Chapter 7

Defendant(s):

Terry W Rindal

Pro Se

Plaintiff(s):

Dean Richards

Represented By
Dean Richards

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:17-13009 Angel Ruben Payan Gutierrez

Chapter 7

Adv#: 2:17-01332 Chef Merito, Inc. v. Gutierrez

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01332. Complaint by Chef Merito, Inc. against Angel Ruben Payan Gutierrez. fraud as fiduciary, embezzlement, larceny),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Smith, Charles)

Docket 1

*** VACATED *** REASON: DISMISSED 12-18-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Angel Ruben Payan Gutierrez	Represented By Hector Vega
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Defendant(s):

Angel Ruben Payan Gutierrez	Pro Se
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Joint Debtor(s):

Maria Victoria Payan	Represented By Hector Vega
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Plaintiff(s):

Chef Merito, Inc.	Represented By Charles G Smith
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Trustee(s):

Heide Kurtz (TR)	Pro Se
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**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#109.00 Status Conference

RE: [11]RE: [11] **COUNTERCLAIM** by Huesing Holdings LLC against Crystal Waterfalls, LLC for Reformation of Deeds of Trust with Proof of Service

fr. 1-16-18

Docket 11

***** VACATED *** REASON: DISMISSED 1-30-2018**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Huesing Holdings LLC

Represented By
Kyra E Andrassy

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

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Tuesday, March 13, 2018

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11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01343 Crystal Waterfalls, LLC v. Huesing Holdings LLC et al

#110.00 Status Conference

RE: [1] Adversary case 2:16-ap-01343. Complaint by Crystal Waterfalls, LLC against Huesing Holdings LLC. (Charge To Estate). Nature of Suit: (14 (Recovery of money/property - other)),(21 (Validity, priority or extent of lien or other interest in property)) (Landsberg, Ian)

FR. 4-11-17; 1-16-18

Docket 1

***** VACATED *** REASON: DISMISSED 1-30-2018**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Huesing Holdings LLC

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC

Represented By
Ian Landsberg

**United States Bankruptcy Court
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11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Steven Tsang	Pro Se
Hieu Tai Tran	Pro Se
Benjamin Kirk	Pro Se
Lucy Gao Seh	Pro Se
Sunshine Valley, LLC	Pro Se

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11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

California International Bank, N.A. Pro Se

All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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10:00 AM

2:10-12927 FirstFed Financial Corp.

Chapter 11

#1.00 Hearing: [284] and [375] Post-confirmation Status Conference re chapter 11 plan

fr. 4-26-12; 5-23-12; 6-6-12; 7-3-12; 7-3-12; 10-2-12; 3-20-13; 10-9-13; 4-16-14;
4-7-15; 12-16-15; 1-20-16; 1-17-17; 9-12-17

Docket 284

Tentative Ruling:

3/13/2018

This status conference has been vacated for the reasons set forth in the Court's "Order Vacating Postconfirmation Status Conference," entered on March 9, 2018.

Party Information

Debtor(s):

FirstFed Financial Corp.

Represented By
Jon L Dalberg
Rodger M Landau
Joel S. Miliband
Cathrine M Castaldi
Rodger M Landau

Movant(s):

Holdco Advisors, L.P.

Represented By
Jeff D Kahane
Jeff D Kahane

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:12-31372 First Regional Bancorp

Chapter 11

#2.00 Hearing RE [257] Post-Confirmation Status Conference

FR. 5-23-14; 4-10-14; 10-22-14; 4-22-15; 6-16-15; 1-6-16; 7-13-16; 12-7-16; 6-6-17; 9-12-17

Docket 0

Tentative Ruling:

3/13/2018

No appearances required. This is the Ninth post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to **June 12, 2018 at 10:00 a.m.** A post-confirmation status report is due 14 days prior to the hearing. If a final decree is entered prior to the continued status conference, the status conference will go off calendar.

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#3.00 Hearing re [120] Objection to Claim #2 by Claimant Department of the Treasury - Internal Revenue Service

Docket 0

Tentative Ruling:

3/13/2018

For the reasons set forth below, the Claim Objection is OVERRULED and the IRS' claim is allowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtor's Objection to Amended Claim #2 by the Department of the Treasury—Internal Revenue Service in the Amount of \$152,073.43 (the "Claim Objection") [Doc. No. 120]
- 2) United States of America's Opposition to the Debtor's Objection to IRS Claim (the "Opposition") [Doc. No. 153]
 - a) United States of America's Supplemental Declaration of Neal Kakuske in Support of the Opposition to the Debtor's Objection to IRS Claim [Doc. No. 168]
- 3) Debtor's Reply Memo in Support of His Objection to Amended Claim #2 by the Department of the Treasury—Internal Revenue Service in the Amount of \$152,073.43 (the "Reply") [Doc. No. 166]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Property"). *See* Doc. No. 62 (the "Sale Order"). As ordered by the Court, the sales proceeds of the

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CONT... John Fuchs

Chapter 11

Property are currently being held on deposit in the Court's registry.

On June 30, 2017, the Internal Revenue Service (the "IRS") filed a Proof of Claim in the amount of \$164,105.57, on account of unpaid taxes. Claim 2-1. On October 24, 2017, the IRS filed an Amended Proof of Claim in the amount of \$152,073.43. Claim 2-2. The itemization of the amounts claimed is as follows:

Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Date	Lien Filed: Office Location
I n c o m e	12/31/2007	11/03/2008	\$15,208.62	\$11,762.07	\$13,049.08	09/12/2014 10/20/2011	Riverside Los Angeles
C i v i l P e n a l t y	03/31/2008	10/10/2011	\$0.00	\$0.00	\$75.56	09/12/2014 02/21/2013	Riverside Los Angeles
C i v i l P e n a l t y	06/30/2008	10/10/2011	\$8,561.08	\$0.00	\$1,711.14	09/12/2014 02/21/2013	Riverside Los Angeles

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CONT...

John Fuchs

Chapter 11

C i v i l P e n a l t y	09/30/2008	10/10/2011	\$7,687.75	\$0.00	\$1,536.59	09/12/2014 02/21/2013	Riverside Los Angeles
C i v i l P e n a l t y	12/31/2008	10/10/2011	\$5,979.41	\$0.00	\$1,195.13	09/12/2014 02/21/2013	Riverside Los Angeles
I n c o m e	12/31/2009	11/15/2010	\$20,246.77	\$6,173.65	\$5,548.09	09/12/2014 10/20/2011	Riverside Los Angeles
I n c o m e	12/31/2010	11/21/2011	\$16,100.00	\$4,807.98	\$3,593.11	09/12/2014 02/21/2013	Riverside Los Angeles
I n c o m e	12/31/2012	11/18/2013	\$927.62	\$150.21	\$146.22	09/12/2014	Riverside
I n c o m e	12/31/2013	11/17/2014	\$5,678.00	\$1,610.66	\$660.25	12/26/2014 01/07/2016	Riverside Riverside

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CONT...

John Fuchs

Chapter 11

I n c o m e	12/31/20 14	09/26/201 6	\$13,166.00	\$5,445.68	\$1,051.76	11/08/2 016	Riverside
TOTAL			\$93,555.25	\$29,950.25	\$28,567.93		

The Debtor's Claim Objection

The Debtor objects to the claim of the IRS, and makes the following arguments and representations in support of his objection:

The IRS has failed to produce a sufficiently detailed accounting of the amount of past taxes that it has collected by levy and how these amounts were credited against the taxes claimed to be due. Absent such an accounting, the IRS has failed to establish the accuracy of its Proof of Claim. In fact, the Proof of Claim is inflated because it does not account for past tax levies and past tax refunds that have been seized, as follows:

- 1) In early 2016, the IRS seized a \$3,505 tax refund that has not been applied to the amounts claimed to be due.
- 2) The Debtor's 2016 tax return reflects an entitlement to an \$8,159 tax refund. The Debtor has not received this refund. In the event the \$8,159 refund is seized, the IRS' claim will be further reduced.
- 3) The IRS has seized at least \$25,000 by way of levies that have not been properly accounted for.

The Court should order the IRS to provide a detailed accounting of its seizures and levies from January 1, 2008 to the present, showing the amounts assessed, whether the assessment was based on 1040, 940, or 941 returns, and the amounts of interest and penalties. In the alternative, the IRS' claim should be reduced by at least \$33,159—to account for the \$25,000 previously seized that has not been properly accounted for in addition to the \$8,159 refund.

The IRS' Opposition to the Debtor's Claim Objection

The IRS makes the following arguments and representations in opposition to the Debtor's Claim Objection:

The IRS has already provided to the Debtor the detailed accounting that he

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CONT... John Fuchs

Chapter 11

demands in the Claim Objection. On November 8, 2017, the Debtor, Assistant United States Attorney Jolene Tanner, and IRS Insolvency Advisor Neal Kakuske participated in a telephone call to discuss the IRS' Proof of Claim. During the call, Ms. Tanner referred the Debtor to transcripts setting forth tax levies that the IRS had attached to its opposition to the Debtor's Sale Motion.

The amounts that the IRS has levied, in the total amount of \$20,014.48, and the application of those levies are as follows:

	Payment Source	IRS Receive Date	Amount	Payment Application
U S B a n k	6/1/2015	\$2,873.14	Corporation – 941 – 3/31/2008	
U S B a n k	10/19/2015	\$6,743.73	Corporation – 941 – 3/31/2008	
U n k n o w n s o u r c e	4/23/2013	\$59.00	Form 1040 – 2007	

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CONT... John Fuchs

Chapter 11

U n k n o w n s o u r c e	4/25/2013	\$1,384.70	Form 1040 – 2007
C a p i t a l O n e 3 6 0	5/1/2013	\$69.50	Form 1040 – 2007
H S B C B a n k	5/6/2013	\$43.01	Form 1040 – 2007
C h a s e B a n k	5/20/2013	\$328.76	Form 1040 – 2007

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CONT... John Fuchs

Chapter 11

C r e d it U n i o n	3/24/2016	\$1,091.81	Form 1040 – 2007
U n i o n B a n k	8/15/2016	\$1,427.65	Form 1040 – 2007
C h a s e B a n k	8/19/2016	\$118.43	Form 1040 – 2007
U S B a n k	9/13/2016	\$209.41	Form 1040 – 2007

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CONT...

John Fuchs

Chapter 11

Total Bank Levy Payments		\$14,349.14	
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CONT...

John Fuchs

Chapter 11

S o c i a l S e c u r i t y A d m i n i s t r a t i o n (S S A) L e v y	4/8/2012	\$299.41	Form 1040 – 2009
S S A L e v y	5/16/2012	\$299.41	Form 1040 – 2009

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CONT... John Fuchs

Chapter 11

S S A L e v y	6/20/2012	\$299.41	Form 1040 – 2009
S S A L e v y	7/18/2012	\$299.41	Form 1040 – 2007
S S A L e v y	8/15/2012	\$299.41	Form 1040 – 2007
S S A L e v y	9/19/2012	\$299.41	Form 1040 – 2007
S S A L e v y	10/17/2012	\$299.41	Form 1040 – 2007
S S A L e v y	11/21/2012	\$299.41	Form 1040 – 2007

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CONT... John Fuchs

Chapter 11

S S A L e v y	12/19/2012	\$311.16	Form 1040 – 2007
S S A L e v y	1/16/2013	\$323.85	Form 1040 – 2007
S S A L e v y	2/20/2013	\$323.85	Form 1040 – 2007
S S A L e v y	3/20/2013	\$323.85	Form 1040 – 2007
S S A L e v y	4/17/2013	\$323.85	Form 1040 – 2007
S S A L e v y	6/3/2013	\$332.70	Form 1040 – 2007

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S S A L e v y	7/3/2013	\$332.70	Form 1040 – 2007
	8/2/2013	\$332.70	Form 1040 – 2007
	10/3/2013	\$332.70	Form 1040 – 2007
Total SSA Levies			\$5,665.34

In addition, on November 15, 2013, the Debtor entered into a voluntary installment agreement with the IRS. Under the terms of the installment agreement, the Debtor was to pay the IRS \$500 per month for the first twelve months, followed by an increased payment of \$3,182 per month commencing in month twelve. Collection was suspended while the Debtor was in the installment agreement. The Debtor failed to make a single payment under the installment agreement.

There is no merit to the Debtor's argument that the IRS' Proof of Claim should be reduced by \$8,159, the amount of the refund the Debtor claims for the 2016 tax year. The IRS applied the 2016 tax refund to taxes owed by the Debtor on account of the Form 1040 account for 2007.

The Debtor's Reply to the IRS' Opposition

The Debtor makes the following arguments and representations in Reply to the Opposition filed by the IRS:

The Opposition filed by the IRS demonstrates that the IRS's accounting cannot be

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relied upon. First, the IRS claims that the Debtor made no payments under the installment agreement that he entered into in November 2013. In fact, the Debtor made payments of \$3,743.93 under the installment agreement. Those payments have not been accounted for in the list of levies and payments furnished in the IRS' Opposition.

Second, the declarations attached to the Opposition discuss issues regarding unpaid business taxes from Form 941, but the associated "Account Transcripts" attached to the Opposition do not refer to 941 taxes. Instead, the Account Transcripts cite only Form 1040 taxes and civil penalties.

Third, the Debtor has located Notices of Levy from 2012, showing that on the very date that the IRS asserted that \$584.43 was overdue for 1040 taxes for 2008, it assessed civil penalties in the amount of \$20,000. That civil penalty calculation cannot be accurate as it represents penalties of nearly 2,000%.

Fourth, payments made under the installment agreement, in the total amount of \$2,457, were applied to 1995 taxes claimed to be due. At the time, those taxes were uncollectible as being beyond the statute of limitations.

The Debtor's Claim Objection should be ordered to mediation and/or a trial. Alternatively, the Debtor is willing to offer, as a compromise, to pay the amount of taxes claimed to be due, without interest or penalties, in the amount of \$93,555.25.

The Supplemental Declaration of Insolvency Advisor Neal Kakuske

Insolvency Advisor Neal Kakuske submitted a Supplemental Declaration in response to the Debtor's Reply. The representations made in the Supplemental Declaration may be summarized as follows:

The declaration submitted in connection with the IRS' Opposition to the Claim Objection erroneously stated that the Debtor had made no payments under the installment agreement. Further review of records establishes that payments under the installment agreement were made and applied as follows:

- 1) On February 4, 2014, the Debtor made the first payment under the installment agreement in the amount of \$500. This payment was credited to the March 31, 1995 trust fund recovery penalty account. At the time, the collection statute was still open, due to a number of actions that tolled the collection statute.
- 2) On October 3, 2013, the IRS received \$332.70 from the Debtor. This amount was credited to the Form 1040 account for the 2007 tax year.
- 3) On March 23, 2014, the IRS received \$320.38 from the Debtor. This amount

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was credited to the Form 1040 account for the 2012 tax year. This payment was a voluntary payment received in response to a CP14 notice of balance due for the 2012 tax year.

- 4) On April 25, 2014, the IRS received \$633.85 from the Debtor. This amount was credited to the Form 1040 account for the 2008 tax year. This payment was in response to the CP523 notice of default on the installment agreement.
- 5) On May 15, 2014, the IRS received \$1,000 from the Debtor. This amount was credited to the trust fund recovery penalty account for the period ending March 31, 1995.
- 6) On June 19, 2014, the IRS received \$1,000 from the Debtor. This amount was credited to the trust fund recovery penalty account for the period ending March 31, 1995.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Proof of Claim 2-2 is allowed as a secured claim in the amount of \$152,073.43 (which is the full amount claimed by the IRS). The Debtor contends that the claim is inflated, not having been properly reduced by amounts that the IRS seized or levied.

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The Debtor is mistaken. IRS Insolvency Advisor Neal Kakuske has submitted detailed declarations in support of the amounts claimed which are accompanied by extensive documentation. Only a small portion of that extensive documentation has been reproduced in the tables above. The Kakuske declarations and the accompanying supporting documentation establish that the IRS' Proof of Claim accurately reflects the Debtor's tax liability, and that the IRS has properly applied past levies and refund seizure to outstanding taxes that the Debtor owed.

The Debtor hones in on an inconsequential error in one of Mr. Kakuske's declarations—a statement that the Debtor made no payments under the 2013 installment agreement. The oversight was quickly corrected in a subsequent declaration submitted by Mr. Kakuske which explains in detail how the installment payments made by the Debtor were applied. The presence of such an error does not, as the Debtor contends, cast doubt upon the accuracy of the IRS' accounting. In view of the twenty-year history of the IRS' attempts to collect from the Debtor the taxes which he owes, the inconsequential oversight is understandable.

The Debtor attempts to distract from the issue of the unpaid taxes with allegations that Revenue Agent James Eliff has "mercilessly harassed" him. It hardly bears repeating that tax collection officials are never popular and that taxpayers do not like tax enforcement procedures. The Debtor's ad hominem attacks upon Mr. Eliff are wholly inappropriate.

The Debtor's tactic in the instant Claim Objection is best reflected by an e-mail that the Debtor sent to United States Attorney Jolene Tanner on November 10, 2017 (Doc. No. 153, Ex. E). It provides:

I am still in the process of reviewing the transcripts, but I have a question for you, out of curiosity. If I had been able to work out an Offer in Compromise with Mr. Elliff before I filed my bankruptcy, would I have been able to negotiate a discount off of the amount set forth in the IRS' Amended Proof of Claim?

Simply put, the Claim Objection is nothing more than the Debtor's continued attempt to obtain a tax discount. The Debtor is not entitled to a discount; he owes the full amount of taxes set forth in the IRS' Proof of Claim. And in the absence of any genuine disputed issues of fact, the Debtor is not entitled to a trial in connection with the Claim Objection. Indeed, to indulge the Debtor's request—made only to increase his bargaining leverage with the IRS—would be a derogation of this Court's responsibility to the public, as it would require the IRS to spend further taxpayer

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dollars to collect from the Debtor the taxes he owes.

Based upon the foregoing, the Claim Objection is **OVERRULED** and the IRS' claim is allowed in its entirety. The IRS shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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2:17-17199 John Fuchs

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#4.00 Hearing re [119] Disclosure Statement in Support of Plan of Reorganization

Docket 0

Tentative Ruling:

3/13/2018

The Debtor must file a First Amended Plan and First Amended Disclosure Statement addressing the issues specified herein by no later than **April 10, 2018**.

Pleadings Filed and Reviewed:

- 1) Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 119]
 - a) Chapter 11 Plan of Reorganization [Doc. No. 118]
- 2) Objection of Mercedes-Benz Financial Services USA, LLC to Proposed Disclosure Statement [Doc. No. 125]
- 3) Objection of the United States Trustee to Approval of Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 126]
 - a) Request for Judicial Notice in Support of the Objection of the United States Trustee to Approval of Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 127]
- 4) United States of America's Opposition to the Debtor's Disclosure Statement [Doc. No. 154]
- 5) Debtor's Reply Memo in Response to the Objection by Mercedes Benz Financial Services to the Debtor's Disclosure Statement [Doc. No. 164]
- 6) Debtor's Reply Memo in Response to the Objection by the United States to the Debtor's Disclosure Statement [Doc. No. 165]
- 7) Debtor's Reply Memo in Response to the Objection by the United States Trustee to the Debtor's Disclosure Statement [Doc. No. 167]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been

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performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). Doc. No. 62 (the "Sale Order"). As ordered by the Court, the sales proceeds of the Residence are currently being held on deposit in the Court's registry.

The Debtor seeks approval of the Disclosure Statement filed in connection with his Chapter 11 Plan (the "Plan"). The Plan's material terms are as follows:

- 1) The Bank of New York Mellon will hold an allowed secured claim in the amount of \$1,392,136.22 and will receive a regular monthly payment of \$8,164.33.
- 2) Ocwen Loan Servicing will hold an unimpaired secured claim and will receive regular monthly payments of \$2,185.10.
- 3) Unsecured claims of \$5,000 or less will receive an unspecified payment.
- 4) Three undisputed remaining claims will be paid in full.

Mercedes-Benz Financial Services ("Mercedes") objects to the Disclosure Statement on the grounds that it fails to identify the treatment of Mercedes' claim with sufficient specificity, by referring only to claims secured by auto loans. The Debtor states that he has continued to make current payments on account of Mercedes' claim and is willing to amend the Plan to provide the necessary specificity.

The Internal Revenue Service (the "IRS") objects to the Disclosure Statement because it fails to describe payments to be made on account of its claim. The Debtor asserts that the Plan does not provide for payments to the IRS because he has objected to the IRS' claim.

The United States Trustee (the "UST") asserts that the Disclosure Statement and Plan are defective for the following reasons:

- 1) the Plan is not feasible because the Debtor has monthly negative net income of \$3,730.98;
- 2) the liquidation analysis does not demonstrate that creditors will receive more under the Plan than in a Chapter 7 liquidation;
- 3) the Plan fails to specify the treatment of creditors holding claims of \$5,000 or less;
- 4) the Plan fails to identify priority unsecured creditors; and
- 5) recent Monthly Operating Reports filed by the Debtor show that his expenses are higher than the expenses stated in his Declaration of Current/Postpetition

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Income and Expense.

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In Response to the UST's Opposition, the Debtor asserts that:

- 1) There is no merit to the UST's suggestion that the Monthly Operating Reports reflect higher expenses. The Debtor's expenses were temporarily higher because he recently moved; the Debtor used the \$160,000 in homestead exemption proceeds that he received to fund those expenses.
- 2) With regard to the UST's objections pertaining to the liquidation analysis, a liquidation analysis is unnecessary because this is not a liquidating plan.

II. Findings and Conclusions

Having reviewed the Plan, Disclosure Statement, the objections to the Disclosure Statement filed by various parties, and the Debtor's responses to those objections, the Court finds that certain changes must be made to the Plan. The Court finds that addressing these issues now, rather than in connection with a Plan Confirmation hearing, will expedite these proceedings. The Court notes that some of the issues may stem in part from ambiguities arising from the design and structure of the optional template Plan upon which the Debtor relied.

First, Class 2a consists of the secured claim of the Bank of New York Mellon ("BNY"). The Plan states that BNY's claim is unimpaired, and provides that the total amount of the allowed claim is \$1,392,136.22. However, the total allowed amount of BNY's claim is \$1,648,975.29. *See* Order on Objections to Claims [Doc. No. 149]. The Plan must be amended to accurately state the amount of BNY's claim.

Second, Class 6 consists of convenience claims of \$5,000 or less. But in subsequent briefing, the Debtor implies that Class 6 consists of claims of \$5,000 or more. *See* Doc. No. 167 at p. 4. The composition and treatment of Class 6 claims must be clarified.

Third, the Plan does not provide for payment of the IRS' claim as a result of the Debtor's pending Claim Objection. However, the Court has found that the IRS claim is allowable in its entirety. The Amended Plan must therefore provide for the treatment of the IRS' claim in accordance with the Bankruptcy Code.

Fourth, additional specificity with regard to Mercedes' claim is necessary. It is not enough that the Plan refers merely to payments upon an automobile loan without identifying specific creditors.

Fifth, the Debtor's assertion that a Liquidation Analysis is unnecessary because this is not a liquidating plan is incorrect as a matter of law. In order to obtain plan

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confirmation, the Debtor must establish that the requirements of §1129(a)(7) have been met, which means completing a liquidation analysis.

By no later than **April 10, 2018**, the Debtor shall (1) file a First Amended Plan and First Amended Disclosure Statement and (2) notice a hearing on the adequacy of the First Amended Disclosure Statement.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By

John R Fuchs

Gail S Gilfillan

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2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01507 Yoo v. Tan et al

#5.00 HearingRE: [31] Motion for Default Judgment with proof of service (Avery, Wesley)

Docket 31

Tentative Ruling:

The Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Default Judgment [Doc. No. 31]
 - a) Amended Proof of Service Re: Notice of Motion and Motion for Default Judgment [Doc. No. 33]

I. Facts and Summary of Pleadings

Hiep Tan Tran (the “Debtor”) commenced a voluntary Chapter 7 petition on September 1, 2017. The Chapter 7 Trustee commenced fraudulent transfer and turnover actions against the Debtor and the Debtor’s brother, Tran Hung Tan. In an attempt to obtain dismissal of the fraudulent transfer actions, the Debtor filed a motion seeking voluntary dismissal of his Chapter 7 petition (the “Voluntary Dismissal Motion”). On February 8, 2018, the Court denied the Voluntary Dismissal Motion. *See* Final Ruling Denying Voluntary Dismissal Motion (the “Final Ruling Denying Voluntary Dismissal Motion”) [Doc. No. 35, Case No. 2:17-bk-20784-ER].

The Trustee now moves for entry of default judgment in both adversary proceedings. No opposition to either Motion for Default Judgment has been filed. This tentative ruling pertains to the proceeding captioned *Timothy Yoo, Chapter 7 Trustee v. Tran Hung Tan* (Adv. No. 2:17-ap-01507-ER).

By way of the underlying Complaint, the Trustee seeks to recover possession of real property located at 4335 W. 139th Street, Hawthorne, CA 90250 (the “Triplex”). The Complaint alleges that the Debtor fraudulently transferred the Triplex to the Defendant, who is the Debtor’s brother.

II. Findings and Conclusions

The Court notes that papers filed by the Debtor in connection with the Voluntary Dismissal Motion could be construed as an opposition to the Motion for Default

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CONT... **Hiep Tan Tran**

Chapter 7

Judgment. In determining the instant Motion, the Court has considered all papers filed in connection with the Voluntary Dismissal Motion. Nothing presented in those papers warrants denial of the Motion for Default Judgment. *See generally* Final Ruling Denying Voluntary Dismissal Motion.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). The Complaint's well-pleaded factual allegations, as well as the declarations and other evidence submitted in connection with the Motion for Default Judgment, establish that the Trustee is entitled to default judgment on the Complaint's first, third, fourth, seventh, eighth, and ninth claims for relief.

The Trustee shall submit a default judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Tran Hung Tan

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Represented By

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Hiep Tan Tran

Wesley H Avery

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2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01508 Yoo v. Tran

#6.00 HearingRE: [25] Motion for Default Judgment with proof of service (Avery, Wesley)

Docket 25

Tentative Ruling:

3/13/2018

The Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Default Judgment [Doc. No. 31]
 - a) Amended Proof of Service Re: Notice of Motion and Motion for Default Judgment [Doc. No. 33]

I. Facts and Summary of Pleadings

Hiep Tan Tran (the “Debtor”) commenced a voluntary Chapter 7 petition on September 1, 2017. The Chapter 7 Trustee commenced fraudulent transfer and turnover actions against the Debtor and the Debtor’s brother, Tran Hung Tan. In an attempt to obtain dismissal of the fraudulent transfer actions, the Debtor filed a motion seeking voluntary dismissal of his Chapter 7 petition (the “Voluntary Dismissal Motion”). On February 8, 2018, the Court denied the Voluntary Dismissal Motion. *See* Final Ruling Denying Voluntary Dismissal Motion (the “Final Ruling Denying Voluntary Dismissal Motion”) [Doc. No. 35, Case No. 2:17-bk-20784-ER].

The Trustee now moves for entry of default judgment in both adversary proceedings. No opposition to either Motion for Default Judgment has been filed. This tentative ruling pertains to the proceeding captioned *Timothy Yoo, Chapter 7 Trustee v. Hiep Tan Tran* (Adv. No. 2:17-ap-01508-ER).

In a related action, the Trustee sought to recover possession of real property located at 4335 W. 139th Street, Hawthorne, CA 90250 (the “Triplex”). By way of the underlying Complaint, the Trustee seeks a judgment denying the Debtor’s discharge, based upon the Debtor’s involvement in the fraudulent transfer of the Triplex.

II. Findings and Conclusions

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CONT... **Hiep Tan Tran**

Chapter 7

The Court notes that papers filed by the Debtor in connection with the Voluntary Dismissal Motion could be construed as an opposition to the Motion for Default Judgment. In determining the instant Motion, the Court has considered all papers filed in connection with the Voluntary Dismissal Motion. Nothing presented in those papers warrants denial of the Motion for Default Judgment. *See generally* Final Ruling Denying Voluntary Dismissal Motion.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). The Complaint's well-pleaded factual allegations, as well as the declarations and other evidence submitted in connection with the Motion for Default Judgment, establish that the Trustee is entitled to a default judgment denying the Debtor's discharge.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Hiep Tan Tran

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

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CONT... Hiep Tan Tran

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Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery

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2:17-11174 James Russell Stewart and Cathy Sue Stewart

Chapter 7

#100.00 Status HearingRE: [24] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 23). (united states trustee (pg))

Docket 24

Tentative Ruling:

3/13/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$486.75

Total Expenses: \$30.80

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

James Russell Stewart

Represented By
Alon Darvish

Joint Debtor(s):

Cathy Sue Stewart

Represented By
Alon Darvish

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#101.00 Status Hearing
RE: [91] Disclosure Statement Describing Chapter 11 Plan of Reorganization,
with Proof of Service

fr: 2-21-18

Docket 91

Tentative Ruling:

3/13/2018

No appearances required.

Continued to June 20, 2018 at 11:00 a.m. to allow for resolution of the declaratory relief action re: IRS claim subordination.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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2:17-18597 Base Architecture Planning & Engr Inc.

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#102.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For
Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17; 3-13-18

Docket 14

Tentative Ruling:

3/13/2018

For the reasons set forth below, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including June 30, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. Furthermore, having received no objection or further stipulation, the Court extends the terms of the Third IRS Stipulation through and including June 30, 2018. A hearing on whether the Debtor may use cash collateral subsequent to June 30, 2018 will take place on June 20, 2018 at 11:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by May 16, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by May 23, 2018. Any reply may be filed and served by May 30, 2018.

Pleadings Filed and Reviewed:

- 1) Supplemental to Motion for Authority to Use Cash Collateral (THIRD) (the "Motion") [Doc. No. 104]
 - a) Notice of Motion and Motion for Authority to Use Cash Collateral [Doc. No. 14]
- 2) Third Stipulation Regarding Interim Use of Cash Collateral and Adequate Protection [between the Debtor and Citizens Business Bank] (the "Bank Stipulation") [Doc. No. 85]
- 3) Second Stipulation Between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection [Doc. No. 100]
- 4) No opposition has been filed as of the date of this tentative ruling.

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CONT... Base Architecture Planning & Engr Inc.

Chapter 11

I. Facts and Summary of Pleadings

Base Architecture Planning & Engr Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on July 14, 2017. The Debtor is an urban design, architecture, planning, and civil engineering firm located in Los Angeles. The Debtor specializes in designing and constructing airport facilities, transit projects, municipal and civic facilities, schools, and commercial offices. The Debtor has 22 active contracts with different property owners and government agencies, which it expects to assume. The immediate cause of the petition was the entry of a judgment against the Debtor in the amount of \$70,000 on May 25, 2017.

On February 20, 2018, the Debtor filed the "Supplemental to Motion for Authority to Use Cash Collateral (THIRD)" (the "Motion") [Doc. No. 104]. The Debtor seeks authorization to use cash collateral in accordance with: (1) the stipulation executed between the Debtor and Citizens Business Bank (the "Bank Stipulation") [Doc. No. 85]; and (2) the stipulation executed between the Debtor and the Internal Revenue Service (the "First IRS Stipulation") [Doc. No. 26]. The Debtor states that it owes Citizens Business Bank (the "Bank") \$212,120.15 as of the petition date; that the Debtor owes the IRS \$500,000; that the indebtedness of the Bank is senior to the indebtedness of the IRS; that both the Bank and the IRS hold blanket liens on all the Debtor's assets; and that the Bank holds a personal guaranty against the Debtor's primary shareholder, Michael H. Anderson, as well as liens against two real properties. The Debtor seeks to extend the two stipulations through and including June 30, 2018.

The material terms of the Bank Stipulation are as follows:

- 1) The Debtor acknowledges and agrees (a) that it is liable to the Bank in the amount of \$212,120.15; (b) that the Bank's indebtedness is secured by a valid, perfected security interest on substantially all assets of the Debtor; (c) and that the Bank's indebtedness constitutes an allowed claim under the Bankruptcy Code.
- 2) Solely during the operative period of the Bank Stipulation, the Debtor waives the rights (a) to surcharge the Bank's collateral pursuant to §506(c) or (b) to incur financing or indebtedness from any party other than the Bank that includes the granting by the Debtor of liens, claims, or interests in favor of such other party that are senior to or *pari passu* with the liens,

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CONT...

Base Architecture Planning & Engr Inc.

Chapter 11

claims, and interests in favor of the Bank.

- 3) The Debtor will make monthly adequate protection payments to the Bank in the amount of \$5,000.00, commencing on November 1, 2017. As further adequate protection, the Bank will receive a replacement lien on the rents, proceeds, and profits of its collateral, with such replacement lien having the same validity, extent, and priority as the Bank's prepetition lien. In addition, if the foregoing protection is insufficient to satisfy in full the Bank's claim, the Bank will be granted a superpriority administrative claim pursuant to §507(b).
- 4) The Bank Stipulation authorizes the Debtor to use cash collateral through April 30, 2018.

The material terms of the First IRS Stipulation, which were incorporated by the Second IRS Stipulation, are as follows:

- 1) The Debtor will make monthly adequate protection payments to the United States in the amount of \$500.00, retroactive to the petition date, with payments to commence within seven calendar days after the Court approves the IRS Stipulation.
- 2) As further adequate protection, the IRS will receive a replacement lien on the Debtor's post-petition accounts receivable and on all other property acquired by the Debtor subsequent to the petition, with such replacement lien having the same validity, extent, and priority as the IRS' pre-petition lien. To the extent that the foregoing protection proves insufficient, the IRS will be granted a superpriority administrative claim pursuant to §507 (b).
- 3) The Debtor must remain current on its post-petition tax obligations, including its obligation to timely make federal payroll tax deposits and estimated income tax payments.

The "Third Stipulation between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection" (the "Third IRS Stipulation") [Doc. No. 98] was filed on February 7, 2018. The Third IRS Stipulation incorporates the material terms of the First IRS Stipulation, and stipulates that the Debtor may continue to use cash collateral in accordance with the terms of the First IRS Stipulation until March 31, 2018.

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The Debtor seeks to extend the terms of each of the Bank Stipulation and the Third IRS Stipulation through and including June 30, 2018.

No opposition has been filed.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court finds the terms of the Bank Stipulation, including the Debtor's acknowledgment of the validity of the Bank's indebtedness and its acknowledgment that the Bank holds an allowed claim under the Bankruptcy Code, to be acceptable. The terms of the Third IRS Stipulation are also acceptable. The Court, therefore, authorizes the continued use of cash collateral provided that the Debtor continues to comply with the terms of both Stipulations, including making the adequate protection payments required under the Bank Stipulation and the First IRS Stipulation.

Conclusion

In conclusion, for the reasons set forth above, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including June 30, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. Furthermore, having received no objection or further stipulation, the Court extends the terms of the Third IRS Stipulation through and including June 30, 2018. A hearing on whether the Debtor may use cash collateral subsequent to June 30,

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2018 will take place on June 20, 2018 at 11:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by May 16, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by May 23, 2018. Any reply may be filed and served by May 30, 2018.

The Debtor shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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Hearing Room 1568

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2:18-11025 Vicente Ramirez Jimenez

Chapter 7

#1.00 HearingRE: [16] Motion to vacate dismissal (Madaen, Bahram)

Docket 16

Tentative Ruling:

3/14/2018

This case was dismissed because counsel did not submit holograph signatures in accordance with the Court's new holograph signature requirements which were adopted on December 1, 2017. The holographic signatures have now been submitted. The Motion to Vacate Dismissal is GRANTED.

Movant shall submit a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Vicente Ramirez Jimenez

Represented By
Bahram Madaen

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:16-17549 Ronnie David Yona and Caroline Yona

Chapter 7

#2.00 APPLICANT: Trustee : Wesley H Avery

Hearing re [164] and [166] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$8,375.00

Total Expenses: \$241.02

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Ronnie David Yona

Represented By
Keith S Dobbins

Joint Debtor(s):

Caroline Yona

Represented By
Keith S Dobbins

Trustee(s):

Wesley H Avery (TR)

Represented By

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CONT...

Ronnie David Yona and Caroline Yona

David R. Weinstein

Chapter 7

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2:16-17549 Ronnie David Yona and Caroline Yona

Chapter 7

#3.00 APPLICANT: Attorney for Trustee : David R Weinstein

Hearing re [164] and [166] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$147,675.00 (to be paid \$41,349.00 pursuant to Trustee's Final Report)

Expenses: \$2,011.85

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Ronnie David Yona

Represented By
Keith S Dobbins

Joint Debtor(s):

Caroline Yona

Represented By
Keith S Dobbins

Trustee(s):

Wesley H Avery (TR)

Represented By
David R. Weinstein

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2:16-17549 Ronnie David Yona and Caroline Yona

Chapter 7

#4.00 APPLICANT: Accountant for Trustee : Jeffrey L Sumpter

Hearing re [164] and [166] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

3/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$141,914.00 (to be paid \$39,735.92 pursuant to Trustee's Final Report)

Expenses: \$278.25

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Ronnie David Yona

Represented By
Keith S Dobbins

Joint Debtor(s):

Caroline Yona

Represented By
Keith S Dobbins

Trustee(s):

Wesley H Avery (TR)

Represented By
David R. Weinstein

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2:17-13761 401 S. Hope, LLC

Chapter 7

#5.00 APPLICANT: Attorney for Trustee (Other Firm) - SULMEYER KUPETZ A PROFESSIONAL CORPORATION

Hearing

RE: [42] and [43] Trustee's Final Report and Applications for Compensation .

Docket 40

Tentative Ruling:

3/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$14,892.50

Expenses: \$407.47

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

401 S. Hope, LLC

Represented By
Michael H Yi

Trustee(s):

John J Menchaca (TR)

Represented By
David M Goodrich

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2:17-13761 401 S. Hope, LLC

Chapter 7

#6.00 APPLICANT: Other Chapter 7 Administrative Expenses - Leonard Rosenaur

Hearing

RE: [42] and [43] Trustee's Final Report and Applications for Compensation .

Docket 40

Tentative Ruling:

3/14/2018

See Cal. No. 9 below, incorporated herein by reference.

Party Information

Debtor(s):

401 S. Hope, LLC

Represented By
Michael H Yi

Trustee(s):

John J Menchaca (TR)

Represented By
David M Goodrich

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2:17-13761 401 S. Hope, LLC

Chapter 7

#7.00 APPLICANT: Other State or Local Taxes (post-petition) - FRANCHISE TAX BOARD

Hearing

RE: [42] and [43] Trustee's Final Report and Applications for Compensation .

Docket 40

Tentative Ruling:

3/14/2018

See Cal. No. 9 below, incorporated herein by reference.

Party Information

Debtor(s):

401 S. Hope, LLC

Represented By
Michael H Yi

Trustee(s):

John J Menchaca (TR)

Represented By
David M Goodrich

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2:17-13761 401 S. Hope, LLC

Chapter 7

#8.00 APPLICANT: Accountant for Trustee - MENCHACA & COMPANY LLP

Hearing

RE: [42] and [43] Trustee's Final Report and Applications for Compensation .

Docket 40

Tentative Ruling:

3/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,901.00

Expenses: \$87.56

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

401 S. Hope, LLC

Represented By
Michael H Yi

Trustee(s):

John J Menchaca (TR)

Represented By
David M Goodrich

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#9.00 APPLICANT: JOHN J. MENCHACA, TRUSTEE

Hearing

RE: [42] and [43] Trustee's Final Report and Applications for Compensation .

Docket 40

Tentative Ruling:

3/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$7,475.00

Total Expenses: \$42.80

Franchise Tax Board: (1) \$800.00; and (2) \$800.00

Other, Leonard Rosenaur: \$50.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

401 S. Hope, LLC

Represented By
Michael H Yi

Trustee(s):

John J Menchaca (TR)

Represented By
David M Goodrich

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Hearing Room 1568

10:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#10.00 HearingRE: [239] Motion For Order Closing Case on Interim Basis.

Docket 239

Tentative Ruling:

3/14/2018

For the reasons set forth below, the Motion is GRANTED in its entirety. The matter herein is decided on the papers and no appearances will be taken at March 15, 2018 scheduled hearing.

Pleadings Filed and Reviewed:

- 1) Amendment to Notice of Motion and Motion for Order Closing Case on An Interim Basis—Seeking A Final Decree Closing Case on A Final Basis (the "Motion") [Doc. No. 250]
 - a) Notice of Motion and Motion for Order Closing Case on An Interim Basis [Doc. No. 239]
- 2) Supplemental Declaration of Ali Sharifi in Support of the Motion ("Sharifi Declaration") [Doc. No. 249]
- 3) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Unity Courier Service, Inc. (the "Debtor" or "Reorganized Debtor") filed a voluntary Chapter 11 petition on March 31, 2017 (the "Petition") [Doc. No. 1]. The Debtor filed the First Amended Plan of Reorganization (the "Plan") [Doc. No. 189] on December 13, 2017. On February 22, 2018, the Court entered the "Order Granting Debtor's Motion for Order Confirming Debtor's First Amended Plan of Reorganization Dated December 13, 2017 As Modified" (the "Plan Confirmation Order") [Doc. No. 237]. The Effective Date of the Plan was February 26, 2018.

The Motion

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On March 12, 2018, the Reorganized Debtor filed the "Amendment to Notice of Motion and Motion for Order Closing Case on An Interim Basis—Seeking A Final Decree Closing Case on A Final Basis" (the "Motion") [Doc. No. 250].¹ **[Note 1]**. The Motion requests an order closing the case on a final basis pursuant to 11 U.S.C. § 350 and Fed. R. Bankr. P. 3022 so that the Reorganized Debtor may avoid incurring an additional \$30,000.00 in quarterly fees to the Office of the United States Trustee (the "UST"). The Motion states that, notwithstanding the disbursements under the Plan that will eventually be made by the Court to the allowed Class 3(a) claimants out of the Registry Fund, *see* "Motion for Order Authorizing Establishment of Registry Fund for Class 3(a) Disbursements" (the "Registry Fund Motion") [Doc. No. 238] (which is scheduled to be heard concurrently with the present Motion), and by the Reorganized Debtor to Class 3(b) claimants out of the Class 3(b) Fund, entry of a final decree closing the case should not be delayed. The Motion contends that a final decree closing the case is appropriate based on the following facts: (1) the Plan has been confirmed prior to the hearing on this Motion; (2) all payments required to be made to date under the Plan will have been made; (3) all deposits required under the Plan have been made; (4) all transfers required to be made under the Plan will have been made (with the exception of the \$400,000.00 earmarked for distribution to Class 3(a) creditors that will be deposited into the Court upon entry of an order granting the Registry Fund Motion); (5) the Reorganized Debtor will have assumed the management and control of the property dealt with by the Plan; (6) all priority payments will have been made, and certain of the interval payments to be made over time will have commenced; and (7) there are no pending contested matters or adversary proceedings. *See generally* "Supplemental Declaration of Ali Sharifi in Support of the Motion" ("Sharifi Declaration") [Doc. No. 249].

II. Findings of Fact and Conclusions of Law

Section 350 of the Bankruptcy Code provides, in pertinent part:

- (a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.
- (b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

Rule 3022 of the Federal Rules of Bankruptcy Procedure provides that, "[a]fter an

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estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. *See also* Local Bankruptcy Rule 3022-1(a) ("After an estate is fully administered in a chapter 11 reorganization case, a reorganized debtor . . . may file a motion for a final decree . . ."). In determining whether the estate has been fully administered, the court considers factors including:

- (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee Notes, 1993 Amendments.

Here, the Court finds that entry of a final decree closing the Case is appropriate under the circumstances. The Court finds that the Estate is "substantially consummated," as required under LBR 3022-1(b). The Court has confirmed the Plan, and the Reorganized Debtor has and will continue to comply with the provisions of the Plan. *See* Sharifi Declaration at ¶ 12. Furthermore, while there are future disbursements to be made under the Plan to Class 3(a) and 3(b) claimants from the Class 3(a) Registry Fund and the Class 3(b) Fund, respectively, such disbursements should not delay entry of a final decree closing the case because the disbursements are merely ministerial. *See In re Antiquities of Nevada, Inc.*, 173 B.R. 926, 930 (B.A.P. 9th Cir. 1994) (holding that the plan had been "substantially consummated" where the reorganized debtor had "assumed management and control of the property administered under the confirmed plan, and commenced distribution of payments" under the plan); *In re Mold Makers, Inc.*, 124 B.R. 766, 767–68 (Bankr. N.D. Ill. 1990) (entry of final decree closing Chapter 11 case was appropriate, after payments had begun, even though not all that was called for under plan had been done, where estate had been fully administered and plan had been consummated). As such, at the time which the disbursements are to be made under the Plan, the Court will enter an order authorizing the disbursements to be made without reopening the case, and without further notice or hearing. Lastly, the Court retains jurisdiction to, if and when

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Chapter 11

the need arises, reopen the Debtor's case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b).

III. Conclusion

Based on the foregoing, the Court GRANTS the Motion in its entirety. The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor filed the Motion, which amended a previous motion that sought only interim closure of the case [Doc. No. 239], because the Debtor's counsel was informed by the UST that if the case was reopened after being closed on an interim basis, "the UST may take the position that the Debtor is obligated to pay quarterly fees for disbursements made during the entire period which the case was originally closed . . ." Motion at 3.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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2:17-13943 Unity Courier Service, Inc.

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#11.00 HearingRE: [238] Motion - Reorganized Debtor's Notice of Motion and Motion for Order Authorizing Establishment of Registry Fund for Class 3(a) Disbursements; Declaration in Support Thereof;

Docket 238

Tentative Ruling:

3/14/2018

For the reasons set forth below, the Motion is GRANTED in its entirety. The matter herein is decided on the pleadings and no appearances will be taken at March 15 scheduled hearing.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Authorizing Establishment of Registry Fund for Class 3(a) Disbursements (the "Motion") [Doc. No. 238]
- 2) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Unity Courier Service, Inc. (the "Debtor" or "Reorganized Debtor") filed a voluntary Chapter 11 petition on March 31, 2017 (the "Petition") [Doc. No. 1]. The Debtor filed the First Amended Plan of Reorganization (the "Plan") [Doc. No. 189] on December 13, 2017. On February 22, 2018, the Court entered the "Order Granting Debtor's Motion for Order Confirming Debtor's First Amended Plan of Reorganization Dated December 13, 2017 As Modified" (the "Plan Confirmation Order") [Doc. No. 237]. The Effective Date of the Plan was February 26, 2018.

The Motion

On February 22, 2018, the Reorganized Debtor filed the "Notice of Motion and Motion for Order Authorizing Establishment of Registry Fund for Class 3(a)

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Disbursements" (the "Motion") [Doc. No. 238]. The Plan provides for the deposit of \$400,000.00 for the benefit of holders of Allowed Claims of Class 3(a) creditors, either as individuals or as Class Representatives. The Motion seeks implementation of this provision of the Plan for the benefit of Class 3(a) Claimants. Class 3(a) currently includes the following claims: (1) Claimant Pedro Polio Class Claim in the amount of \$80,867,985.71 (the "Polio Class Claim"); (2) the presumptively allowed, timely filed proofs of: (a) Claim No. 28, filed by Angela Brooks, et al., individually and on behalf of the TBS Class in the amount of \$5,313,926.99 (the "TBS Class Claim"); (b) Claim No. 38 filed by Fern Thompson in the amount of \$6,000.00; and (c) Claim No. 39 filed by Janey Mills in the amount of \$1,735.71; and (3) the informal proof of claim by Joan Velarde, on account of the certain state court complaint which was dismissed by Velarde without prejudice (the "Velarde Claim"). Pursuant to the Plan, holders of Allowed or presumptively Allowed Class 3(a) Claims must first object or otherwise resolve the informal Velarde Claim prior to any distributions from the Class 3(a) Fund.

II. Findings of Fact and Conclusions of Law

Local Bankruptcy Rule 7067-1 sets out procedures for establishment of a registry fund. Among other things, LBR 7067-1 requires a court order prior to funds being sent to the court or the clerk for deposit. Additionally, the party seeking authorization to deposit funds into the registry must prepare an order which complies with LBR 9004-1 and which states "(A) the exact amount to be deposited; (B) that the funds are to be deposited into an interest bearing account; and (C) that the funds will remain on deposit until further order of the court." LBR 7067-1(a)(2). The order must also contain the language set forth in LBR 7067-1(a)(2). The funds must be submitted to the clerk by check or money order made payable to "U.S. Bankruptcy Court" in the exact amount specific in the court order. LBR 7067-1(a)(3).

Here, the Court GRANTS the Motion. The confirmed Plan provides for the deposit of \$400,000.00 for the benefit of holders of Allowed Claims of Class 3(a) creditors, either as individuals or as Class Representatives. The Court finds that the proposed order, which is attached as "Exhibit 1" to the Motion, meets the requirements of LBR 7067-1. The Debtor is willing and able to establish the \$400,000 Registry Fund, and the Debtor shall deliver such funds to the Clerk of the Court upon entry of the order granting this Motion pursuant to 7067-1(a)(3).

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CONT... **Unity Courier Service, Inc.**

Chapter 11

III. Conclusion

Based on the foregoing, the Court GRANTS the Motion in its entirety. The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, March 15, 2018

Hearing Room 1568

10:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#12.00 HearingRE: [242] Application for Compensation - Final Fee Application, Including Fees and Expenses Incurred During the Period November 25, 2017 through February 22, 2018, and All Previously Approved Fees and Expenses That Were Approved on an Interim Basis Approved on a Final Basis, for Ira Benjamin Katz, Debtor's Attorney, Period: 3/31/2017 to 2/22/2018, Fee: \$255,136.00, Expenses: \$26, for David W. Meadows, Debtor's Attorney, Period: 3/31/2017 to 2/22/2018, Fee: \$123,310.00, Expenses: \$863.26.

Docket 242

Tentative Ruling:

3/14/2018

No appearances are required. Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis are now deemed final).

Fees: \$90,132.00 (\$68,187.00 for Law Offices of Ira Benjamin Katz and \$21,945.00 for Law Offices of David W. Meadows)

Expenses: \$130.63 (\$0.00 for Law Offices of Ira Benjamin Katz and \$130.63 for Law Offices of David W. Meadows)

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

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2:17-23522 Builddirect.com Technologies Inc.

Chapter 15

#13.00 HearingRE: [39] Motion for Recognition and Enforcement of Order of the Supreme Court of British Columbia Approving and Sanctioning the Plan of Compromise, Arrangement and Reorganization, Dated February 20, 2018, of BuildDirect.com Technologies Inc. and Granting Related Relief; Memorandum of Points of Authorities in Support Thereof (Chenetz, Sara)

Docket 39

Tentative Ruling:

3/14/2018

For the reasons set forth below, the Motion is GRANTED on the pleadings in its entirety. The March 15 hearing on the Motion is VACATED and no appearances will be taken.

On March 13, 2018, the Supreme Court of British Columbia issued the Sanction Order (the Canadian equivalent of a Plan Confirmation Order), of which the instant Motion seeks recognition. No opposition to the Motion is on file. Pursuant to Local Bankruptcy Rule 9013-f(3), failure of a party to file an opposition may be deemed consent to entry of an order granting the Motion. *See Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Pleadings Filed and Reviewed:

- 1) Motion for Recognition and Enforcement of Order of the Supreme Court of British Columbia Approving and Sanctioning the Plan of Compromise, Arrangement and Reorganization, Dated February 20, 2018, of BuildDirect.com Technologies Inc. and Granting Related Relief (the "Motion") [Doc. No. 39]
 - a) Affidavit of Suzanne Mercier in Support of the Motion [Doc. No. 40]
 - b) Compendium of Unpublished Authorities in Support of the Motion [Doc. No. 41]

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CONT... Builddirect.com Technologies Inc.

Chapter 15

- c) Notice of Issuance by the Supreme Court of British Columbia of Order Made After Application Sanctioning Plan and Amendments to Plan (the "Sanction Order") [Doc. No. 48]
- 2) Ex Parte Application for Order Directing Service of the Motion [Doc. No. 42]
 - a) Order Directing Service of the Motion [Doc. No. 45]
 - b) Affidavit Re: Service of the Motion [Doc. No. 47]
- 3) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

On October 31, 2017, BuildDirect.com Technologies, Inc. (the "Debtor"), commenced a proceeding in the Supreme Court of British Columbia (the "Canadian Court") under Canada's Companies; Creditors Arrangement Act, R.S.C. 1985, c. C-36 (the "Canadian Proceeding"), in order to restructure the Debtor's finances. Thereafter, the court in the Canadian Proceeding appointed PricewaterhouseCoopers, Inc., as monitor (the "Monitor"), and the Debtor as Foreign Representative in the Canadian Proceeding under 11 U.S.C § 1505. The Canadian Court authorized the Debtor to commence proceedings under 11 U.S.C § 1501 et seq. to have the Canadian Proceeding recognized as the "foreign main proceeding," pursuant to 11 U.S.C. § 1515.

The Debtor filed a Chapter 15 Petition for Recognition of Foreign Proceeding (the "Petition") [Doc. No. 1] on November 1, 2017. The Debtor filed the "Emergency Motion for Foreign Representative for Entry of Provisional and Final Orders Granting Relief Pursuant to Sections 362, 365(e), 1517, 1519, 1520, 1521, and 105(a) of United States Bankruptcy Code" (the "Motion for Provisional Order") [Doc. No. 4] on November 2, 2017. The Debtor concurrently filed the "Petition for Recognition of Foreign Proceeding" (the "Petition for Recognition") [Doc. No. 3]. On November 2, 2017, the Court issued the "Order Setting Hearing on Emergency Motion for Entry of Provisional Order" [Doc. No. 6], which scheduled a hearing on the Motion for Provisional Order for November 3, 2017. Following the hearing on November 3, 2017, the Court entered the "Provisional Order Granting [Related Relief]" [Doc. No. 14] and scheduled a final hearing on recognition of the Petition for December 6, 2017. Following the final hearing, on December 8, 2017, the Court entered the "Order Granting Recognition of Foreign Main Proceedings and Related Relief" (the

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Chapter 15

"Recognition Order") [Doc. No. 30], which granted the Petition and recognized the Canadian Proceeding, and all prior proceedings held therein, as a foreign proceeding and foreign main proceeding pursuant to 11 U.S.C. § 1517. The Recognition Order further stated that "The Canadian Proceedings and all terms of the Canadian Order shall be and hereby are granted comity in the United States."

The Canadian Court subsequently granted further relief that enabled the Debtor to proceed with its restructuring efforts. *See* "Motion for Recognition and Enforcement of Order of the Supreme Court of British Columbia Approving and Sanctioning the Plan of Compromise, Arrangement and Reorganization, Dated February 20, 2018, of BuildDirect.com Technologies Inc. and Granting Related Relief" (the "Motion") [Doc. No. 39] at 9–10. Such relief included, among other things: authorization for the Debtor to carry out a certain "Sale and Investment Solicitation Process," *id.* at 9; the Bar Date Order setting the bar date for the filing of proofs of claim, *id.* at 10; and the "Meeting Order" which set March 12, 2018 as the date on which the meeting of creditors (the "Meeting") would be held and at which creditors would vote on the Plan, *id.*; *see also* "Affidavit of Suzanne Mercier in Support of the Motion" ("Mercier Affidavit") [Doc. No. 40], Exhibit D. On February 22, 2018, the Debtor filed the "Notice of Issuance by the Supreme Court of British Columbia of [Entry of the Meeting Order]" [Doc. No. 37]. The Meeting Order also sets March 13, 2018 as the date for the hearing by the Canadian Court on the application of the Debtor for entry of the "Sanction Order," the Canadian equivalent of an order confirming a Plan of Reorganization [Doc. No. 39, Exhibit B].

Summary of the Plan

On March 13, 2018, the Canadian Court entered the Order Sanctioning the Plan and Amendments to the Plan. "Notice of Issuance by the Supreme Court of British Columbia of Order Made After Application Sanctioning Plan and Amendments to Plan" (the "Sanction Order") [Doc. No. 48]. The Plan contemplates the cancellation or exchange of all existing equity interests in the Debtor and the issuance of equity interests in the Reorganized Debtor to new investors, existing "Secured Noteholders," and to other existing equity holders that are "Qualifying Investors." *See* Motion at 11; "Affidavit of Dan Park" ("Park Affidavit") [Doc. No. 40, Exhibit A] at ¶ 9. The Plan provides for the elimination of all existing debt, with the exception of amounts owing to Deans Knight. *Id.* at ¶ 7. Unsecured Creditors, whose claims total approximately \$17,201,000, will receive some distributions on their allowed claims.

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Motion at 11–12. The majority of Unsecured Creditors are suppliers to the Debtor and, under the Plan, suppliers will have the opportunity to continue to do business with the Reorganized Debtor. *Id.* at 12; Park Affidavit at ¶ 10. The Plan is contingent on the completion of the Capital Financing that is currently being undertaken by the Debtor. Motion at 12.

For the Plan to be approved, more than 50% of the creditors voting in each Class representing 2/3 in value of the total Claims being voted in such Class must vote in favor of the Plan at the Meeting. *Id.* The Monitor has recommended that creditors vote in favor of the Plan. *Id.* at 13.

The Motion

The Motion, which was filed by the Debtor on February 22, 2018, seeks recognition and enforcement of the Sanction Order (the "Sanction Recognition Order"), which relief the Debtor contends is necessary to ensure that the Plan can be implemented. Motion at 15. The Debtor has limited funding to continue operations, Park Affidavit at ¶ 13; thus, the contemplated Effective Date of the Plan is March 19, 2018, *see* Motion at 13. As a result, the Debtor sought and received authority to convene the Meeting quickly, and is seeking entry of the Sanction Order and the Sanction Recognition Order with similar pace. *Id.* at 39.

The Motion additionally seeks issuance of a permanent injunction which the Debtor contends is necessary to effectuate the terms of the Plan. The Motion further requests that the court apply § 1145 and declare that the securities to be issued through Section 4.4 of the Plan are exempt from registration under the United States Securities Act of 1933, and applicable securities laws. Lastly, the Motion requests that the case be closed pursuant to §§ 1517(d) and 350.

II. Findings of Fact and Conclusions of Law

Section 1521 of the Bankruptcy Code provides that, "Upon recognition of a foreign proceeding . . . , where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief" 11 U.S.C. § 1521(a). Such relief includes "granting any additional relief that may be available to a trustee" subject to certain exceptions. 11 U.S.C. § 1521(a)(7). Additionally, § 1507

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CONT... **Buildirect.com Technologies Inc.**

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authorizes a court to provide "additional assistance" to a foreign representative at any time after recognition. A court determining whether to provide additional assistance under § 1507 considers the factors enumerated under subsection (b), which provides:

(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with principles of comity, will reasonably assure

- { "pageset": "Sac" (1) just treatment of all holders of claims against or interests in the debtor's property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of the debtor;
- (4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and
- (5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

11 U.S.C. § 1507(b). Section 1507 has been held to include granting such relief as is necessary to consummate a plan which would be consistent with the types of relief granted in chapter 11 proceedings. *See In re Rede Energia S.A.*, 515 B.R. 69, 90–91 (Bankr. S.D. N.Y. 2014) (granting "Plan Enforcement Relief" under §§ 1521 and 1507); "Compendium of Unpublished Authorities in Support of the Motion" [Doc. No. 41], Exhibit 10 (*In re Quebecor World, Inc.*, Case No. 08-13814 (JLG), at Docket No. 12 (Bankr. S.D. N.Y. July 1, 2009) (recognizing and enforcing Canadian sanction order in Chapter 15 case)).

Recognition of the Sanction Order

Here, the Court finds that under §§ 1521 and 1507, recognition and enforcement

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of the Sanction Order is appropriate and necessary to ensure that the Plan can be timely implemented. The Court finds that the Debtor has diligently pursued its restructuring efforts both before this Court and in the Canadian Proceeding, such that the Debtor is well-positioned to successfully reorganize. *See* Park Declaration at ¶¶ 6–22. Consistent with the provisions of § 1507, recognition of the Sanction Order will reasonably assure: (1) the just treatment of holders of claims and interests through the consummation of the Plan; (2) the Plan and the Canadian Proceeding did not prejudice or inconvenience creditors in the United States because the Debtor took appropriate steps to provide notice of the Bar Date Order by lodging such order with the Court, *see* Doc. No. 34, and the Plan does not discriminate based on citizenship; (3) the Sanction Order and Plan provide for equitable distributions to holders of similarly situated claims; and (4) the Sanction Order and Plan are substantially similar to what a United States confirmation order and Chapter 11 plan typically provide.

Based on the foregoing, the Court GRANTS the Motion for recognition and enforcement of the Sanction Order.

Permanent Injunction

Section 304(b)(1) of the Bankruptcy Code "gives bankruptcy courts broad authority to issue an injunction" to "enable all claims against a foreign debtor to be handled in the same forum, if the foreign forum meets certain criteria" *In re Manning*, 236 B.R. 14, 22 (B.A.P. 9th Cir. 1999). "In determining whether to enjoin creditors under § 304(b)(1), bankruptcy courts 'shall be guided by what will best assure an economical and expeditious administration of [the foreign bankruptcy] estate.'" *Id.* (citing 11 U.S.C. § 304(c)). Section 304(c) sets forth the following factors that the court should consider in making a determination under § 304(b):

- (1) just treatment of all holders of claims against or interests in such estate;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;
- (3) prevention of preferential or fraudulent dispositions of property of such estate;
- (4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;
- (5) comity; and
- (6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

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See also In re Manning, 236 B.R. at 23.

For the same reasons as were discussed above—because the inquiry under § 304 (c) for issuance of an injunction substantially mirrors the inquiry under § 1507(b) for granting "additional assistance"—the Court finds that imposition of an injunction is appropriate to assure "an economical and expeditious administration" of the Estate by ensuring the fair and efficient implementation of the Plan as approved by the Canadian Court through the Sanction Order. Granting such relief is consistent with the principles of comity and public policy.

Based on the foregoing, the Court GRANTS the Motion for a permanent injunction to ensure the implementation of the Plan.

Section 1145: Securities to Be Issued Under the Plan

Section 1145 of the Bankruptcy Code provides a limited exemption from registration under federal and state securities law for an offer or sale of securities that are: (i) offered or sold "under a plan," § 1145(a)(1); (ii) of the debtor, of an affiliate participating in a joint plan with the debtor or of a successor to the debtor under the plan," *id.*; and (iii) "in exchange for a claim against, an interest in, or a claim for an administrative expense in the case concerning, the debtor or such affiliate," § 1145(a)(1)(A). Section 1145 "shield[s] from liability under the federal securities laws those individuals participating in the reorganization of an entity in bankruptcy" in order to "encourage satisfaction of debts or other existing interests in the debtor." *U.S. S.E.C. v. Universal Exp., Inc.*, 475 F.Supp.2d 412, 425 (S.D. N.Y. 2007) (quoting Collier on Bankruptcy, ¶ 1145.02[1][a] (15th ed. 2006)).

Here, the Court finds that § 1145 relief may be granted as "additional relief" under § 1521(a) because it is relief available to a chapter 11 debtor in possession. Alternatively, § 1145 relief is authorized under § 1507 as "additional assistance," because it is consistent with the principles of comity, and will reasonably assure a just and efficient administration of the Estate. Section 1145 relief is appropriate because: (i) the Series I Shares are to be issued "under the plan," specifically Section 4.4 of the Plan consistent with § 1145(a)(1); (ii) because the Debtor is a "debtor" under § 1502, the securities are to be offered or sold by a debtor consistent with § 1145(a)(1); and

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(iii) the Series I Shares are being offered "in exchange for a claim against [or] an interest in . . . the debtor," consistent with § 1145(a)(1)(A).

Based on the foregoing, the Court GRANTS the Motion for relief under § 1145. The Series I Shares are exempted from registration consistent with the provisions of § 1145.

Closing of the Chapter 15 Case

Section 1517(d) of the Bankruptcy Code provides that, "A case under this chapter may be closed in the manner prescribed under section 350." Section 350 of the Bankruptcy Code provides, in pertinent part:

(a) After an estate is fully administered and the court has discharged the trustee, the court shall close the case.

(b) A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause.

Rule 3022 of the Federal Rules of Bankruptcy Procedure provides that, "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case. *See also* Local Bankruptcy Rule 3022-1(a) ("After an estate is fully administered in a chapter 11 reorganization case, a reorganized debtor . . . may file a motion for a final decree . . ."). In determining whether the estate has been fully administered, the court considers factors including:

- (1) whether the order confirming the plan has become final, (2) whether deposits required by the plan have been distributed, (3) whether the property proposed by the plan to be transferred has been transferred, (4) whether the debtor or the successor of the debtor under the plan has assumed the business or the management of the property dealt with by the plan, (5) whether payments under the plan have commenced, and (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

Fed. R. Bankr. P. 3022, Advisory Committee Notes, 1993 Amendments. Lastly,

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Chapter 15

Bankruptcy Rule 5009(c) provides that:

A foreign representative in a proceeding recognized under § 1517 of the Code shall file a final report when the purpose of the representative's appearance in the court is completed. The report shall describe the nature and results of the representative's activities in the court. The foreign representative shall transmit the report to the United States trustee, and give notice of its filing to the debtor, all persons or bodies authorized to administer foreign proceedings of the debtor, all parties to litigation pending in the United States in which the debtor was a party at the time of the filing of the petition, and such other entities as the court may direct. The foreign representative shall file a certificate with the court that notice has been given. If no objection has been filed by the United States trustee or a party in interest within 30 days after the certificate is filed, there shall be a presumption that the case has been fully administered.

Fed. R. Bankr. P. 5009(c).

Here, the Court finds that the Motion adequately describes the Foreign Representative's activities in this chapter 15 case and contains all necessary details for a final report. Therefore, as soon as the Effective Date and Effective Time have occurred and the Order on this Motion has become final and non-appealable (collectively, the "Final Steps"), the Foreign Representative is authorized to file a declaration that the Final Steps have occurred, and a Motion for Final Decree in this case and a proposed order, which the Court will enter without further notice or hearing.

III. Conclusion

Based on the foregoing, the Court GRANTS the Motion in its entirety.

Party Information

Debtor(s):

Builddirect.com Technologies Inc.

Represented By
Sara Chenetz
William B Seligstein

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Hearing Room 1568

11:00 AM

2:15-21624 Harry Roussos

Chapter 7

#100.00 HearingRE: [932] Motion to Consolidate Lead Case 2:15-bk-21624-ER with 2:15-bk-21626-ER (Lev, Daniel)

Docket 932

Tentative Ruling:

3/14/2018

For the reasons set forth below, the Motion is GRANTED in its entirety. The matter will be decided on the pleadings and no hearing will be held.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order Authorizing Substantive Consolidation of the Estate of Harry Roussos and the Estate of Theodosios Roussos (the "Motion") [Doc. No. 932]
 - a) Notice of Motion [Doc. No. 933]

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") moves to substantively consolidate the estate of Theodosios Roussos into the estate of Harry Roussos, such that the assets of and claims against both estates are treated as existing against only a single pooled estate. No opposition to the Motion is on file.

II. Findings and Conclusions

Substantive consolidation is a general equitable power of the Bankruptcy Court. The procedure combines the assets and liabilities of multiple estates into a single pooled estate, and is used to avoid prejudice to creditors who have dealt with multiple entities as a single entity. In the Ninth Circuit, substantive consolidation is appropriate where (1) creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit or where (2) the affairs of the debtors are so entangled that consolidation would benefit all creditors. *Alexander v. Compton (In re Bonham)*, 229 F.3d 750 (9th Cir. 2000).

Here, the second prong of the *Bonham* test is satisfied. The affairs of Theodosios and Harry Roussos are inextricably entangled. Both brothers jointly participated in the

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CONT... Harry Roussos

Chapter 7

sale transactions that gave rise to the litigation in this case. Consolidation benefits all creditors by increasing the distribution they will receive on account of their claims. Treatment of the two estates as a single estate will reduce administrative costs and thus increase all creditors' recovery.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Harry Roussos

Represented By
David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#101.00 HearingRE: [78] Motion Notice of Motion and Motion to Reopen Discovery and Vacate Trial Date; Memorandum of Points and Authorities and Declarations of Shelby Ho in Support Thereof, with Proof of Service (Hinds, James)

Docket 78

Tentative Ruling:

3/14/2018

Upon the Court's own motion, this hearing is CONTINUED to Wednesday, March 21, 2018, at 10:00 a.m.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By
James Andrew Hinds Jr

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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Monday, March 19, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#1.00 Hearing
RE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2395 Roanoke Road, San Marino, CA 91108 . (Wilkinson, Reilly)

fr: 2-20-18

Docket 28

Tentative Ruling:

3/15/2018

Hearing required.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

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Monday, March 19, 2018

Hearing Room 1568

10:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#2.00 HearingRE: [78] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4251 Cordero Drive, El Dorado Hills, CA 95762 . (Raftery, Kelly)

Docket 78

Tentative Ruling:

3/15/2018

As this is the latest relief from stay filed in connection with this Debtor who has no connection to the subject Property, the court finds that this case has been "highjacked" by entities acting in bad faith and with no connection to the Debtor. Hereafter, relief from stay will be granted in this case upon 24 hour's notice and with a declaration from the Debtor or its counsel that disclaims any interest in the subject property. No hearing will be held.

The Motion is GRANTED pursuant to §§ 362(d)(1), (d)(2) and (d)(4). The Court finds that the Property is not necessary to an effective reorganization in this case. The Court makes no findings with respect to whether the Debtor was involved in a fraudulent scheme.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording.

The Movant shall submit a conforming order within seven days of the hearing.

Party Information

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CONT... Red Booth, Inc.

Chapter 11

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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2:17-12054 Radiology Support Devices, Inc.

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#1.00 Hearing re [200] and [201] Combined Hearing 1.Adequacy Of First Amended Disclosure Statement Describing First Amended Chapter 11 Plan Of Reorganization Dated February 12, 2018 Of Radiology Support Devices, Inc.; And 2. Confirmation Of First Amended Chapter 11 Plan Of Reorganization Dated February 12, 2018 Of Radiology Support Devices, Inc.

fr. 2-14-18

Docket 0

Tentative Ruling:

3/20/2018

For the reasons set forth below, the Court: (1) APPROVES the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. § 1125; and (2) CONFIRMS the Debtor's Plan.

Pleadings Filed and Reviewed:

- 1) First Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization Dated February 12, 2018 of Radiology Support Devices, Inc. ("Disclosure Statement" or "DS") [Doc. No. 200]
- 2) First Amended Chapter 11 Plan of Reorganization Dated February 12, 2018 of Radiology Support Devices, Inc. (the "Plan") [Doc. No. 201]
 - a) Plan Ballot Summary [Doc. No. 208]
 - b) Amended Exhibit C to the Plan [Doc. No. 206]
- 3) Notice of Combined Hearing on: (1) Adequacy of the Disclosure Statement; and (2) Confirmation of the Plan [Doc. No. 203]
- 4) Memorandum of Points and Authorities in Support of: (1) Approval of the Disclosure Statement; and (2) Confirmation of the Plan (the "MPA") [Doc. No. 207]
- 5) Declaration of Matthew Alderson in Support of: (1) Approval of the Disclosure

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Statement; and (2) Confirmation of the Plan (the "Alderson Declaration") [Doc. No. 209]

- 6) Proof of Service of the: (1) MPA; (2) Plan Ballot Summary; and (3) Alderson Declaration [Doc. No. 210]
- 7) No opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Radiology Support Devices, Inc., the Debtor and debtor in possession (the "Debtor"), seeks approval of the "First Amended Disclosure Statement Describing Chapter 11 Plan of Reorganization Dated February 12, 2018 of Radiology Support Devices, Inc." (the "Disclosure Statement" or "DS") [Doc. No. 200], and confirmation of the "First Amended Chapter 11 Plan of Reorganization Dated February 12, 2018 of Radiology Support Devices, Inc." (the "Plan") [Doc. No. 201].

Background

The Debtor commenced a voluntary Chapter 11 petition on February 21, 2017 (the "Petition") [Doc. No. 1]. The Debtor manufactures and sells specialized anthropomorphic mannequins (known as "phantoms") designed for medical testing, teaching, training, radiology, oncology, and health physics. The phantoms are used to test and calibrate x-ray equipment and radiation cancer treatments to measure the amount of radiation that would otherwise be delivered to a patient. Matthew Alderson is the president, sole owner, and 100% shareholder of the Debtor. The Debtor employs seventeen employees, consisting of Mr. Alderson, an office manager, and fifteen manufacturing employees.

The Debtor had a backlog of approximately \$310,838.00 worth of orders around the date of the Petition because of Chawalit Krautim's alleged refusal to train the Debtor's employees in the proprietary production process. The Debtor hired a new production manager, Lawrence King, who has been effective in reducing the backlog of orders, and promoted a longtime employee, Mario Sanchez, to shop supervisor, who has helped stabilize the production department. The Debtor reacquired most of the stolen molds. The Debtor also reversed engineered at least one of the lost designs

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(known as the "breathing phantom") with the help of Dr. Robert Wallace, a medical physicist, and contracted Dr. Jay Phan to assist with production of radioactive isotopes in the molds, further helping to alleviate the Debtor's backlog. The Debtor was also able to retain a critical supplier to ensure the output of a superior quality product. As a result of these efforts, the Debtor's previous average in shipments during the three months preceding bankruptcy to the three months post-petition, increased approximately from \$95,666.00 to \$175,666.66.

Claim Objections

On September 14, 2017, the Debtor filed the "Motion for Order to Disallow Late Filed Claim of Daniel Krautim [Claim #9]" (the "Daniel Krautim Claim Objection") [Doc. No. 129]. On October 30, 2017, the Court entered the Order Granting the Daniel Krautim Claim Objection [Doc. No. 152] and Disallowed the Daniel Krautim Claim in its entirety.

On November 6, 2017, the Debtor filed the "Motion for Order to Disallow Late Filed Claim of Chawalit Krautim [Claim #10]" (the "Chawalit Krautim Claim Objection") [Doc. No. 160]. On December 13, 2017, the Court entered the Order Granting the Chawalit Krautim Claim Objection [Doc. No. 170] and Disallowed the Chawalit Krautim Claim in its entirety.

On December 1, 2017, the Debtor filed the "Motion for Order to Disallow Late Filed Claim of Michael Kohrman [Claim #8]" (the "Kohrman Claim Objection") [Doc. No. 166]. On January 4, 2018, the Court entered the Order Granting the Kohrman Claim Objection [Doc. No. 185] and disallowed the Kohrman Claim in its entirety.

Summary of the Disclosure Statement and Plan

The Plan will pay all allowed claims in full. The effective date of the Plan is May 1, 2018 (the "Effective Date").

Administrative Claims

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The Disclosure Statement outlines the following administrative claims, which include certain professional fees and expenses (3–6 below) that will only be paid after Court approval:

- (1) the Clerk's Office fees in the amount of \$0, *see* Disclosure Statement at 22;
- (2) the Office of the United States Trustee fees in the amount of \$4,875.00 per quarter, paid in full on the Effective Date and every quarter thereafter until the entry of a final decree, *see id.*;
- (3) the Debtor's general bankruptcy counsel, Weintraub and Selth, APC, in the estimated amount of \$140,000.00, paid in monthly installments based on the Debtor's sales and cash position but shall not be less than \$10,000.00 per month (with deposits beginning in February 2018) and shall not exceed \$30,000.00 per month, *see id.* at 22 & Exhibit B ("Cash Projections");
- (4) the Debtor's financial consultant, Hiramatsu & Associates, in the approximate amount of \$70,000.00, paid in monthly installments based on the Debtor's sales and cash position but shall not be less than \$4,000.00 per month (with deposits beginning in February 2018) and shall not exceed \$8,000.00 per month, *see id.* at 23 & Exhibit B;
- (5) the Debtor's special litigation counsel, Sheppard, Mullin, Richter & Hampton ("SMRH"), in the amount of \$27,500.00, which amount includes the \$10,000.00 retainer paid by the Debtor to SMRH in January 2018, with the remaining balance of \$17,500.00 to be deposited in the trust account of SMRH on the Effective Date, *id.*; and
- (6) the Debtor's special litigation counsel, Tiedt & Hurd ("T&H"), in the amount of \$10,000.00, paid in five monthly instalments of \$2,000.00 commencing on the Effective Date.

Priority Tax Claims

Second, the Disclosure Statement lists the following priority tax claims:

- (1) the Internal Revenue Service ("IRS") in the amount of \$55,184.48, which

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pursuant to the "Stipulation for [Plan] Treatment of Claim of the [IRS]" (the "IRS Stipulation") [Doc. No. 177], will be paid in monthly payments in the amount of \$2,396.38 over a period of 24 months, with payments commencing on the Effective Date;

- (2) the Los Angeles Treasurer and Tax Collector in the amount of \$961.80, to be paid in full on the Effective Date, and
- (3) the Franchise Tax Board ("FTB") in the claimed amount of \$3,439.06, paid in monthly payments in the amount of \$292.84 for a period of 12 months commencing on the Effective Date.

Classified Claims & Interests

The Debtor lists the following secured claims in Classes 1 through 3, respectively:

- (1) **Class 1:** Citibank, N.A., as an impaired class in the amount \$86,457.52 to be paid in full in monthly payments of \$1,352.64, with interest calculated at 4% per annum, beginning on the Effective Date and ending on the sixth anniversary of the Effective Date;
- (2) **Class 2:** Wells Fargo Bank ("Wells") as an impaired class in the amount \$435,210.92 to be paid in full in monthly payments of \$7,367.78, with interest calculated at 6.75% per annum, beginning on the Effective Date and ending on the sixth anniversary of the Effective Date; and
- (3) **Class 3:** Clay Lorinsky as an impaired class in the amount \$50,000.00 to be paid in full in monthly payments of \$805.25, with interest calculated at 5% per annum, beginning on the Effective Date and ending on the sixth anniversary of the Effective Date.

Thereafter, the Debtor outlines the following claims in Classes 4 through 6, respectively:

- (1) **Class 4:** General unsecured claims ("General Unsecured Creditors") as an impaired class in the amount of \$205,508.48, paid \$2,964.14 per month, with interest calculated at 1.17% (the current Federal Judgment Rate) to 1.25% per

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annum, beginning on the Effective Date and ending on the sixth anniversary of the Effective Date; and

(2) **Class 5:** General unsecured claim of Wilmington Associates in the amount of \$46,232.32, which claim, pursuant to the First [Doc. No. 114] and Second [Doc. No. 198] Stipulations for Plan Treatment of Wilmington Associates' Claim, will be paid in full with a payment of \$5,740.00 paid on the Effective Date, plus monthly payments of \$3,374.36 commencing on the Effective Date for a period of 12 months; and

(3) **Class 6:** Mr. Alderson will retain all equity interests in the Reorganized Debtor.

Assumption of Unexpired Lease

The Debtor intends to assume the unexpired landlord's lease, dated January 12, 1989 ("Lease"), with Wilmington Associates. The Debtor will cure the arrears of the Lease, estimated at \$28,492.38, over a period of twelve months.

Effectuating the Plan

The Debtor estimates that it will have \$179,842.00 cash on hand on the Effective Date after making Plan payments. *See* Disclosure Statement, Exhibit B ("Cash Projections"). Based on the Cash Projections, the Debtor predicts a total yearly income (for the remainder of 2017) at \$949,739.00 and yearly expense, including the total debt service, of \$892,219.00, leaving about \$57,520.00 in positive net cash flow annually. Disclosure Statement, Exhibit B.

Mr. Alderson will continue to manage the Debtor and remain as president. Attached to the Disclosure Statement is a liquidation analysis ("Liquidation Analysis"). Disclosure Statement, Ex. D. The Liquidation Analysis concludes that the General Unsecured Creditors would receive nothing under chapter 7 because the Debtor's assets are its raw materials, molds, and accounts receivables, which would sell for approximately \$166,790.74. Administrative costs and secured claims would leave nothing available for distribution to General Unsecured Creditors; in contrast, the Plan proposes to pay all General Unsecured Creditors in full. Further, the Debtor

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submits that the Plan is feasible because \$55,381.00 will be necessary to make Effective Date Plan payments and the Debtor anticipates having \$179,842.00 on hand after making the Effective Date payments. Furthermore, the Debtor anticipates based on the Debtor's Monthly Operating reports that it will have sufficient post-petition net income to make the monthly Plan payments which total approximately \$14,886.00.

Finally, the Debtor designates the risk factors under the Plan as including: (1) a decline in the training of x-ray technicians, triggering a decline in demand for the Debtor's products; (2) new technological advances that render the Debtor's products obsolete; and (3) production issues.

II. Findings of Fact and Conclusions of Law

The Debtor seeks approval of the Disclosure Statement, and Confirmation of the Plan.

Adequacy of Disclosure Statement

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

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Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement satisfies many of the relevant *Metrocraft* factors, including: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (10) the future management of the debtor; (11) the Chapter 11 Plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; (15) information

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relevant to the risks posed to creditors under the Plan; and (18) tax attributes of the debtor.

Based on the foregoing, the Court finds that the Disclosure Statement contains adequate information and, therefore, the Court APPROVES the Disclosure Statement.

Confirmation of the Plan

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129.

Section 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the Collier, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" Collier on Bankruptcy ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

Each of the secured claims is classified separately, as is appropriate because each secured claimant has unique rights with respect to specific collateral. The claims of unsecured creditors in Class 4 are substantially similar to each other. Class 5 consists of only the general unsecured claim of Wilmington Associates. Class 6 consists of the equity interest of Matthew Alderson. The Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan separately classifies the unsecured claim of Wilmington Associates, and

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this classification is appropriate under the circumstances considering the Court-approved stipulations regarding the treatment of this claim. The Plan satisfies § 1122 (b).

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary Chapter 11 case. The Plan separately classifies § 507(a)(2) administrative expense claims and § 507(a)(8) priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the plan "specify any class of claims or interests that is not impaired under the plan."

The only unimpaired class is Class 6, which consists of Matthew Alderson's equity interests in the Debtor. The Plan specifies that Class 6 is not impaired and that Matthew Alderson is not entitled to vote on the Plan. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the plan "specify the treatment of any class of claims or interests that is impaired under the plan."

The description of each class set forth in Sections III.C.1–4 of the Plan details the treatment of the impaired class. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the plan "provide adequate means for the plan's

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implementation."

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The Plan describes the means for implementation of the Plan's provisions. The Plan provides for funding from: the Debtor's cash on hand on the Effective Date which is estimated to be \$179,842.00 after Effective Date payments are made; and the Debtor's cash received from ongoing operations which, as set forth in the Cash Projections, are adequate for plan implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Plan includes only one equity class; therefore, the Plan satisfies §1123(a)(6).

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan provides that, on the Effective Date, the Reorganized Debtor will be managed by Matthew Alderson, its sole shareholder. Mr. Alderson has the requisite experience to operate the Reorganized Debtor. The Plan satisfies § 1123(a)(7).

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization.

The Plan contains certain of § 1123(b)'s optional provisions including subparagraphs (1), (2), (3). The Plan is consistent with § 1123(b).

Section 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title."

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The Court finds that the Debtor as Plan proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (as is set forth above in the section on the "Adequacy of the Disclosure Statement"); and
- 2) Obtained Court approval of the employment of professional persons (*see Order Granting Application for Authority to Employ Weintraub & Selth, APC as General Bankruptcy Counsel* [Doc. No. 42]).

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

Section 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan presented here seeks results consistent with the purposes and objectives of the code. The Debtor negotiated the Plan provisions with its secured creditors and at least one member of each of the unsecured creditor classes. No objections to Plan Confirmation have been filed. The terms and conditions of the Plan allow the Debtor's business to reorganize while paying creditors at least as much as such creditors would receive in a Chapter 7 liquidation. The Plan satisfies §1129(a)(3).

Section 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides for payment of attorney and other professional fees only upon

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application to, and approval by, the Court. The Plan satisfies § 1129(a)(4).

Section 1129(a)(5)

Section 1129(a)(5) requires that the plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan describes the current and future role of Matthew Alderson as the sole equity interest holder and President of the Debtor and the sole post-Effective Date equity interest holder and President of the Debtor. The Plan satisfies § 1129(a)(5).

Section 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the Plan, does not apply.

Section 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Based upon its review of the Liquidation Analysis included with the Disclosure Statement, under Chapter 7 liquidation unsecured creditors would likely be paid 0% on their claims. Furthermore, liquidation would cause appointment of a trustee who would be entitled to compensation as an administrative expense. The Plan satisfies § 1129(a)(7).

Section 1129(a)(8)

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Section 1129(a)(8) requires each class to accept the plan, unless the class is not impaired. To accept a plan, members of a class must affirmatively vote in favor of the plan. *In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989).

Classes 1, 2, 3, 4, and 5 are all impaired and all such classes, with the exception of Class 1 which has not voted, voted to confirm the Plan. Because of Class 1's failure to vote, the Plan must satisfy the cramdown provisions of § 1129(b).

To be "fair and equitable," a plan must comply with the "absolute priority rule." *See Case v. Los Angeles Lumber Co.*, 308 U.S. 106 (1939). In applying § 1129(b)(2) (B), this Court follows the approach set forth in *In re Arnold*, 471 B.R. 578 (Bankr. C.D. Cal. 2012) and applies the absolute priority rule to individual chapter 11 debtors. Collier defines that absolute priority rule:

A plan of reorganization may not allocate any property whatsoever to any junior class on account of the members' interest or claim in a debtor unless all senior classes consent, or unless such senior classes receive property equal in value to the full amount of their allowed claims, or the debtor's reorganization value, whichever is less.

7 Collier on Bankruptcy ¶ 1129.03 02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

As required by the Bankruptcy Code, the Plan places claims and interests into various Classes according to their priority, with the exception of the "unclassified claims" consistent with the provisions of § 1123(a)(1). The Plan complies with the absolute priority rule.

In sum, the Plan satisfies the applicable requirements of § 1129(a)(8) and § 1129 (b).

Section 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment.

Section III.B.2 of the Plan provides for payment in full of taxing authority claims over a period not exceeding sixty months from the Petition Date. Section III.B.1 of the Plan provides that the Debtor will pay other claims allowed under § 503(b) and entitled to priority under § 507(a)(2), including United States Trustee's fees, in full on

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the Effective Date except to the extent that a holder of these claims agreed to other terms. The Plan satisfies § 1129(a)(9).

Section 1129(a)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan.

Classes 2, 3, 4, and 5 are impaired classes that have accepted the Plan. The Plan satisfies § 1129(a)(10).

Section 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

Based upon its review of the Cash Projections included with the Disclosure Statement, the Court finds that the Debtor's projected income and cash available on the Effective date are sufficient to make required plan payments. The Plan is feasible and satisfies § 1129(a)(11).

Section 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

The Plan and the projections in the Disclosure Statement include payment of all Administrative Claims. The Plan satisfies § 1129(a)(12).

Section 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

Section 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

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CONT... Radiology Support Devices, Inc.

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Section 1129(a)(15)

Section 1129(a)(15)(B) applies only to an individual case. As the Debtor is not an individual, § 1129(a)(15)(B) does not apply.

Section 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Debtor is a Corporation that engages in a business for profit and, therefore, § 1129(a)(16) does not apply.

Section 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes. The Plan was proposed in good faith, and the principal purpose of the Plan is to allow the Debtor to continue operating its business while paying creditors at least as much as they would receive in a Chapter 7 liquidation. The Plan satisfies § 1129(d).

Based on the foregoing, the Debtor's Amended Chapter 11 Plan of Reorganization is CONFIRMED.

III. Conclusion

For the reasons set forth above, the Court: (1) APPROVES the Disclosure Statement as containing adequate information; and (2) CONFIRMS the Debtor's Amended Plan.

The Debtor shall lodge a confirming order within seven (7) days of the hearing.

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CONT... Radiology Support Devices, Inc.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

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2:18-11284 Damu Vusha and Akiba Vusha

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#2.00 Final Hearing re [11] *Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral*

FR. 2-16-18

Docket 0

Tentative Ruling:

3/20/2018

For the reasons set forth below, the Court GRANTS, on a final basis, the Cash Collateral Motion. The Debtors' use of the Cash Collateral is authorized in accordance with the terms of the Motion and the Updated Budget and Financial Projections.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Order Authorizing Use of Cash Collateral (the "Cash Collateral Motion") [Doc. No. 11]
 - a) Order Authorizing Interim Use of Cash Collateral [Doc. No. 23]
- 2) Declaration of Michael Jay Berger with Updated Budget and Financial Projections in Support of the [Use of Cash Collateral on a Final Basis] [Doc. No. 33]
- 3) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Damu Vusha and Akiba Vusha (the "Debtors") filed a voluntary Chapter 11 petition on January 18, 2018 (the "Petition") [Doc. No. 1]. The Debtors hold an interest in three real properties: (1) 6122 S. Kings Road, Los Angeles, CA 90056 (the

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"Principal Residence"); (2) 5150 S. Wilton Place, Los Angeles, CA 90062 (the "Wilton Property"); and (3) 1300 W 69th Street, Los Angeles, CA 90044 (the "69th Street Property") (the 69th Street Property and the Wilton Property collectively, the "Rental Properties"). "Declaration of Damu Vusha and Akiba Vusha" ("Vusha Declaration") [Doc. No. 12] at ¶ 3. The Debtors operate a sole proprietorship, dba Jatkodd Crisis Intervention Center (the "Business"), from the Wilton Property. *Id.* at ¶ 9. The Debtors' Business is a residential care facility, which provides care to four developmentally disabled individuals. *Id.* The Debtors receive additional rental income from the Rental Properties, as well as income from certain social security and disability payments. *Id.*

The Debtors' Petition was precipitated by the foreclosure sale of the Principal Residence which was scheduled to take place on February 6, 2018. *Id.* at ¶ 10. The Debtors' Principal Residence is secured by a mortgage in favor of Wells Fargo Home Mortgage with an estimated claim amount of \$578,370.63. *Id.* at ¶ 4. The Wilton Property and the 69th Street Property, respectively, are secured by mortgages as set forth in more detail in "Cash Collateral Motion," *infra*. The Debtors also have an auto loan with Santander Consumer USA for their 2004 Toyota Sienna with an estimated claim amount of \$2,345. *Id.* at ¶ 7. The Debtors' unsecured priority claims consist of the claims owed to the Debtors' employees, *see* "Prepetition Wage Motion," *infra*, and the claim owed to the IRS in the scheduled amount of \$9,935.95, Vusha Declaration at ¶ 8. The Debtors' unsecured non-priority claims consist of medical bills, an unpaid insurance premium, a student loan, and an unsecured claim of the IRS, in the aggregate amount of \$88,938.83. *Id.*

The Cash Collateral Motion and Updated Budget and Financial Projections

On February 14, 2018, the Debtors filed the "Emergency Motion for Order Authorizing Use of Cash Collateral" (the "Cash Collateral Motion") [Doc. No. 11]. The Debtors requested authorization to use cash collateral with respect to: (a) the Wilton Property; and (b) the 69th Street Property. The Court held a hearing on the Cash Collateral Motion on February 16, 2018. On February 20, 2018, the Court entered the Order Authorizing Interim Use of Cash Collateral (the "Cash Collateral Order") [Doc. No. 23]. The Cash Collateral Order set a continued hearing on the further use of cash collateral for March 21, 2018, and further ordered the Debtor to submit further evidence in support of the use of cash collateral including an updated budget and updated financial projections. On March 7, 2018, the Debtor filed the

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"Declaration of Michael Jay Berger with Updated Budget and Financial Projections in Support of the [Use of Cash Collateral on a Final Basis]" (the "Updated Budget and Financial Projections") [Doc. No. 33].

The Wilton Property is secured by a mortgage in favor of Rushmore Loan Management Services in the principal amount of \$313,649.00 (the "Wilton Secured Creditor"), and the 69th Street Property is secured by a mortgage in favor of Wells Fargo Home Mortgage in the principal amount of \$275,518.09 (the "69th Street Secured Creditor") (together, the "Secured Creditors"). The Debtors believe that the use of Cash Collateral is necessary for the Debtors to continue the Debtors' operations and to reorganize. The Debtors further believe that adequate protection in addition to continued payment of the mortgage obligations is not required under the circumstances. The Debtors seek to continue making the regular mortgage payments on each of the respective Rental Properties so as not to fall behind which will, in turn, assist the Debtors to propose a successful plan of reorganization. "Declaration of Debtors in Support of the [Cash Collateral Motion]" [Doc. No. 11]. The amounts listed below include the amounts reflected in the Updated Budget and Financial Projections which covers the period from February 2018 through July 2018. The amounts are listed as follows: (a) the Wilton Property and Budget; (b) the 69th Street Property and Budget; and (c) the Debtors' monthly projected net income for the period from February 2018 through July 2018, and the projected net business income for the same period.

(a) The Wilton Property and Budget

- (1) *Collateral*: the Wilton Property
- (2) *Value of Collateral*: \$487,600 (Debtors' declaration as owner)¹ [**Note 1**]
- (3) *Income/rent*: \$3,200.00 per month
- (4) *Lien Holder*: Rushmore Loan Management Services; Principal balance due— \$313,649.00; Monthly Payment—\$1,980.00 (due on the 1st of each month); Prepetition arrears—\$0.00; Postpetition arrears—\$0.00
- (5) *Equity in the Wilton Property*: \$173,951.00

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(6) *Adequate Protection*: As adequate protection the Debtors offer the following:

- The equity in the Wilton Property;
- The maintenance of the Wilton Property;
- Payments to Rushmore Loan Management Services of the regular monthly mortgage payment in the amount of \$1,980.00; and
- The use or sale of the Cash Collateral which will generate more collateral (Replacement Collateral) each month, and the Debtors offer a lien in the Replacement Collateral.

(7) Updated Monthly Budget for the period from February 2018 through July 2018:

- *Income*: \$3,200.00 (Rent)
- *Expenses*: (a) First Lien Holder—\$1,980.00; (b) Maintenance—\$400.00; (c) Pest Control—\$75.00; (d) Landscaping—\$110.00; (e) Electricity—\$100.00; (f) Gas—\$50.00; (g) Water—\$150.00; and (h) Other—\$550.00 (groceries for the care of the disabled)
- *Total Expenses*: \$3,415.00

(b) The 69th Street Property

- (1) *Collateral*: the 69th Street Property
- (2) *Value of Collateral*: \$368,000 (Zillow valuation and Debtors' knowledge and belief)
- (3) *Income/rent*: \$2,300.00 per month
- (4) *Lien Holder*: Wells Fargo Home Mortgage; Principal balance due—\$275,518.09; Monthly Payment—\$1,431.00 (due on the 1st of each

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month); Prepetition arrears—\$0.00; Postpetition arrears—\$0.00

(5) *Equity in the 69th Street Property*: \$92,481.91

(6) *Adequate Protection*: As adequate protection the Debtors offer the following:

- The equity in the 69th Street Property;
- The maintenance of the 69th Street Property;
- Payments to Wells Fargo Home Mortgage of the regular monthly mortgage payment in the amount of \$1,431.00; and
- The use or sale of the Cash Collateral which will generate more collateral (Replacement Collateral) each month, and the Debtors offer a lien in the Replacement Collateral.

(7) Proposed Monthly Budget for the period from February 2018 through the date of confirmation of a Chapter 11 Plan or dismissal of the case:

- *Income*: \$2,300.00 (Rent)
- *Expenses*: (a) First Lien Holder—\$1,431.00; and (b) Water—\$170.00
- *Total Expenses*: \$1,601.00

(c) Debtors' Projected Net Income and Net Business Income

The following amounts are the Debtors' projected monthly net income for the period from February 2018 through July 2018, which amount includes the average net monthly business income from the Debtors' business, Jaktodd Crisis Intervention:

- (1) *February 2018*: \$2,006.00
- (2) *March 2018*: \$2,006.00
- (3) *April 2018*: \$1,031.00

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(4) *May 2018*: \$2,006.00

(5) *June 2018*: (\$2,545.00)

(6) *July 2018*: \$1,480.00

Additional Relief Sought

In addition to the expenses set forth in the Updated Budget and Financial Projections, the Debtors request:

- (1) To use Cash Collateral to pay quarterly fees to the UST and to pay any required fees to the Court;
- (2) To deviate from the line item expenses in the proposed budget by no more than 15% on both a line item and aggregate basis without need to seek further order of the Court; and
- (3) Because some earmarked expenses may not be required to be paid every month, permission to use any unused amounts earmarked for expenses in subsequent months in payment of that particular expense for the duration of the period in which the Debtors are granted the use of Cash Collateral.

Unless otherwise indicated in the Cash Collateral Motion, the use of Cash Collateral is not intended to modify the rights of affected lienholders pursuant to the existing agreement between the lienholders and the Debtors.

No opposition to the further use of cash collateral has been filed as of the date of this tentative ruling.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the

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statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368–69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984); *see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.)*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Here, the Court finds that each of the Secured Creditors' interest, respectively, is adequately protected. As to the Wilton Property, the property has a value of \$487,600.00 and is encumbered by a perfected security interest in favor of the Wilton Secured Creditor in the amount of \$313,649.00; thus, including the estimated cost of sale, there is an equity cushion of 27.7% and, therefore, the Wilton Secured Creditor's interest is adequately protected. Furthermore, in addition to the equity cushion, the Court finds the adequate protection proposed by the Debtors, *see* Cash Collateral Motion at 4, adequately protects the interest of the Wilton Secured Creditor. The Debtors' proposal to continue making the regular monthly mortgage payment to the Wilton Secured Creditor in the amount of \$1,980.00 qualifies as adequate protection.

As to the 69th Street Property, the property has a value of \$368,000.00 and is encumbered by a perfected security interest in favor of the 69th Street Secured Creditor in the amount of \$275,518.09; thus, there is an equity cushion of 17.1%. Therefore, the 69th Street Secured Creditor's interest is adequately protected. *See*,

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e.g., In re Rogers Development Corp., 2 B.R. 679, 685 (Bankr. E.D. Va. 1980) (court decided that an equity cushion of approximately 15% to 20% was sufficient adequate protection to the creditor, even though the debtors had no equity in the property), *cited with approval in In re Mellor*, 734 F.2d at 1401. Furthermore, in addition to the equity cushion, the Court finds the adequate protection proposed by the Debtors, *see* Cash Collateral Motion at 6, adequately protects the interest of the 69th Street Secured Creditor. The Debtors' proposal to continue making the regular monthly mortgage payment to the 69th Street Secured Creditor in the amount of \$1,431.00 qualifies as adequate protection.

Therefore, based on the foregoing, the Court GRANTS the Cash Collateral Motion. The Debtors' use of the Cash Collateral is authorized in accordance with the terms of the Motion and the Updated Budget and Financial Projections. The Debtors are further authorized to:

- (1) Use Cash Collateral to pay quarterly fees to the UST and to pay any required fees to the Court;
- (2) Deviate from the line item expenses in the proposed budget by no more than 15% on both a line item and aggregate basis without need to seek further order of the Court; and
- (3) Use any unused amounts earmarked for expenses in subsequent months in payment of that particular expense for the duration of the period in which the Debtors are granted the use of Cash Collateral.

The Debtors shall submit a conforming order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: The Cash Collateral Motion lists the value of the Wilton Property as \$530,000 based on "Debtors' declaration as owner;" however, the Debtors' Declaration in Support of the Motion does not make any declarations regarding the value of the Wilton Property. The only evidence submitted in support of the valuation is the Debtors' Schedule D, *see* Cash Collateral Motion Exhibit 1, which lists the value of the Wilton Property as \$487,600.00. Furthermore, based on the Debtors' calculation of equity in the Wilton Property, which is consistent with the valuation listed in Schedule D, the Debtors' seemingly made an error in listing the value as \$530,000.00 in the Cash Collateral Motion. In the absence of other competent evidence, the value of the Wilton Property for the purposes of the Cash Collateral Motion shall be \$487,600.00—the amount listed in the Debtors' Schedule D.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

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2:16-13575 Liberty Asset Management Corporation

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Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

- #3.00** Hearing
RE: [78] Motion Notice of Motion and Motion to Reopen Discovery and Vacate Trial Date; Memorandum of Points and Authorities and Declarations of Shelby Ho in Support Thereof, with Proof of Service (Hinds, James)

fr. 3-15-18

Docket 78

Tentative Ruling:

3/20/2018

The Motion is DENIED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Motion to Reopen Discovery:
 - a) Notice of Motion and Motion to Reopen Discovery and Vacate Trial Date (the "Motion") [Doc. No. 78]
 - b) The Official Committee of Unsecured Creditors' Opposition to Shelby Ho's Motion to Reopen Discovery and Vacate the Trial Date (the "Opposition") [Doc. No. 80]
 - c) Shelby Ho's Reply in Support of Motion to Reopen Discovery and Vacate Trial Date (the "Reply") [Doc. No. 81]
- 2) Operative Pleadings:
 - a) Complaint for Breach of Fiduciary Duty; Conversion; Avoidance and Recovery of Fraudulent Transfers; Money Had and Received; Unjust Enrichment; and Accounting (the "Complaint") [Doc. No. 1]
 - i) Exhibits A-Q to Complaint [Doc. No. 2]
 - b) Second Amended Answer of Tsai Luan Ho to Complaint for Breach of Fiduciary Duty; Conversion; Avoidance and Recovery of Fraudulent Transfers; Money Had and Received; Unjust Enrichment; and Accounting [Doc. No. 39]

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CONT... Liberty Asset Management Corporation

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I. Facts and Summary of Pleadings

On August 16, 2016, the Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Committee") filed a *Complaint for Breach of Fiduciary Duty; Conversion; Avoidance and Recovery of Fraudulent Transfers; Money Had and Received; Unjust Enrichment; and Accounting* (the "Complaint") against Tsai Luan Ho (aka Shelby Ho) and Benjamin Kirk. The Complaint seeks to avoid, as actually and constructively fraudulent, various transfers from Liberty or its investment entities to Ms. Ho. The transfers which the Committee seeks to recover from Ms. Ho include (1) property located at 126 Atherton Avenue, Atherton, CA (the "Atherton Property"), (2) property located at 88 E. San Fernando, Units 89 and 99, San Jose, CA (the "San Jose Units"), and (3) funds allegedly paid by Liberty to Ms. Ho as real estate commissions. In addition, the Complaint alleges that Ms. Ho received cash distributions by causing various other real properties to be encumbered, and seeks to recover the value of such distributions.

Ms. Ho was represented by Dykema Gossett, LLP ("Dykema") until October 5, 2017, when the Court granted Dykema's motion to withdraw from representation. On October 12, 2017, Ms. Ho retained Hinds & Shankman, LLP to replace Dykema.

The discovery cutoff in this action was June 30, 2017. *See* Doc. No. 11. The parties participated in two days of mediation before Peter Gurfein on June 26, 2017 and July 26, 2017. By order entered July 12, 2017 [Doc. No. 50], the Court scheduled a trial for the week of February 26, 2018. By order entered November 20, 2017, the Court continued the trial date for 90 days, to the week of May 29, 2018, so that the parties could participate in additional mediation before Rebecca Callahan. The mediation before Ms. Callahan did not result in settlement of the action.

Ms. Ho's Motion to Reopen Discovery and Continue the Trial Date

Ms. Ho moves to reopen discovery and continue the trial date. Ms. Ho makes the following arguments and representations in support of the Motion:

At the insistence of her new counsel, Ms. Ho has actively engaged in discovery from third parties designed to prove that the Committee's claims lack merit. This discovery has only recently uncovered evidence that insiders at Liberty consistently forged Ms. Ho's signature to open new bank accounts and to establish with the Secretary of State new entities in Ms. Ho's name that Liberty used in furtherance of its Ponzi scheme. Specifically, Ms. Ho has discovered (1) checks from an account at Mega Bank bearing forged signatures of Ms. Ho and (2) documents establishing the Mega Bank account also bearing forged signatures of Ms. Ho. Ho Decl. at ¶¶6–7. Ms.

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Ho has also learned that Mr. Kirk and Liberty incorrectly designated various loans that Ms. Ho made to Mr. Kirk as the repayments of commissions to Ms. Ho.

Discovery in this action should be reopened so that Ms. Ho can officially share with the Committee the information that she has uncovered. Further, the trial date should be continued so that Ms. Ho can properly prepare for trial in this matter. Ms. Ho wishes to schedule the deposition of one or more former employees of Liberty related to the new evidence. Ho Decl. at ¶17.

The Committee's Opposition to the Motion

The Committee opposes the Motion, and makes the following arguments and representations in support of its Opposition:

Ms. Ho was aware of the evidence of the alleged forgeries of the Mega Bank signatures prior to the June 30, 2017 discovery cutoff. On June 13, 2017, Ms. Ho's prior counsel sent the Committee's counsel an e-mail asserting Ms. Ho's position that documents associated with the Mega Bank account contained forged signatures:

While you are waiting for my documents I am voluntarily sending you the documents we received from Mega Bank as it relates to the 88 San Fernando LLC account.

I have confirmed that each signature that which appears to be my client's has been forged.

You will see that it was set up by Vanessa and the money was deposited into this account and then went out over forged signatures.

Maybe you can find some money from the true actors.

See Opposition at Ex. C [Doc. No. 80].

Having been previously aware of the evidence which she alleges was only recently discovered, Ms. Ho has failed to demonstrate good cause for modification of the Scheduling Order. The Committee will be prejudiced by a further continuance of the trial date because its litigation expenses would be dramatically increased.

To the extent Ms. Ho asserts that reopening discovery is necessary to enable her to depose former Liberty employees, Ms. Ho has only herself to blame for not diligently pursuing discovery.

Ms. Ho's Reply in Support of the Motion

Ms. Ho makes the following arguments in Reply to the Committee's Opposition:

The Committee has failed to show that it will be substantially prejudiced by reopening discovery. The Committee claims it will suffer substantial prejudice as a

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result of a brief reopening of discovery. Contrary to the Committee's assertion, Ms. Ho does not seek to prolong the litigation indefinitely. Ms. Ho simply asks: What is the Committee afraid of in facing all of Ms. Ho's defenses on the merits? Is it afraid that it will not be able to prove the Complaint's allegations?

II. Findings and Conclusions

On November 20, 2017, the Court entered a Scheduling Order [Doc. No. 74] which set trial for the week of May 29, 2018, and set a pretrial conference for April 17, 2018, at 11:00 a.m. The June 30, 2017 discovery cutoff date was set by way of a Scheduling Order entered on October 21, 2016 [Doc. No. 11].

Civil Rule 16, which governs scheduling orders, provides that the dates set forth in a scheduling order "may be modified only for good cause and with the judge's consent." Civil Rule 16(a)(4). "A scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 610 (9th Cir. 1992). A court's decision "to honor the terms of its binding scheduling order does not simply exalt procedural technicalities over the merits" of a case, as disregard of the scheduling order "would undermine the court's ability to control its docket, disrupt the agreed-upon course of the litigation, and reward the indolent and the cavalier." *Id.*

As the Ninth Circuit has further explained:

"The district court is given broad discretion in supervising the pretrial phase of litigation, and its decisions regarding the preclusive effect of a pretrial order ... will not be disturbed unless they evidence a clear abuse of discretion." ... The pretrial schedule may be modified "if it cannot reasonably be met despite the diligence of the party seeking the extension." If the party seeking the modification "was not diligent, the inquiry should end" and the motion to modify should not be granted.

Zivkovic v. S. California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (internal citations omitted).

In *Zivkovic*, the Ninth Circuit upheld the denial of a request to modify the scheduling order, based upon a finding that counsel had not demonstrated diligence in complying with the dates set forth therein. *Zivkovic*, 302 F.3d at 1087.

Ms. Ho's request for modification of the Court's Scheduling Order is denied. Ms. Ho has failed to show that she was diligent in pursuing discovery. Ms. Ho maintains that discovery must be reopened because she has recently discovered evidence that her signatures on documents associated with the Mega Bank account were forged.

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However, communications between Ms. Ho's prior counsel and the Committee's counsel establish that Ms. Ho was aware of the alleged forgeries *prior* to the June 30, 2017 discovery cutoff. On June 13, 2017, Ms. Ho's prior counsel sent the Committee's counsel an e-mail which states in relevant part:

While you are waiting for my documents I am voluntarily sending you the documents we received from Mega Bank as it relates to the 88 San Fernando LLC account.

I have confirmed that each signature that which appears to be my client's has been forged.

You will see that it was set up by Vanessa and the money was deposited into this account and then went out over forged signatures.

Maybe you can find some money from the true actors.

See Opposition at Ex. C [Doc. No. 80].

Therefore, Ms. Ho had the opportunity to conduct whatever discovery she deemed necessary with respect to the alleged forgeries associated with the Mega Bank account. For unknown reasons, Ms. Ho, a real estate and business professional advised by sophisticated counsel, failed to undertake such discovery. Unfortunately, Ms. Ho's lack of diligence is not good cause for setting aside the litigation deadlines governing these proceedings.

As held by the Ninth Circuit in *Zivkovic*, Ms. Ho's lack of diligence is by itself sufficient to support denial of the Motion. *See Zivkovic*, 302 F.3d at 1087 ("If the party seeking the modification 'was not diligent, the inquiry should end' and the motion to modify should not be granted."). However, examination of the other factors which the Court may consider in connection with a request to modify a scheduling order also supports denial of the Motion. In ruling on a motion to amend a scheduling order to reopen discovery, the following factors may be considered:

- 1) whether trial is imminent,
- 2) whether the request is opposed,
- 3) whether the non-moving party would be prejudiced,
- 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court,
- 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and
- 6) the likelihood that the discovery will lead to relevant evidence.

City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017).

Upon consideration of the *Pomona* factors, the Court finds that Ms. Ho has failed

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to establish good cause to reopen discovery and to continue the trial date. The Court places substantial weight upon factor six, the likelihood that the discovery will lead to relevant evidence. This factor is challenging to apply in practice, as it is impossible to know precisely what additional evidence further discovery will yield. Further, in applying this factor, the Court must also be mindful of Civil Rule 26(b)(1), which provides that discovery must be "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

Recognizing that its determination is not an exact science, the Court finds that Ms. Ho has failed to establish that it is likely that further discovery will produce material relevant evidence. Prior to expiration of discovery cutoff date, Ms. Ho was represented by Dykema, a sophisticated law firm. At the time it sought leave to withdraw from representing Ms. Ho, Dykema had billed Ms. Ho \$363,068.93 for services rendered. Thus, Dykema's attorneys expended substantial work in connection with this case. Further, counsel had ample time to pursue discovery into relevant issues. The discovery cutoff date of June 30, 2017 gave Ms. Ho approximately one year to conduct discovery (the Complaint was filed on August 16, 2016).

The Court cannot rule out the possibility that Dykema may have overlooked potentially promising areas which, if pursued by Ms. Ho's new counsel, could yield potential evidence. Such an outcome, though possible, is unlikely, particularly given the posture in which the instant Motion comes before the Court. First, the Motion relies substantially upon the Mega Bank account statements as the justification for reopening discovery. But the mail excerpted above clearly establishes that Ms. Ho's prior counsel was fully aware of the possibility that the signatures contained on the Mega Bank statements were forgeries. Why, then, did present counsel wait until now to seek to reopen discovery? The most plausible explanation is that the instant Motion is nothing more than a belated attempt by Ms. Ho to enhance her negotiating leverage after mediation proved unsuccessful. That conclusion is bolstered by the fact that Ms. Ho's new counsel advised the Court on November 14, 2017, that it did "not believe at this time that discovery has to be reopened."

Factor five, foreseeability of the need for additional discovery in light of the time allowed for discovery by the court, weighs against granting the Motion. The discovery cutoff deadline allowed approximately one year for discovery to be conducted. A one-year discovery period is proportional to the needs of this case. The Complaint seeks

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Chapter 11

damages against Ms. Ho "in excess of \$13 million." While this is a substantial amount, the damages sought are not so high as to warrant years of discovery.

Factor four, Ms. Ho's lack of diligence, weighs against granting the Motion, for the reasons discussed above. Factor one, the imminence of trial, and factor two, the Committee's opposition to the Motion, also weigh against reopening discovery.

Factor three, whether the non-moving party would be prejudiced, is neutral. The Committee would suffer some prejudice as a result of the additional delay that would result from the reopening of discovery. However, the Court does not believe that such prejudice would be material. However, given that all the other factors weigh against reopening discovery, the neutrality of this factor is not dispositive.

Based upon the foregoing, the Motion is DENIED. The Committee shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By

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James Andrew Hinds Jr

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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9:00 AM

2:07-14287 Frank Apraku

Chapter 7

Adv#: 2:17-01325 Amoah v. Apraku

#1.00

Trial Date Set

RE: RE: [7] Adversary case 2:17-ap-01325. Amended Complaint by Ofori Amoah against Frank Apraku - false pretenses, false representation, actual fraud))

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED ON 2-28-18**

Party Information

Debtor(s):

Frank Apraku

Represented By
Andrew Edward Smyth
William J Smyth

Defendant(s):

Frank Apraku

Pro Se

Plaintiff(s):

Ofori Amoah

Pro Se

Trustee(s):

John P Pringle (TR)

Represented By
John P Pringle

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9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#2.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18

Docket 0

*** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

Trustee(s):

Timothy Yoo (TR)

Represented By

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Morad Javedanfar

Anthony A Friedman

Chapter 7

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9:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED TO 4-30-18 at 9:00 A.M.**

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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9:00 AM

2:17-11911 Dicran Garo Kuftedjian

Chapter 7

Adv#: 2:17-01287 Parts Network, Inc. v. Kuftedjian et al

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01287. Complaint by Parts Network, Inc. against Dicran Garo Kuftedjian, Linda Torikian Kuftedjian. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Avanesian, Michael)

Docket 1

Party Information

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Defendant(s):

Dicran Garo Kuftedjian

Pro Se

Linda Torikian Kuftedjian

Pro Se

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Plaintiff(s):

Parts Network, Inc.

Represented By
Michael Avanesian

Trustee(s):

Jason M Rund (TR)

Pro Se

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9:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

Docket 1

***** VACATED *** REASON: CONTINUED 5-29-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of

Pro Se

Navient Corporation

Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

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9:00 AM

2:17-12783 Terry W. Rindal

Chapter 7

Adv#: 2:17-01305 Richards v. Rindal

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01305. Complaint by Dean Richards , Assignee of Creditor 4.1, , Identified as Andy Savas against Terry W Rindal . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Serrano, Vera)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 5-15-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Terry W. Rindal

Represented By
Allan S Williams

Defendant(s):

Terry W Rindal

Pro Se

Plaintiff(s):

Dean Richards

Represented By
Dean Richards

Trustee(s):

John J Menchaca (TR)

Pro Se

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9:00 AM

2:17-13009 Angel Ruben Payan Gutierrez

Chapter 7

Adv#: 2:17-01332 Chef Merito, Inc. v. Gutierrez

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01332. Complaint by Chef Merito, Inc. against Angel Ruben Payan Gutierrez. fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Smith, Charles)

Docket 1

***** VACATED *** REASON: DISMISSED 12-18-17**

Party Information

Debtor(s):

Angel Ruben Payan Gutierrez

Represented By
Hector Vega

Defendant(s):

Angel Ruben Payan Gutierrez

Pro Se

Joint Debtor(s):

Maria Victoria Payan

Represented By
Hector Vega

Plaintiff(s):

Chef Merito, Inc.

Represented By
Charles G Smith

Trustee(s):

Heide Kurtz (TR)

Pro Se

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9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#8.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

fr. 3-26-18

Docket 1

***** VACATED *** REASON: CONTINUED 7-30-18 AT 9:00 A.M.**

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford Frey

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Pro Se

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

Sunshine Valley, LLC

Pro Se

California International Bank, N.A.

Pro Se

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CONT... Liberty Asset Management Corporation

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All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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Monday, April 02, 2018

Hearing Room 1568

10:00 AM

2:05-40453 Armen Mekikian

Chapter 7

Adv#: 2:06-01192 Dayan et al v. Mekikian et al

#1.00 Hearing re re [44] Appearance and Examination of ARMEN MEKIKIAN, dba LA WEDDING SETS.

fr. 9-13-17; 12-19-17; 2-5-18

Docket 0

Tentative Ruling:

3/29/2018

Appearances required

Party Information

Debtor(s):

Armen Mekikian

Represented By
Ronald E Michelman

Defendant(s):

Armen Mekikian

Represented By
Ronald E Michelman

Marine Mary Mekikian

Represented By
Ronald E Michelman

Joint Debtor(s):

Marine Mary Mekikian

Pro Se

Plaintiff(s):

Shahin Dayan

Represented By
Nico N Tabibi

Yafa Dayan

Represented By

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10:00 AM

CONT... Armen Mekikian

Chapter 7

Nico N Tabibi

Los Angeles Jewelry Production Inc

Represented By
Nico N Tabibi

Trustee(s):

David L Ray (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 02, 2018

Hearing Room 1568

10:00 AM

2:05-40453 Armen Mekikian

Chapter 7

Adv#: 2:06-01192 Dayan et al v. Mekikian et al

#2.00 Hearing re [43] Application *and Order for Appearance and Examination of MARINE MARY MEKIKIAN, AKA MARINE MEKIKIAN, AKA MARINE M. MEKIKIAN, AKA MARINE DEMIRCHIAN, AKA MARINE M. DEMIRCHIAN, AKA MARINE MARY DEMIRCHIAN*

fr. 9-13-17; 12-19-17

Docket 0

Tentative Ruling:

3/29/2018

Hearing required.

Party Information

Debtor(s):

Armen Mekikian

Represented By
Ronald E Michelman

Defendant(s):

Armen Mekikian

Represented By
Ronald E Michelman

Marine Mary Mekikian

Represented By
Ronald E Michelman

Joint Debtor(s):

Marine Mary Mekikian

Pro Se

Plaintiff(s):

Shahin Dayan

Represented By
Nico N Tabibi

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10:00 AM

CONT... Armen Mekikian

Chapter 7

Yafa Dayan

Represented By
Nico N Tabibi

Los Angeles Jewelry Production Inc

Represented By
Nico N Tabibi

Trustee(s):

David L Ray (TR)

Pro Se

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10:00 AM

2:18-10530 Tony Gonzalez and Nancy Ugalde

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Jeep Renegade and Proof of Service.

Docket 12

Tentative Ruling:

3/29/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Tony Gonzalez and Nancy Ugalde

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Tony Gonzalez

Represented By
Thomas B Ure

Joint Debtor(s):

Nancy Ugalde

Represented By
Thomas B Ure

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-10570 James Orbes Yang

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Toyota Sienna .

Docket 8

Tentative Ruling:

3/29/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... James Orbes Yang

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to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

James Orbes Yang

Represented By
Sam Benevento

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:18-11001 Rosario Caro

Chapter 7

#5.00 HearingRE: [10] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .

Docket 10

Tentative Ruling:

3/29/2018

For the reason set forth below, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 10]
- 2) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Rosario Caro (the "Debtor") filed a voluntary Chapter 7 petition on January 30, 2018 (the "Petition") [Doc. No. 1]. On March 8, 2018, State Farm Mutual Automobile Insurance Company (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 10].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum in an action currently pending in the Los Angeles County Superior Court, captioned *State Farm Mutual Automobile Ins. Co. v. Rosario Caro*, Case No. 17STLC00943 (the "State Court Action"). Motion at 3;

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CONT...

Rosario Caro

Chapter 7

Declaration of Richard L. Mahfouz II ("Mahfouz Declaration") [Doc. No. 10] at ¶ 4. The State Court Action was filed on August 31, 2017. Mahfouz Declaration at ¶ 5. Trial is scheduled to begin on February 28, 2019, and is estimated to require 2 days of trial/hearings. *Id.* The Complaint in the State Court Action asserts claims for: subrogation for property damage. *Id.*

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The Movant seek recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.

Id.

The Motion requests relief under § 362(d)(1) so that the Movant may proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

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CONT... Rosario Caro

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219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing the Movant to continue the intended state court complaint will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, to the extent the automatic stay applies, the Court

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 02, 2018

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10:00 AM

CONT... Rosario Caro

Chapter 7

GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rosario Caro

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 02, 2018

Hearing Room 1568

10:00 AM

2:18-11042 Edward Rapoza Branco

Chapter 7

#6.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 TOYOTA YARIS IA .

Docket 8

Tentative Ruling:

3/29/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Edward Rapoza Branco

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlager, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Edward Rapoza Branco

Represented By
James P Doan

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

2:11-53355 Marco Cesar Rivera Acosta

Chapter 7

#1.00 APPLICANT: Attorney for Trustee: Law Office of Carolyn A. Dye

Hearing re [54] and [55] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/2/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,935.00

Expenses: \$104.33

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Marco Cesar Rivera Acosta

Represented By
Aldo A Flores

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

2:11-53355 Marco Cesar Rivera Acosta

Chapter 7

#2.00 APPLICANT: Trustee : Sam S. Leslie

Hearing re [54] and [55] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/2/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,503.25

Total Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Marco Cesar Rivera Acosta

Represented By
Aldo A Flores

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

2:14-32240 Chang Bae Moon

Chapter 7

Adv#: 2:15-01108 Romex Textiles, Inc. v. Park

#3.00 Hearing re [37] Application re enforcement of judgment re judgment debtor JISOOK PARK

Docket 0

Tentative Ruling:

4/2/2018

Hearing required. Judgment creditor to file proof of service of order for examination prior to the hearing.

Party Information

Debtor(s):

Chang Bae Moon

Represented By
Young K Chang

Defendant(s):

Jisook Park

Represented By
Young K Chang

Joint Debtor(s):

Jisook Park

Represented By
Young K Chang

Plaintiff(s):

Romex Textiles, Inc.

Represented By
Nico N Tabibi

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

2:17-17086 Allynce Inc

Chapter 7

#4.00 HearingRE: [23] Motion RE: Objection to Claim Number 2 by Claimant James Sanchez. -Chapter 7 Trustee's Notice of Motion and Motion for Order Disallowing Claim No. 2 filed by James Sanchez; Memorandum of Points and Authorities; Request for Judicial Notice; and Declaration of Brad D. Krasnoff in Support Thereof; proof of service (Krasnoff (TR), Brad)

Docket 23

Tentative Ruling:

4/2/2018

For the reasons set forth below, the Trustee's Objection to Claim No. 2 filed by James Sanchez in the amount of \$80,000.00 is SUSTAINED. Claim No. 2 is disallowed in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion For Order Disallowing Claim No. 2 Filed by James Sanchez (the "Sanchez Objection") [Doc. No. 28]
 - a) Notice of Errata to Sanchez Objection and Proof of Service [Doc. No. 25]
- 2) Claim No. 2 filed by James Sanchez in the Amount of \$80,000.00 (the "Sanchez Claim")

I. Facts and Summary of Pleadings

Allynce, Inc. (the "Debtor") filed a voluntary Chapter 11 Petition on June 9, 2017 (the "Petition") [Doc. No. 1]. Brad D. Krasnoff was appointed as Chapter 7 Trustee (the "Trustee").

Claim No. 2

On September 21, 2017, Creditor James Sanchez filed Claim No. 2 in the amount of \$80,000.00 (the "Sanchez Claim"). The stated basis for the Sanchez Claim is "wrongful profits from infringement of claimant's design patent." Claim No. 2 at ¶ 8.

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Tuesday, April 03, 2018

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10:00 AM

CONT... Allynce Inc

Chapter 7

Aside from this statement, no additional evidence was submitted in support of the Sanchez Claim.

Objection to the Sanchez Claim

On February 28, 2018, the Trustee filed the "Chapter 7 Trustee's Notice of Motion and Motion For Order Disallowing Claim No. 2 Filed by James Sanchez" (the "Sanchez Objection") [Doc. No. 28]. The Trustee objects to the entire amount of the Sanchez Claim on the grounds that the Sanchez Claim is not supported by any evidence. The Trustee states that he has "communicated orally with the Claimant on multiple occasions concerning the lack of evidentiary support to the [Sanchez] Claim." "Declaration of Brad D. Krasnoff" ("Krasnoff Declaration") [Doc. No. 28] at ¶ 3.

Opposition to the Sanchez Objection

As of the date of this tentative ruling, no opposition to the Sanchez Objection has been filed.

II. Findings of Fact and Conclusions of Law

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). To be entitled to the presumption of *prima facie* validity, the proof of claim must, at a minimum, "allege facts sufficient to support the claim." *In re Allegheny International, Inc.*, 954 F.2d 167, 173 (3d. Cir. 1992). "In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they *prima facie* establish the claim." *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)). Rule 3001(a) requires that the proof of claim "conform substantially" to the Official Form. The relevant Official Form, Official Form 10, requires a claimant to "[a]ttach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements." Fed. R. Bankr. P. Official Form 10. Form 10 additionally instructs the claimant that "[i]f the documents are not available, please explain." *Id.*

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Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

CONT... **Allynce Inc**

Chapter 7

"The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the prima facie validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299–301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. The "'basic federal rule' in bankruptcy is that state law governs the substance of claims." *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner v. United States*, 440 U.S. 48, 57 (1979)). Under § 502(b) (1), the court shall disallow a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured[.]"

The Court finds that, given the absence of any evidence to support the Sanchez Claim, coupled with the vague statement of the basis for the claim, the Sanchez Claim is not entitled to a presumption of validity. *See In re Holm*, 931 F.2d at 623; *In re Circle J Dairy, Inc.*, 112 B.R. at 300 (finding that the claim lacked "adequate factual support to be given prima facie validity" stating that "[i]t [did] not stand on its own but [was], in fact, unsubstantiated."). The stated basis for the Sanchez Claim, "wrongful profits from infringement of claimant's design patent," is insufficient to allow the court or any other party in interest to scrutinize, to any meaningful degree, the legal sufficiency of the claim. Additionally, the claimant has not submitted any documentary evidence (e.g. the claimant's patent) to support the alleged infringement. Thus, the Sanchez claim lacks adequate factual support to be given prima facie validity. Furthermore, insofar as the Sanchez Objection relies upon the claim itself as evidence that the claim is facially defective and legally insufficient, the proof of claim

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CONT... Allynce Inc

Chapter 7

is admissible evidence and the Trustee has carried its burden as the objecting party.

III. Conclusion

Based on the foregoing, the Trustee's Objection to Claim No. 2 filed by James Sanchez in the amount of \$80,000.00 is SUSTAINED. Claim No. 2 is disallowed in its entirety.

The Trustee shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Allynce Inc

Represented By
Glenn Park

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 03, 2018

Hearing Room 1568

10:00 AM

2:17-20920 Patricio Diaz Guevarra

Chapter 7

#5.00 Hearing
RE: [14] Motion to Convert Case From Chapter 7 to 13.

Docket 14

***** VACATED *** REASON: CONTINUED 6-6-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

**United States Bankruptcy Court
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Los Angeles
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:14-20310 Juana Valdez

Chapter 7

#100.00 APPLICANT: Attorney - Caceres & Shamash, LLP

Hearing re [110] & [111] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,852.50 (to be paid \$8,000.00 pursuant to Trustee's Final Report)

Expenses: \$800.36

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph Caceres

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:14-20310 Juana Valdez

Chapter 7

#101.00 APPLICANT: Trustee - Wesley Avery

Hearing re [110] & [111] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,250.00

Total Expenses: \$200.40

Charges, U.S. Bankruptcy Court: \$350.00

Hahn & Fife Co.: The Court approves as final the flat fee paid to Hahn & Fife Co. pursuant to the Court's Order entered on January 5, 2018 [Doc. No. 105].

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT...

Juana Valdez

Joseph Caceres

Chapter 7

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:14-20310 Juana Valdez

Chapter 7

#102.00 APPLICANT: Accountant - Hahn Fife & Company

Hearing re [110] & [111] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph Caceres

**United States Bankruptcy Court
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:14-20310 Juana Valdez

Chapter 7

#103.00 APPLICANT: Bond Payments - International Sureties

Hearing re [110] & [111] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph Caceres

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:14-20310 Juana Valdez

Chapter 7

#104.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing re [110] & [111] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Juana Valdez

Represented By
Brenda Elizabeth Vargas

Trustee(s):

Wesley H Avery (TR)

Represented By
Joseph Caceres

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:15-13775 Samuel Angelo Furnari

Chapter 7

#105.00 APPLICANT: Accountant for Trustee (Other Firm) - Jeffrey L. Sumpter

Hearing re [66] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$29,709.50

Expenses: \$88.69

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Samuel Angelo Furnari

Represented By
John D Faucher

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:15-13775 Samuel Angelo Furnari

Chapter 7

#106.00 APPLICANT: Trustee - Wesley Avery

Hearing re [66] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$16,322.59

Total Expenses: \$597.95

Charges, U.S. Bankruptcy Court: \$350.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Samuel Angelo Furnari

Represented By
John D Faucher

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:15-13775 Samuel Angelo Furnari

Chapter 7

#107.00 APPLICANT: Attorney for Trustee (Other Firm) - ROBERT A HESSLING, APC

Hearing re [66] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$97,816.00

Expenses: \$1,999.64

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Samuel Angelo Furnari

Represented By
John D Faucher

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:15-13775 Samuel Angelo Furnari

Chapter 7

#108.00 Charges, U.S. Bankruptcy Court

Hearing re [66] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

4/2/2018

See Cal. No. 106 above, incorporated by reference.

Party Information

Debtor(s):

Samuel Angelo Furnari

Represented By
John D Faucher

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert A Hessling

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#109.00 Hearing

RE: [609] Motion for approval of First Amended chapter 11 disclosure statement Notice Of Motion And Motion For Order (A) Approving Official Unsecured Creditors Committees Disclosure Statement; (B) Fixing Voting Record Date; (C) Approving Solicitation And Voting Procedures; (D) Approving Form Of Solicitation Materials; And (E) Setting Confirmation Hearing And Deadlines In Connection Therewith; Memorandum Of Points And Authorities; Declaration Of C. Alex Naegele

Docket 591

Tentative Ruling:

4/2/2018

For the reasons set forth below, the Court finds that the *First Amended Disclosure Statement* contains "adequate information" within the meaning of §1125.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order (A) Approving Official Unsecured Creditors' Committee's Disclosure Statement; (B) Fixing Voting Record Date; (C) Approving Solicitation and Voting Procedures; (D) Approving Form of Solicitation Materials; and (E) Setting Confirmation Hearing and Deadlines in Connection Therewith [Doc. No. 591] (the "Motion")
 - a) Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset Management Corporation [Doc. No. 592]
 - b) Disclosure Statement in Support of Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset Management Corporation [Doc. No. 593]
- 2) Objection of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation to the Disclosure Statement in Support of Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset Management Corporation [Doc. No. 607]
- 3) Official Committee of Unsecured Creditors' (1) Submission of First Amended

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 03, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Disclosure Statement in Support of First Amended Plan of Liquidation Dated January 31, 2018 and (2) Reply to Opposition of Benjamin Kirk to Disclosure Statement in Support of Chapter 11 Plan of Liquidation Dated January 31, 2018 [Doc. No. 608]

I. Facts and Summary of Pleadings

The Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Committee") seeks approval of its *First Amended Disclosure Statement in Support of First Amended Plan of Liquidation Dated January 31, 2018* (the "Disclosure Statement"). [Note 1] The following are the material provisions of the Committee's *First Amended Chapter 11 Plan of Liquidation* (the "Plan"):

- 1) All of the Debtor's assets will be liquidated. The liquidation will be overseen by a Plan Administrator, Bradley D. Sharp of Development Specialists, Inc. ("DSI"). The Plan Administrator's current hourly rate is \$640.00. It is estimated that total fees and costs payable to the Plan Administrator will not exceed \$200,000. The Plan Administrator may retain counsel to assist him in liquidating the estate's assets. It is contemplated that the Committee's counsel will serve as the Plan Administrator's counsel.
- 2) Upon the Effective Date, the Plan Administrator shall establish the amount of the Plan Reserves. The Plan Reserves shall consist of assets necessary to fund litigation related to ongoing causes of action, fees owing to the United States Trustee, and the Plan Administrator's fees and expenses.
- 3) The Debtor's principal remaining assets cash; real estate; twenty million shares of common stock in California International Bank, N.A.; interests in investment entities that owned real estate; and causes of action against Benjamin Kirk, Lucy Gao, Shelby Ho, and Steven Tsang. The primary litigation asset is a judgment entered against Mr. Kirk and Ms. Gao in the amount of approximately \$74 million; an appeal of that judgment is currently pending before the District Court. The Committee estimates that, not including that Kirk/Gao Judgment, there will be between \$11.9 and \$13.8 million available for distribution to holders of general unsecured claims (Class 3).
- 4) The Committee estimates that the aggregate amount of general unsecured claims (Class 3) will be approximately \$75 million to \$80 million. The Plan Administrator will make a distribution to holders of Class 3 claims on a quarterly basis, provided that the Plan Administrator has cash on hand of at least \$100,000 to distribute.

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Summary of the Objection filed by Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation, and the Committee's Reply

Benjamin Kirk, in his capacity as chair of the Board of Directors of Liberty Asset Management Corporation, filed an objection (the "Objection") contending that the Disclosure Statement does not contain adequate information. [Note 2] The objections asserted by Mr. Kirk, and the Committee's responses thereto, are summarized below.

First, Mr. Kirk asserts that the Committee has not sufficiently disclosed the basis for its estimate that the Plan Reserves will be set at \$2 million. In response, the Committee states that Plan Reserves include (1) \$200,000 to be paid to the Plan Administrator; (2) \$500,000 to be paid to the Plan Administrator's counsel; and (3) other expenses associated with wind-down and collection efforts.

Second, Mr. Kirk notes that the Committee estimates allowed general unsecured claims to be between \$75 million and \$80 million, even though proofs of claim in the aggregate amount of \$126 million have been filed. Mr. Kirk contends that there has been insufficient disclosure of the basis for the Committee's conclusion that total claims will equal only \$80 million. In response, the Committee states that it has reviewed all claims, and assigned each claim a low end value based upon the Committee's best estimate of the amount at which the claim will be allowed.

Third, Mr. Kirk objects to the liquidation analysis. According to Mr. Kirk, the Committee has failed to adequately discuss how the statutory cap on fees allowed to a Chapter 7 Trustee could affect the amounts to be distributed to creditors. Mr. Kirk asserts that the Committee has failed to show that the fees billed by the Plan Administrator will be less than the fees accrued by a Chapter 7 Trustee. In response, the Committee asserts that its liquidation analysis is adequate, given that the Disclosure Statement discusses, on an asset-by-asset basis, all assets that remain to be liquidated and the expected liquidation value of each asset.

II. Findings and Conclusions

Section 1125 provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, ... that would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of

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providing additional information." §1125.

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). As explained by one court:

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984).

However, "[d]isclosure of all factors is not necessary in every case." *Id.*

The Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement contains:

- 1) A detailed description of the estate's principal assets, including estimates of the liquidation value of those assets that have not already been liquidated.
- 2) A description of the significant events that have occurred during the Chapter 11 proceedings.
- 3) A description of the powers and authority of the Plan Administrator.
- 4) A description of the procedures that shall apply with respect to the resolution of disputed claims.

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The objections asserted by Mr. Kirk to the adequacy of the information contained in the Disclosure Statement are overruled. Having reviewed the Disclosure Statement and Plan, the Court finds that the Disclosure Statement contains sufficient information to enable creditors to make an informed decision as to whether to vote for or against the Plan. There is no merit to Mr. Kirk's assertion that the Disclosure Statement does not contain information sufficient to enable creditors to determine whether their interests would be better served by a Chapter 7 liquidation as opposed to the Plan. The Plan sets forth the identity of the Plan Administrator who will be responsible for liquidating the Debtor's assets; estimates that total fees of the Plan Administrator will be approximately \$200,000; and contains estimates as to the liquidation value of the Debtor's assets. This information is sufficient to enable creditors to decide whether the Plan is in their best interests.

Nor is there merit to Mr. Kirk's contention that the Disclosure Statement does not contain adequate information regarding the Committee's estimate of the aggregate amount of claims filed. The Committee has sufficiently explained the methodology upon which it relied to estimate the total amount of allowed claims against the estate.

Mr. Kirk's objection that the Committee has failed to sufficiently disclose the basis for its estimate of the Plan Reserves is likewise without merit. The Committee has explained that it projects that the Plan Reserves will be set at \$2 million. That figure includes \$200,000 to be paid to the Plan Administrator, \$500,000 to be paid to the Plan Administrator's counsel, and approximately \$1.3 million in expenses associated with wind-down and collection efforts. In view of the complexity of the case, the basis for the estimated amount of the Plan Reserves has been sufficiently disclosed.

The following dates will apply with respect to the solicitation of votes and plan confirmation:

- 1) A hearing will be held on the confirmation of the Debtors' Amended Chapter 11 Plan on **June 6, 2018, at 10:00 a.m.**
- 2) The record date for determining (a) those Creditors entitled to receive the Solicitation Package pursuant to the Solicitation Procedures, (b) those Creditors entitled to vote to accept or reject the Plan, and (c) whether Claims have been properly transferred to an assignee pursuant to Bankruptcy Rule 3001(e) such that the assignee can vote as the holder of the assigned claim (the "Voting Record Date") shall be **April 3, 2018.**
- 3) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a

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notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **April 6, 2018**.

- 4) **April 27, 2018** is fixed as the last day for creditors and equity security holders to return to Debtors' counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtors' counsel by 5:00 p.m. on such date.
- 5) **May 4, 2018** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtors have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 6) **May 23, 2018** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 7) **May 30, 2018** is fixed as the last day on which the Debtors may file and serve their reply to any opposition to the Confirmation Motion (the "Reply").

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

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Subsequent to filing its *Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset Management Corporation*, the Committee made certain minor modifications to the Plan in response to concerns raised by the United States Trustee (the "UST"). The Committee submitted its *First Amended Chapter 11 Plan of Liquidation* on March 27, 2018.

Note 2

On January 22, 2018, the Court denied a motion brought by Mr. Kirk in his capacity as chair of Liberty's Board to convert the case to Chapter 7. *See* Order Denying Motion to Convert Case from Chapter 11 to Chapter 7 [Doc. No. 584] and Final Ruling Denying Motion to Convert Case from Chapter 11 to Chapter 7 [Doc. No. 580].

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:17-24457 8590 Sunset A-FS, LLC dba Cafe Primo

Chapter 7

#110.00 Hearing

RE: [54] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 8590 W. Sunset Blvd. .

Docket 54

Tentative Ruling:

4/2/2018

Tentative Ruling:

For the reasons set forth below, the Court finds that the lease at issue terminated pre-petition and cannot be assumed by the Trustee. Therefore, the automatic stay does not bar the Landlord from exercising its remedies under non-bankruptcy law to obtain possession of the leased premises. In view of the finding that the lease is not property of the estate, the Landlord's motion to compel the Trustee to perform post-petition lease obligations is DENIED.

Pleadings Filed and Reviewed:

- 1) Motion of Landlord KR Sunset WEHO, LLC to Compel Performance of Post-Petition Lease Obligations or Other Appropriate Relief [Doc. No. 58]
 - a) Notice of Motion of Landlord KR Sunset WEHO, LLC to Compel Performance of Post-Petition Lease Obligations or Other Appropriate Relief [Doc. No. 57]
 - b) Declaration of Arthur Stroyman in Support of Motion of Landlord KR Sunset WEHO, LLC to Compel Performance of Post-Petition Lease Obligations or Other Appropriate Relief [Doc. No. 59]
- 2) Notice of Motion and Motion for Relief from the Automatic Stay [Doc. No. 54]
 - a) Memorandum of Points and Authorities in Support of KR Sunset WEHO, LLC's Renewed Motion for Relief from the Automatic Stay (Unlawful Detainer) [Doc. No. 55]
 - b) Supplemental Declaration of Arthur Stroyman in Support of Sunset WEHO, LLC's Renewed Motion for Relief from the Automatic Stay (Unlawful Detainer) [Doc. No. 56]
- 3) Trustee's Consolidated Opposition to KR Sunset WEHO, LLC's: (1) Motion for

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Relief from the Automatic Stay and (2) Motion to Compel Performance of Post-Petition Lease Obligations or Other Appropriate Relief [Doc. No. 66]

- 4) Omnibus Reply in Support of KR Sunset WEHO, LLC's: (I) Renewed Motion for Relief from the Automatic Stay (Unlawful Detainer); and (II) Motion to Compel Performance of Post-Petition Lease Obligations or Other Appropriate Relief

I. Facts and Summary of Pleadings

On November 22, 2017, 8590 Sunset A-FS LLC dba Café Primo (the "Debtor") commenced a voluntary Chapter 11 petition. On December 20, 2017, the case was converted to Chapter 7 pursuant to a stipulation between the Debtor and the United States Trustee (the "UST").

Prior to the petition, the Debtor was party to a nonresidential real property lease with KR Sunset WEHO, LLC (the "Landlord"). By order issued on January 17, 2018, the Court denied without prejudice the Landlord's motion seeking stay-relief to commence unlawful detainer proceedings against the Debtor. Doc. No. 46. At the hearing, the Court explained that the motion was being denied so that the Chapter 7 Trustee (the "Trustee"), who had only recently been appointed, would have the opportunity to further evaluate whether the lease could be assumed and assigned by the estate. However, the Court also stated that it was making no findings as to whether the lease had terminated prepetition and therefore whether it was even possible for the estate to assume the lease. **[Note 1]**

According to the Landlord, the lease terminated pre-petition after the Debtor failed to cure monetary and nonmonetary defaults under the lease. The Landlord seeks stay-relief for cause pursuant to §362(d)(1), arguing that the Trustee cannot assume the terminated lease. The Trustee has noticed a motion to assume the lease for April 24, 2018 (the "Lease Assumption Motion"). In the Lease Assumption Motion, the Trustee does not directly refute the Landlord's argument that the lease terminated pre-petition; instead, the Trustee states only that "[d]espite the Landlord's argument that the Lease was terminated by reason of the Debtor's defaults prior to the Petition Date, the Trustee successfully argued in his Opposition to the Landlord's first Relief from the Automatic Stay Motion that the Lease is capable of assumption and assignment." Lease Assumption Motion at 7. The Trustee's Opposition to the Landlord's motion for stay-relief is similarly devoid of any meaningful argument refuting the assertion that the lease terminated pre-petition. The Trustee's Opposition to the Landlord's initial stay-relief motion likewise failed to present any meaningful arguments in opposition to the Landlord's contention that the lease terminated pre-petition.

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In the event that the Court does not grant stay-relief, the Landlord seeks adequate protection. Specifically, the Landlord seeks immediate payment of the amount of rent that would have been owed by the Debtor for use of the leased premises for all dates subsequent to December 20, 2017, the date that the case was converted to Chapter 7. The Landlord asserts that it is owed \$95,080.15 in rent for the period from December 20, 2017 through the end of March 2018. In addition to immediate payment, the Landlord also seeks allowance of the unpaid rent as an administrative claim.

The Trustee opposes stay-relief. The Trustee argues that a new tenant would likely pay at least \$500,000 for the opportunity to assume the lease, and submits declaration testimony of real estate broker Devin Klein in support of this assertion. According to the Trustee, substantial equity exists in the lease because the space has already been built-out as a restaurant or café and is located in a highly desirable area. The Trustee contends that no adequate protection payments are necessary given the substantial equity in the lease; the Trustee also states that no funds are available in the estate to allow present payment to the Landlord.

In Reply to the Trustee's Opposition, the Landlord reiterates its assertion that the lease cannot be assumed by the estate because it terminated pre-petition. The Landlord further notes that under §365(d)(3), the Trustee is obligated to perform all obligations arising under the lease—including the payment of rent—and the lack of availability of funds in the estate does not eliminate this obligation.

II. Findings and Conclusions

The Court first addresses the Landlord's evidentiary objections to the declarations of Devin Klein and Rosendo Gonzales submitted in support of the Trustee's Opposition. The Landlord objects to statements in both declarations intended to establish that the right to assume the lease has a value of \$500,000. The Landlord contends that the testimony is conclusory and lacks foundation. The Landlord's evidentiary objections are overruled; but the Court accords the declaration testimony only minimal weight. Devin Klein, the Trustee's real estate broker, is qualified to offer an opinion as to the value of the lease to prospective tenants. However, Mr. Klein provides few facts to corroborate his assertion that the right to assume the lease is worth \$500,000. Mr. Klein asserts that Starbucks, Philz Coffee, Mix'd, and Smoke & Stone (the founders of California Pizza Kitchen) have expressed interest in the premises. An expression of interest absent a firm offer does little to establish the lease's value. Mr. Gonzales' testimony, which is based upon and duplicates Mr. Klein's testimony, is accorded only minimal weight for the same reasons.

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Turning to the merits, the paramount issue is whether the Trustee has the ability to assume the lease. Section 365 permits the Trustee to “assume ... any ... unexpired lease.” As the Ninth Circuit has explained:

Assumability of a lease by a trustee in bankruptcy, in the context of a lease termination claim, involves a two-part test. The first part of the test is to determine whether the lease terminated before the petition in bankruptcy was filed..... The second part of the test requires the court to ‘determine *whether the termination could have been reversed under a state anti-forfeiture provision or other applicable state law.*’ This second step in the analysis ‘permits the [trustee] the same opportunities to avoid forfeiture of a lease ... that it would have received under state law absent the bankruptcy proceedings.’

Vanderpark Properties v. Buchbinder (In re Windmill Farms, Inc.), 841 F.2d 1467, 1472 (9th Cir. 1988) (internal citations omitted).

To determine whether the lease terminated pre-petition, the Court looks to California law. Cal. Code Civ. P. §1161(2) provides that a lease terminates upon the delivery of a proper three-day notice to pay rent or quit if the tenant fails to pay the rent within the three-day period. Here, there is no dispute that the Landlord delivered to the Debtor a *Notice to Pay Rent or Quit* on November 2, 2017. Nor is there any dispute that the Debtor failed to pay the delinquent rent within the three-day period. Consequently, the lease terminated by operation of law prior to the filing of the petition on November 22, 2017.

The second part of the *Windmill Farms* test requires the Court to determine whether the lease termination could be reversed under California anti-forfeiture law. Cal. Civ. Proc. Code § 1179 permits the Court to “relieve a tenant against a forfeiture of a lease or rental agreement, whether written or oral, and whether or not the tenancy has terminated, and restore him or her to his or her former estate of tenancy, in case of hardship, as provided in section 1174.” In determining whether to relieve a tenant against forfeiture, “the court in balancing the equities should take into consideration the circumstances of the case, the hardship, if any, to the lessee from the forfeiture, the hardship, if any, to the lessor from relieving the lessee from the forfeiture, the willful or other character of the breach, and then use its best discretion in determining whether relief will be granted. Its action will not be upset unless there is a clear showing of abuse of discretion.”” *Thrifty Oil Co. v. Batarse*, 174 Cal. App. 3d 770, 777, 220 Cal. Rptr. 285 (Cal. Ct. App. 1985) (internal citations omitted).

Cal. Civ. Proc. Code § 3275 contains a similar anti-forfeiture provision:

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"Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, ..., he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty."

Here, despite having had multiple opportunities to do so, the Trustee has failed to present to the Court any arguments establishing that it is entitled to revive the lease under California's anti-forfeiture provisions. The Trustee made no such arguments in opposition to the Landlord's first stay-relief motion. No such arguments were made in the Trustee's opposition to the Landlord's renewed stay-relief motion. Nor are any such arguments presented in the Trustee's pending Lease Assumption Motion. Accordingly, the Trustee has waived his right to assert that the lease can be revived under California's anti-forfeiture provisions.

Because the lease terminated pre-petition, there is no remaining lease for the Trustee to assume. Accordingly, no purpose would be served by allowing the Trustee to continue to market the lease. As a result of the pre-petition termination of the lease, the lease is not property of the estate, and the automatic stay does not apply. Therefore, the Court confirms that Landlord is not barred by the stay from enforcing its remedies under non-bankruptcy law to obtain possession of the leased premises. Notwithstanding Bankruptcy Rule 4001(a)(3), the order confirming the inapplicability of the stay shall be effective immediately upon entry. In view of the Court's finding that the lease is not property of the estate, the Landlord's motion to compel the Trustee to perform post-petition lease obligations is DENIED.

The Landlord shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Note 1

An audio recording of the findings made by the Court at the January 16, 2018 hearing is on file with the Clerk of the Court.

Party Information

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Debtor(s):

8590 Sunset A-FS, LLC dba Cafe

Represented By
Michael Jay Berger

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Sonia Singh
Diane C Weil

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#111.00 Hearing
RE: [58] Motion to Compel Performance of Post-Petition Lease Obligations or
Other Appropriate Relief; Memorandum of Points and Authorities

Docket 58

Tentative Ruling:

4/2/2018

See Cal. No. 110, above, incorporated in full by reference.

Party Information

Debtor(s):

8590 Sunset A-FS, LLC dba Cafe

Represented By
Michael Jay Berger

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Sonia Singh
Diane C Weil

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2:15-19694 Tony Nan Thou

Chapter 7

Adv#: 2:15-01391 Tap v. Thou

- #1.00** Show Cause Hearing RE: [1] Adversary case 2:15-ap-01391. Complaint by Hok Tap against Tony Nan Thou . (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Collins, Kim S.) CORRECTION: This entry has been corrected to remove: 41 (Objection / revocation of discharge - 727 as a Nature of Suit in this action; Modified on 9/28/2015 (Garcia, Elaine L.). Additional attachment(s) added on 2/2/2016 (Banderas (Barrera), Cynthia).

Docket 1

Tentative Ruling:

4/3/2018

For the reasons set forth below, this action is dismissed, pursuant to Civil Rule 41 (b), based upon Plaintiff's failure to prosecute.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute, Pursuant to Fed. R. Civ. P. 41(b) [Doc. No. 61] (the "OSC")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 18]
 - b) Certificate of Service [Doc. No. 19]

I. Facts and Summary of Pleadings

On July 27, 2015, Hok Tap commenced a *Complaint Objecting to Discharge* (the "Complaint") against Debtor and Defendant Tony Nan Thou. Both parties are proceeding *in pro per*. The Hon. Deborah J. Saltzman presided over this action from July 27, 2015 to January 3, 2018. On January 3, 2018, this action was transferred to the undersigned Judge.

The Complaint alleges, among other things, that Defendant defrauded Plaintiff by embezzling funds from a mortuary support services joint business venture that Plaintiff entered into with Defendant. The Complaint seeks a judgment of non-dischargeability under §523(a)(4), in the amount of \$80,000.

On November 23, 2015, the Clerk of the Court entered default against the

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CONT...

Tony Nan Thou

Chapter 7

Defendant. On December 15, 2015, Judge Saltzman conducted a hearing on Plaintiff's Motion for Default Judgment (the "Motion"). Judge Saltzman denied the Motion and explained the reasons for the denial to Plaintiff on the record. [Note 1] Judge Saltzman informed Plaintiff that he had provided Defendant only thirteen days' notice of the Motion, as opposed to the twenty-one days' notice required by the Local Bankruptcy Rules. Judge Saltzman further explained that Plaintiff had failed to furnish any evidence substantiating that he was entitled to default judgment upon the claims asserted in the Complaint. Judge Saltzman directed the Plaintiff to file a renewed Motion for Default Judgment that was supported by appropriate evidence.

On March 2, 2018, the undersigned Judge issued the instant *Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute, Pursuant to Fed. R. Civ. P. 41(b)* [Doc. No. 16] (the "Order to Show Cause"). Plaintiff has not responded to the Order to Show Cause.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Moneymaker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

Here, factors one, two, three, and five weigh in favor of dismissing the action for lack of prosecution. The Court finds that dismissal is warranted as a result of Plaintiff's failure to prosecute.

1. Public's Interest in Expeditious Resolution of Litigation

To dismiss a case for lack of prosecution, "the court must find unreasonable delay." *Eisen*, 41 F.3d at 1451. The Court finds that Plaintiff has unreasonably delayed the prosecution of this case. More than two years have elapsed since Plaintiff

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filed a Motion for Default Judgment. Plaintiff has taken no action to advance the case since the filing of that motion. Further, Plaintiff has taken no action in response to the Court's Order to Show Cause.

2. The Court's Need to Manage its Docket

"This factor is usually reviewed in conjunction with the public's interest in expeditious resolution of litigation to determine if there is unreasonable delay." *Eisen*, 31 F.3d at 1452. As discussed above, Plaintiff has engaged in unreasonable delay in the prosecution of this action. This factor weighs in favor of dismissal.

3. The Risk of Prejudice to the Defendants

"[T]he failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual prejudice to the defendant from the failure.... The law presumes injury from unreasonable delay." *Eisen*, 31 F.3d at 1452. If the Plaintiff offers "an excuse for his delay that is anything but frivolous, the burden of production shifts to the defendant to show at least some actual prejudice." *Id.* at 1453. "Prejudice itself usually takes two forms—loss of evidence and loss of memory by a witness." *Nealey v. Transportacion Maritima Mexicana, S. A.*, 662 F.2d 1275, 1281 (9th Cir. 1980).

Because Plaintiff has offered no explanation for the delay, this factor weighs in favor of dismissal.

4. The Public Policy Favoring the Disposition of Cases on Their Merits

"[C]ourts weigh this factor against the plaintiff's delay and the prejudice suffered by the defendant." *Eisen*, 31 F.3d at 1454. "Although there is indeed a policy favoring disposition on the merits, it is the responsibility of the moving party to move towards that disposition at a reasonable pace, and to refrain from dilatory and evasive tactics." *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991).

The public policy favoring resolution of disputes on their merits does not outweigh Plaintiff's unreasonable delay in prosecuting this action.

5. The Availability of Less Drastic Sanctions

As a result of Plaintiff's failure to respond to the instant Order to Show Cause, the Court is convinced that less drastic sanctions would not adequately remediate Plaintiff's dilatory conduct.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

CONT... Tony Nan Thou

Chapter 7

III. Conclusion

Based upon the foregoing, the Court will dismiss this action for failure to prosecute, with prejudice. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

An audio recording of the findings made by Judge Saltzman at the December 15, 2015 hearing is on file with the Clerk of the Court.

Party Information

Debtor(s):

Tony Nan Thou	Pro Se
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Defendant(s):

Tony Nan Thou	Pro Se
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Plaintiff(s):

Hok Tap	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:16-23393 William Harvey Stokes and Arlette Leona Stokes

Chapter 7

#2.00 APPLICANT: Trustee - David M. Goodrich

Hearing re [28] and [29] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$875.00

Total Expenses: \$53.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

William Harvey Stokes

Represented By
Alon Darvish

Joint Debtor(s):

Arlette Leona Stokes

Represented By
Alon Darvish

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:10-10853 T Salvation Distribution, LLC

Chapter 11

#3.00 Status Hearing re POST-CONFIRMATION STATUS CONFERENCE

fr. 3-17-15; 1-19-16; 9-14-16; 4-19-17; 12-5-17

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 3-27-18**

Tentative Ruling:

12/4/2017

No appearances required. Upon review of the Status Report, the Court CONTINUES the status conference to April 4, 2018 at 10:00 a.m.. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

T Salvation Distribution, LLC

Represented By
Scott F Gautier

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:15-26177 David Lee Tomblin

Chapter 11

#4.00 Post-Confirmation Status Conference

fr. 6-6-17; 12-5-17

Docket 0

Tentative Ruling:

4/3/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to **September 18, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

David Lee Tomblin

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#5.00 Status Hearing
RE: [131] post confirmation status conference

fr. 5-2-17; 8-30-17; 12-27-17; 1-3-18

Docket 131

Tentative Ruling:

4/3/2018

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **September 18, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. The continued status conference will be vacated if a final decree is entered before the date of the continued status conference.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#6.00 Hearing
RE: [61] Motion to Dismiss Adversary Proceeding on Behalf of all Defendants

fr. 2-23-18

Docket 61

***** VACATED *** REASON: DISMISSED 2-28-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Blue Sky Communications, Inc., a

Represented By
Cynthia Futter

Lantern Brands, Inc., a California

Represented By
Cynthia Futter

TT Investment Los Angeles Fund I,

Represented By
Cynthia Futter

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

**United States Bankruptcy Court
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Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Wednesday, April 04, 2018

Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#7.00 HearingRE: [613] Motion to Withdraw as Attorney Motion Of Valensi Rose, PLC For An Order Granting It Leave To Withdraw As Counsel For Monge Property Investments, Inc.; Memorandum Of Points And Authorities; Declaration Of David M. Reeder

Docket 613

Tentative Ruling:

4/3/2018

Hearing required.

The court has several concerns regarding the motion to withdraw.

This case has been pending for nearly six years. A major roadblock to the progress of the case were probate proceedings in state court which the court understood have been resolved. In a few weeks the debtor will have its disclosure statement up for hearing - a critical step in the resolution of the case. It is likely that the debtor will not have time enough to retain counsel (as required) for this hearing, and it is possible that new counsel, if any, would not want to go forward with a disclosure statement and plan he did not draft. Thereby creating expense and delay.

In circumstances where an attorney seeks to withdraw on the eve of trial, this court has denied the request. This seems to be an analogous situation.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
David M Reeder

**United States Bankruptcy Court
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#100.00 APPLICANT: LEVENE NEALE BENDER YOO & BRILL, LLP, Attorney

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

4/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$23,752.50

Expenses: \$247.94

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By
John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#101.00 APPLICANT: HEIDE KURTZ, Trustee

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for
Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

4/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$12,950.00

Total Expenses: \$98.96

Franchise Tax Board: \$829.28

Bilal Law Group (Special Litigation Counsel): All amounts previously paid on an interim basis are deemed final.

Other (Elie Abi Nader): All amounts previously paid on an interim basis are deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By

John L Greifendorff - INACTIVE -

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

CONT... Mepco Services, Inc.

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#102.00 APPLICANT: Other State or Local Taxes (post-petition) - FRANCHISE TAX BOARD

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

4/3/2018

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By
John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#103.00 APPLICANT: HAHN FIFE & COMPANY, LLP, Accountant for Trustee

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

4/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,415.50

Expenses: \$404.80

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By
John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#104.00 APPLICANT: Special Counsel for Trustee Fees - BILAL LAW GROUP

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

4/3/2018

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By
John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#105.00 APPLICANT: Other State or Local Taxes (post-petition) - FRANCHISE TAX BOARD

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By
John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By
Heide Kurtz (TR)
Carmela Pagay
Timothy J Yoo

**United States Bankruptcy Court
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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:13-20150 Mepco Services, Inc.

Chapter 7

#106.00 APPLICANT: Other Chapter Administrative Expenses - ELIE ABI NADER

Hearing re [126] & [127] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Mepco Services, Inc.

Represented By

John L Greifendorff - INACTIVE -

Trustee(s):

Heide Kurtz (TR)

Represented By

Heide Kurtz (TR)

Carmela Pagay

Timothy J Yoo

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Wednesday, April 04, 2018

Hearing Room 1568

11:00 AM

2:17-17994 Dawna-Jo Buchalter

Chapter 7

#107.00 APPLICANT: Trustee - Elissa D. Miller

Hearing re [25] and [26] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$1,237.50

Total Expenses: \$28.40

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Dawna-Jo Buchalter

Represented By
David V Luu

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, April 05, 2018

Hearing Room 1568

10:00 AM

2:17-24296 Peter Truong

Chapter 7

#1.00 HearingRE: [29] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Chapter 7 Trustee's Notice of Motion and Motion for Orders: (1) Approving Sale of Real Property, Subject to Overbid; (2) Authorizing Sale Free and Clear of Liens and Interests; (3) Authorizing Release of Funds from Escrow; (4) Approving Payment of Real Estate Commissions; and (5) Approving Payment of Exemption; Memorandum of Points and Authorities; Declarations in Support Thereof with Proof of Service (Marchisotto, Michelle)

Docket 29

Tentative Ruling:

4/4/2018

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchasers: Agnes Tung Ling Ma and Anthony Hocktong Tjio
- 2) Property for Sale: 227 S. Atlantic Blvd. #A, Monterey Park, CA 91754
- 3) Purchase price if no overbidders are present: \$505,000
- 4) Overbids (adjusted by the Court from the terms proposed in the Sale Motion): The initial overbid shall be \$510,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Orders: (1) Approving Sale of Real Property, Subject to Overbid; (2) Authorizing Sale Free and Clear of Liens and Interests; (3) Authorizing Release of Funds from Escrow; (4) Approving Payment of Real Estate Commissions; and (5) Approving Payment of Exemption [Doc. No. 29] (the "Sale Motion")
 - a) Notice of Sale of Estate Property [Doc. No. 30]
- 2) No opposition is on file

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Thursday, April 05, 2018

Hearing Room 1568

10:00 AM

CONT... Peter Truong

Chapter 7

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of the sale of property located at 227 S. Atlantic Blvd. #A, Monterey Park, CA 91754 (the "Property"). The proposed purchasers are Agnes Tung Ling Ma and Anthony Hocktong Tjio, and the proposed purchase price is \$505,000. The sale is subject to overbids. After payment of the secured lender, real estate commissions, closing costs, and the Debtor's homestead exemption, net proceeds to the estate are estimated to be \$31,769.73. No opposition to the Sale Motion is on file.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Sale of the Property will yield estimated proceeds to the estate of \$31,769.73. Pursuant to §704(a), the Trustee has an obligation to "collect and reduce to money the property of the estate for which such trustee serves," and to "close such estate as expeditiously as is compatible with the best interests of parties in interest." The Trustee has articulated sufficient business justification for the sale.

Section 363(f)(3) provides that the Court may authorize a sale free and clear of liens, if the "price at which such property is to be sold is greater than the aggregate value of all liens on such property." Here, the sales price of \$505,000 exceeds the aggregate value of the liens against the Property. The Court approves the sale free and clear of liens, claims, and interests. All such liens, claims, and interests shall attach to the sales proceeds to the same extent and priority as those liens, claims, and interests attached to the Property.

The Court finds that as of November 20, 2017, the date of the petition, the Debtor and the Debtor's spouse held title to the Property as community property. Consequently, the Property is property of the estate in its entirety, and the estate is entitled to receive 100% of the net sales proceeds of the Property. The Court makes this finding notwithstanding the existence of a Grant Deed dated October 12, 2017, that purports to vest title to the Property in the Debtor and the Debtor's spouse as joint tenants. The Court notes that the Debtor and his spouse initially acquired the Property by way of a Grant Deed recorded on October 13, 2006. The October 13, 2006 Grant

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Thursday, April 05, 2018

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10:00 AM

CONT... Peter Truong

Chapter 7

Deed provides that the Debtor and his spouse hold the Property as "Husband and Wife as Community Property."

Cal. Fam. Code §760, known as the "community property presumption," provides that "all property, real or personal, wherever situated, acquired by a married person during the marriage while domiciled in this state is community property." As the Ninth Circuit Bankruptcy Appellate Panel has explained:

The community property presumption applies to property acquired during marriage unless it is: (1) traceable to a separate property source; (2) acquired by gift or bequest; or (3) earned or accumulated while the spouses are living separate and apart.... The community property presumption may be rebutted by evidence that the spouses agreed to recharacterize, or "transmute" the property from community to some other form of ownership. A transmutation is not valid unless "made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." Cal. Fam. Code §852(a).

Clifford Allen Brace v. Speier (In re Brace), 566 B.R. 13, 18 (B.A.P. 9th Cir. 2017) (internal citations omitted).

The community property presumption "applies in disputes in bankruptcy involving the characterization of marital property." *Brace*, 566 B.R. at 19. Applying the community property presumption, the *Brace* court found that real properties, which the Debtor and his non-Debtor spouse had taken title to as "joint tenants," constituted community property since the properties had been acquired using community funds.

As in *Brace*, here the community property presumption compels a finding that the Property is community property, notwithstanding the October 12, 2017 Grant Deed which purports to vest title to the Property in the Debtor and the Debtor's spouse as joint tenants. The Debtor and his spouse took title to the Property during marriage as "Husband and Wife as Community Property." There is no evidence before the Court of any valid transmutation, and there are no other facts which would make the community property presumption inapplicable.

Having reviewed the declarations submitted by Brian Parsons, the Trustee's real estate broker, and the proposed purchasers, Agnes Tung Ling Ma and Anthony Hocktong Tjio, the Court finds that the sale transaction was negotiated at arms-length and in good-faith, and that the proposed purchasers are entitled to the protections of § 363(m). In the event that an overbidder prevails at the auction, the Court will take testimony at the hearing to determine whether such overbidder is entitled to the protections of §363(m).

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10:00 AM

CONT... Peter Truong

Chapter 7

The Trustee is authorized to pay the real estate broker a 6% commission directly from escrow. The Trustee is authorized, at his discretion, to pay from escrow any other closing costs. Finally, the Trustee is authorized to pay the Debtor's \$100,000 homestead exemption from escrow. The *Residential Purchase Agreement dated February 12, 2018*, and the related documents memorializing the sale agreement submitted as Ex. 8, are approved as to form. Pursuant to Bankruptcy Rule 6004(f)(2), the Trustee is authorized to execute all documents necessary to consummate the sale. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$510,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

Party Information

Debtor(s):

Peter Truong

Represented By
Maria W Tam

Trustee(s):

Wesley H Avery (TR)

Represented By
Michelle A Marchisotto

**United States Bankruptcy Court
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Thursday, April 05, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#2.00

Debtors' Motion for Order Authorizing and Approving (A) the Adequacy of the Joint Disclosure Statement Describing Plan of Reorganization Proposed Jointly by Debtors; (B) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation and Notices with Respect Thereto; and (C) Related Confirmation Deadlines and Notices

RE: [53] Disclosure Statement (Frey, Sandford)

Docket 53

Tentative Ruling:

4/4/2018

For the reasons set forth below, the Court DENIES the Motion for Approval of the Disclosure Statement. The Disclosure Statement does not contain adequate information. The deadline for the Debtors to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtors to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. If the First Amended Disclosure Statement is approved at the above-referenced hearing, the Court will hold a hearing on confirmation of the First Amended Plan on **July 24, 2018 at 10:00 a.m.**, subject to the deadlines for solicitation of votes and plan confirmation that will be set forth in the Court's order after hearing on the First Amended Disclosure Statement.

Pleadings Filed and Reviewed:

- 1) Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors Rideshare Port Management, LLC and Red Booth, Inc. (the "Disclosure Statement") [Rideshare Doc. No. 53], [Red Booth Doc. No. 69]
- 2) Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management,

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Thursday, April 05, 2018

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10:00 AM

CONT... Rideshare Port Management, LLC Chapter 11

LLC and Red Booth, Inc. (the "Plan") [Rideshare Doc. No. 54], [Red Booth Doc. No. 70]

- 3) Opposition to Joint Disclosure Statement Describing Plan of Reorganization (the "Opposition") [Rideshare Doc. No. 67]

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC (Case No. 2:17-bk-22974-ER) and Red Booth, Inc. (Case No. 2:17-bk-22975-ER) (collectively, the "Debtors"), and each of them, seek approval of the "Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors, Rideshare Port Management, LLC and Red Booth, Inc." (the "Disclosure Statement") [Rideshare Doc. No. 53], [Red Booth Doc. No. 69]. The Debtors', and each of them, concurrently filed the "Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management, LLC and Red Booth, Inc." (the "Plan") [Rideshare Doc. No. 54], [Red Booth Doc. No. 70].¹ **[Note 1].**

Description of the Plan and Disclosure Statement

The Plan will become effective (the "Effective Date") within 60 days after the date of entry of the Confirmation Order.

The Plan's includes "Unclassified Claims" as follows:

- 1) Administrative Priority Claims: these claims include (i) professional fees and costs; and (ii) United States Trustee's fees. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
- 2) Unclassified Priority Claims/Priority Tax Claims: Unsecured Claims of Governmental Units entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date unless the Debtor files an objection to such claim prior to the Effective Date. The Debtors are not aware of any Unclassified Priority Claims at this time.

The Plan's classification scheme for Claims and Interests is as follows:

- 1) Class 1: Secured Tax Claims Against the Rideshare Debtor: this class

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includes allowed secured tax claims against the Rideshare Debtor. Class 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.

- 2) Class 2: Secured Tax Claims Against the Rideshare Debtor: this class includes allowed secured tax claims against the Rideshare Debtor. Class 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.
- 3) Class 3: Convenience Claims: Class 3 consists of Convenience Claims (as that term is defined in the Plan and Disclosure Statement) against the Debtors. Class 3 is impaired under the Plan and entitled to vote on the Plan.
- 4) Class 4: Allowed Claims of the Holders of General Unsecured Claims Against the Rideshare Debtor: Class 4 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 5, 6, and/or 7. The Debtors' estimate of the amount of the Class 4 Claims is \$277,057.00. Holders of Class 4 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 4 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 4 Plan Reserve Account; or (d) liquidation value/final payment.
- 5) Class 5: Allowed Claims of the Holders of General Unsecured Claims Against the Red Booth Debtor: Class 5 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 4, 6, and/or 7. The Debtors' estimate of the amount of the Class 5 Claims is \$31,275.00. Holders of Class 5 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 5 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 5 Plan Reserve

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Account; or (d) liquidation value/final payment.

- 6) Class 6: Disputed Employment Claims: Class 6 consists of the Disputed Employment Claims. Class 6 is impaired under the Plan and entitled to vote on the Plan. The Holders of Class 6 Claims may select one of two options under the Plan.
- 7) Class 7: Allowed Subordinated Claims for Penalties and All Other Subordinated Allowed Claims: Class 7 consists of allowed subordinated claims for penalties, if any, and all other allowed subordinated claims. Class 7 is impaired under the Plan and entitled to vote on the Plan.
- 8) Class 8: Interests in the Rideshare Debtor: Class 8 consists of the Interests in the Rideshare Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Rideshare Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.
- 9) Class 9: Interests in the Red Booth Debtor: Class 9 consists of the Interests in the Red Booth Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Red Booth Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.

The Disclosure Statement states that the Plan will be funded by the (i) revenue generated by the Reorganized Debtors; (ii) the New Value Contribution; and (iii) net recoveries from Rights of Action, if any. The Debtors anticipate that there will have approximately \$44,281.21 in unrestricted cash on the Effective Date.

The plan's risk factors, as detailed in the Disclosure Statement, include the risk that the Debtor's projections of its income and expenses between the date of the Disclosure Statement and the date of the proposed distributions may prove to be overly optimistic.

The Disclosure Statement does not contain the exhibit designated by the

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Disclosure Statement as containing the Debtors' Liquidation Analysis.

Opposition

On March 22, 2018, Kaushaal Laxmee, Gary Oganessian, Alex Licterman and Howard Miller (collectively, the "Creditors") filed the "Opposition to Joint Disclosure Statement Describing Plan of Reorganization" (the "Opposition") [Rideshare Doc. No. 67]. The Opposition contends that the Disclosure Statement is inadequate in the following respects:

- (1) The Disclosure Statement does not provide any information as to the amount or source of the New Value Contribution;
- (2) The Disclosure Statement does not provide information as to the procedure for determining disputed claims, including Creditors' claims;
- (3) The Disclosure Statement references exhibits which have not been filed;
- (4) The Disclosure Statement separately classifies unsecured "Disputed Employment Claims" from other general unsecured claims, which is impermissible gerrymandering;
- (5) The Plan provides for an impermissible waiver of creditor rights against non-debtor parties; and
- (6) The Disclosure Statement, as a whole, lacks material information for unsecured creditors to make an informed judgment on whether to vote for or against the Plan; the Disclosure Statement's description of the class treatments is ambiguous and renders it impossible for the Creditors to know what the payout will be or the source of funds, and it is thus impossible to determine whether the treatment of insider unsecured claims will violate the absolute priority rule.

Therefore, the Opposition request that the Court deny approval of the Disclosure Statement.

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II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or

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otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement fails to satisfy the following relevant *Metrocraft* factors: (2) a description of the available assets and their value; (4) the source of information stated in the disclosure statement; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; and (15) information relevant to the risks posed to creditors under the Plan.

Among other deficiencies, the Disclosure Statement: (a) does not provide adequate information regarding the specific identities of the "Plan Funders," the amount of the contemplated New Value Contribution, or state whether the New Value Contribution has been exposed to the market; (b) provides for interest holders in Class 8 to retain their interests due to the New Value Contribution, but does not provide a valuation offered for those interests; (c) does not specify the interest rate that is being used to bring the present value equal to the liquidation value, where applicable; (d) references omitted exhibits which are material to the adequacy of the Disclosure Statement (*e.g.*, the procedure for estimating or allowing disputed claims) and which, contrary to their stated intent in the Disclosure Statement, the Debtors have not filed prior to this hearing; (e) does not adequately describe the class treatments or detail the anticipated pay outs to respective classes, which makes it impossible for voting claimholders to assess whether the treatment of insider unsecured claims will violate the absolute priority rule; and (f) does not adequately detail the effect of, among other things, election to participate in the Plan Trust.

The Court notes that, in other filings in their respective cases and in the related Rideshare Adversary Proceeding (Adv. Case. No. 2:17-ap-01530-ER), the Debtors have stated their intent to file a First Amended Joint Plan and Joint Disclosure Statement. *See, e.g.*, "Motion to Extend Exclusivity Period" [Rideshare Doc. No. 66]; "Reply to Defendant's Opposition to the Motion to Extend the Preliminary Injunction"

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[Adv. Doc. No. 40]. In these filings, the Debtors have averred that the Debtors are negotiating with certain of the unsecured creditors, including the Creditors, towards a consensual resolution of their claims, and that the Amended Joint Plan and Joint Disclosure Statement will address the deficiencies identified with respect to the current Plan and Disclosure Statement.

III. Conclusion

For the reasons set forth above, the Court DENIES the Motion for Approval of the Disclosure Statement. The Disclosure Statement does not contain adequate information. The deadline for the Debtors to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtors to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. If the First Amended Disclosure Statement is approved at the above-referenced hearing, the Court will hold a hearing on confirmation of the First Amended Plan on **July 24, 2018 at 10:00 a.m.**, subject to the deadlines for solicitation of votes and plan confirmation that will be set forth in the Court's order after hearing on the First Amended Disclosure Statement.

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtors have both filed the Joint Disclosure Statement and the Plan in their respective cases. For the purposes of this tentative ruling, the Court will cite the Disclosure Statement and Plan filed in the Rideshare Debtor's case (2:17-bk-22974-

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ER), Doc. Nos. 53 & 54, respectively. The Disclosure Statement and Plan filed in the Red Booth Debtor's case (2:17-bk-22975-ER) are located at Doc. Nos. 69 & 70, respectively.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#3.00 Hearing
RE: [25] [26] Motion for Preliminary Injunction Corrected Notice of Motion and Motion of Debtors and Debtors in Possession to Extend Preliminary Injunction; Memorandum of Points and Authorities and Declaration of Rattan Joea

Docket 26

Tentative Ruling:

4/4/2018

For the reasons set forth herein, the Court GRANTS the Debtor's Motion for extension of the preliminary injunction under § 105(a). The deadline for the Debtor and Red Booth to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtor and Red Booth to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. Unless otherwise ordered, the preliminary injunction will terminate without further notice or hearing on **July 31, 2018**.

Pleadings Filed and Reviewed:

- 1) Debtor's and Debtor in Possession's Notice of Motion and Motion to Extend Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2) (the "Motion") [Adv. Doc. No. 25]
- 2) Opposition to the Motion (the "Opposition") [Adv. Doc. No. 38]
- 3) Reply to the Opposition (the "Reply") [Adv. Doc. No. 40]
- 4) Order Granting Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2) (the "Preliminary Injunction Order") [Adv. No. 17]

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- a) Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2) [Adv. Doc. No. 10]
 - i) Declaration of Rattan Joea [Adv. Doc. No. 11]
 - ii) Summons Service [Adv. Doc. No. 9]
- 5) Order Extending Debtor's Deadline to File a Disclosure Statement and Plan from January 26, 2018 to February 9, 2018 [Doc. No. 52]
- 6) Order Setting Deadline for Debtor to File Plan and Disclosure Statement and Deadline to Obtain Court Approval Thereof [Doc. No. 30]

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC (the "Debtor"), filed a voluntary Chapter 11 petition on October 23, 2017, Case No. 2:17-bk-22974-ER (the "Petition") [Bankr. Doc. No. 1]. The Debtor is in the business of providing rideshare van services to passengers, including services to Los Angeles International Airport ("LAX"). The Petition was precipitated by the Debtor having to defend multiple lawsuits—the Debtor has been named as a defendant in at least nine separate lawsuits—which the Defendant can no longer afford. Additionally, the increasing use by consumers of other rideshare services such as Uber has reduced the Debtor's market share, leading to a reduction in gross profits realized. The Debtor's ultimate goal is to reorganize.

Relevant or Related Entities and Individuals

There are four additional entities, and one individual, relevant or related to the Debtor, or the Debtor's business operations, and which are implicated in the discussion herein; therefore, an introduction of the entities and the individual is appropriate.

Rattan Joea

Rattan Joea ("Rattan") is the managing member of the Debtor, and holder of 95% of the Debtor's membership interest. Rattan's management of, and attention to, the Debtor is critical to the successful operations of the Debtor. Rattan's management duties require him to dedicate a substantial portion of his time to the Debtor's operations, as well as the operations of Red Vans, Inc. ("Red Vans"), and Red Booth, Inc. ("Red Booth") (Red Vans and Red Booth are discussed in more detail below).

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Rattan is the primary interface between the Debtor and LAX, and is involved in aspects of the Debtor's daily operations such as overseeing customer routing, dispatching, and pickup. Rattan is also responsible for ensuring that the Debtor—and the other entities which he manages—are in compliance with all relevant airport, local, state, and federal regulations. Rattan's compliance responsibilities require him to be available to attend meetings regarding airport procedures and policies, and to oversee quality of services, regulatory compliance, and implementation of security and safety standards. In sum, Rattan plays a central role in the Debtor's ongoing business operations.

Rideshare Airport Management, LLC

Rideshare Airport Management, LLC ("Airport Management") is a dba of the Debtor. There was a brief gap-period of registration with the Secretary of State during which the name "Rideshare Port Management, LLC" was registered by a third party. Thus, during the gap-period the Debtor used the alternate name "Rideshare Airport Management, LLC" until the name "Rideshare Port Management, LLC" became available again.

Red Booth, Inc.

Red Booth, Inc. ("Red Booth") is a California corporation headquartered in Los Angeles, and engaged in the business of providing curbside support for Red Vans Management Services, Inc. ("Red Vans"). One hundred percent of the stock interest in Red Booth is held by Self Help Trust. Red Booth filed a voluntary Chapter 11 petition on October 23, 2017, Case No. 2:17-bk-22975-ER, which is now pending before this Court.

Red Vans, Inc.

Red Vans, Inc. ("Red Vans") is a California corporation headquartered in Los Angeles. One hundred percent of the stock interest in Red Vans is held by the Garcha Family Trust. Red Vans is a concessionaire with the non-exclusive right to pick-up reservations and non-reservation passengers and their baggage by approved vehicles in and out of LAX, pursuant to that certain "LAX Non-Exclusive, Full-Service Passenger Stage Corporation Share Ride Concession Agreement" between the City of Los Angeles Department of Airports and Red Vans (the "LAX Agreement"). The

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LAX Agreement has a term of three years commencing August 1, 2016, and can be extended for up to two consecutive one-year periods. The Debtor states that the LAX Agreement is "absolutely essential to the business operations of Red Vans and *a fortiori* the Debtor and Red Booth."

Prime Time, Inc.

Prime Time, Inc. ("Prime Time") is a California corporation. Prime Time is a member of the Debtor, LLC. Prime Time's only asset is its membership interest in the Debtor. Prime Time holds a five percent membership interest in the Debtor, LLC.

The Adversary Proceeding

On November 9, 2017, the Debtor filed the "Complaint by Rideshare Port Management, LLC against Alex Lichterman, [et al.] for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2); [and] Temporary Restraining Order" (the "Adversary Complaint") [Adv. Doc. No. 1], commencing this adversary proceeding. On November 14, 2017, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2)" (the "Preliminary Injunction Motion") [Adv. Doc. No. 10]. On December 13, 2017, the Court entered the Order Granting the Preliminary Injunction Motion (the "Preliminary Injunction Order") [Adv. No. 17]. Pursuant to the Court's Preliminary Injunction Order, the preliminary injunction terminated by its own terms on March 7, 2018. The Court declined to make any finding as to whether the Automatic Stay under § 362(a)(3) applies to Rattan or the Non-Debtor entities.

The Motion to Extend the Preliminary Injunction

On March 1, 2018, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion to Extend Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2)" (the "Motion") [Adv. Doc. No. 25]. The Motion requests an order extending the preliminary injunction under § 105(a) to provide for an immediate and temporary stay of any and all acts, actions, claims, and related proceedings against (1)

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the entities of (a) Red Vans , (b) Prime Time, (c) Airport Management (collectively, the "Non-Debtor Entities"); and (2) the Debtor's managing member, Rattan, to enforce any claims, judgments and/or any rights that the State Court Plaintiffs are asserting, or may seek to assert in connection with the civil actions and arbitrations (the "State Court Actions")¹ [Note 1].

The Debtor, the Non-Debtor Entities, and Rattan are named as defendants in eight separate civil actions and arbitrations which together comprise the "State Court Actions." See "Declaration of Rattan Joea" ("Joea Decl.") [Adv. Doc. No. 25], at Ex. 1. According to the Debtor, the State Court Actions were initiated by or on behalf of former or disgruntled drivers who claim that they were wrongly classified as independent contractors rather than employees. The 14 plaintiffs in the State Court Actions are currently, or were previously in privity of contract with the Debtor. The Non-Debtor Entities and Rattan are named as defendants based on indirect, derivative liability, and alter ego theories. Thus, the Debtor asserts that it will necessarily be implicated under the principles of collateral estoppel by a finding of liability against either or both the Non-Debtor Entities and/or Rattan. The grounds for the preliminary injunction sought by the Motion are as follows:

- The Debtor will be implicated under the principles of collateral estoppel if the State Court Plaintiffs are permitted to proceed against the Non-Debtor Defendants and Rattan;
- An interdependent business relationship exists between the Debtor, Red Booth, Inc., and the Non-Debtor Defendants such that proceeding against any of them will adversely impact the Debtor's business operations;
- The claims asserted in the State Court Actions are disputed, and the interim prosecution efforts will circumvent the Debtor's goal of reorganization;
- The State Court Actions are draining the Debtor's finances, disrupting the Debtor's business operations, and require large amounts of Rattan's time to be diverted from business operations to the litigation;
- The undivided time and attention of the Debtor and Rattan to the Debtor's efforts towards reorganization are essential at this stage of the case;

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- The Debtor and the Non-Debtor entities have previously prevailed on multiple occasions in lawsuits similar to the State Court Actions, *see* Joea Decl. at Ex. 2;
- Years of defending these claims has affected the financial viability of the Debtor, and the Debtor can no longer afford to defend without the financial restructuring in this bankruptcy case;
- The Debtor requires an extension of the preliminary injunction so that the Debtor can continue the negotiations with the State Court Plaintiffs towards a consensual plan and consensual claims allowance and/or claims resolution procedure. Additionally, the Debtor and the Red Booth Debtor intend to file a First Amended Plan and First Amended Disclosure Statement;
- Permitting the plaintiffs in the State Court Actions to proceed and to seek, among other things, default judgment and/or to enforce their defaults against the Non-Debtor Entities and/or Rattan will cause irreparable harm to the Debtor's reorganization efforts; and
- Permitting the State Court Actions to proceed at this time will prejudice the Debtor's general unsecured creditors.

The Motion contends that without an extension of the preliminary injunction, there is "real and imminent danger" that the Debtor's reorganization will be jeopardized and irreparably harmed. According to the Debtor, if the State Court Actions are not enjoined, and the State Court Plaintiffs are permitted to create, perfect, and enforce a lien against the business assets, and disrupt the operations, of the Non-Debtor Entities, the Non-Debtor Entities will be precluded from making the funding contributions contemplated by the First Amended Joint Plan of Reorganization (the "Amended Plan"). This will in turn work to the detriment of the Debtor's other creditors, and the Debtor's continuing business operations.

Additionally, with regards to the Mahmoudi State Action² [Note 2], in which the plaintiff seeks a default judgment against Prime Time, if Mahmoudi is permitted to execute upon Prime Time's interest in the Debtor, Mahmoudi could conceivably assert control over the Debtor and its assets to the detriment of the Debtor's creditors.

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This is because the "Rideshare Port Management, LLC Operating Agreement" (the "Rideshare Operating Agreement") [Adv. Doc. No. 25, Ex. 4], states that Prime Time is an equity member of the Debtor, and Article Thirteen of the Rideshare Operating Agreement requires unanimous consent of the members with respect to certain actions taken by the Debtor. Actions requiring unanimous consent of the members include: (1) borrowing money; (2) compromising claims; (3) transferring assets; and (4) purchases in excess of \$100.00. Rideshare Operating Agreement at Art. 13. Therefore, in addition to other consequences, *see* Motion at 22, if Mahmoudi is permitted to obtain a default judgment and execute upon Prime Time's interest in the Debtor, Mahmoudi will be afforded the right in the Debtor's operations and could conceivably exert managerial influence over the Debtor.

The Opposition

On March 22, 2018, Kaushaal Laxmee, Gary Oganesian, Alex Licterman and Howard Miller (collectively, the "Defendants") filed the Opposition to the Motion (the "Opposition") [Adv. Doc. No. 38]. The Opposition contends that the preliminary injunction should not be extended because: (1) the proposed Joint Plan filed on February 9, 2018 [Rideshare Doc. No. 54], [Red Booth Doc. No. 70], demonstrates that the Debtor has no likelihood of success in reorganization; (2) the Defendants, not the Debtor, will suffer irreparable harm if the injunction is extended; (3) the balance of the equities weighs in favor of the Defendants; and (4) no public interest will be served by the requested extension.

First, for the reasons stated in the Defendants' Opposition to the Disclosure Statement [Rideshare Doc. No. 67]—which objections include, among other things, that the Disclosure Statement and Plan "are missing material exhibits, fail to provide any meaningful information regarding the new value that the Non-Debtor Entities will allegedly provide, improperly germander [*sic*] the classes of claims and impermissibly provide for a complete injunction and waiver of creditor recourse against non-debtor parties, including the Non-Debtor Entities," Opposition at 6—the Debtor has not demonstrated a likelihood of success on the merits, *i.e.* that the Debtor will confirm a plan.

Second, the Debtor will not suffer irreparable harm if the injunction is not extended. The Opposition contends that: (a) the Debtor is protected by the automatic stay; (b) terminating the injunction will not affect the claims administration process,

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but rather will benefit the estate by liquidating the Defendants' claims against the third-parties, thus limiting the resources the Debtor will need to expend to determine the amount of claims; (c) there is no indication that Rattan is in any way responsible for the Non-Debtor Entity Prime Time; and (d) the fact that the Joint Plan and Disclosure Statement fail to describe which Non-Debtor Entities will be providing new value and in what amount, coupled with the fact that Prime Time's only asset is its interest in the Debtor, undermines the Debtor's argument that termination of the injunction will prevent the Non-Debtor Entities from making their contemplated contributions to the funding of the Plan.

Third, the balance of the equities weighs in favor of the Defendants because the combination of extending the preliminary injunction and the permanent injunction incorporated into the Plan will result in complete termination of the rights of the Defendants to pursue their claims against the Debtor, Rattan, and the Non-Debtor Entities. Furthermore, in its current form, the Plan is incomplete, fails to detail a process for determining the Defendants' claims, and improperly classifies the Defendants' claim in a separate class from other unsecured claims.

Lastly, based on the foregoing arguments, the Debtor cannot demonstrate that any public interest will be served by extending the preliminary injunction.

The Reply

On March 29, 2018, the Debtor filed the Reply to the Opposition (the "Reply") [Adv. Doc. No. 40]. The Reply states that the Debtor and Red Booth require an extension of the preliminary injunction to file a First Amended Joint Plan and Joint Disclosure Statement to address various issues raised in the Defendants' Opposition to the Disclosure Statement as well as the Defendants' Opposition to the present Motion. Among other things, the Debtor and Red Booth intend to file the missing exhibits and schedules to the Disclosure Statement, address the new value issue in the Amended Joint Plan and Joint Disclosure Statement, and address the issue of disclosing the amount of funding and other details regarding the Plan Funders in the Amended Joint Plan and Joint Disclosure Statement. Insofar as the Opposition argues that the Plan and Disclosure Statement provide for an injunction and waiver of claims against the "Plan Funders" without clearly identifying the Plan Funders, the Reply contends that the Disclosure Statement clearly identifies the Plan Funders as the Debtors, Red Vans,

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Prime Time, and Airport Management.

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For these reasons, and in addition to the arguments set forth in the Motion, the Reply contends that the Debtor has made the requisite showing for extension of the preliminary injunction.

II. Findings of Fact and Conclusions of Law

Preliminary Injunction Under Section 105(a)

The Court is vested with power under §105 to enjoin the State Court Actions to preserve its jurisdiction. As the Ninth Circuit has explained:

[The] usual preliminary injunction standard does not apply to injunctions issued by the bankruptcy court pursuant to 11 U.S.C. § 105. That section specifically provides:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (emphasis added).

The only requirement for the issuance of an injunction under § 105 is that the remedy conform to the objectives of the Bankruptcy Code. Thus, as the Seventh Circuit has observed:

[A] bankruptcy court can enjoin proceedings in other courts when it is satisfied that such proceedings would defeat or impair its jurisdiction over the case before it. In other words, the court does not need to demonstrate an inadequate remedy at law or irreparable harm.

In re L & S Industries, Inc., 989 F.2d 929, 932(7th Cir.1993). As the Sixth Circuit further noted, “Section 105(a) contemplates injunctive

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relief in precisely those circumstances where the parties are ‘pursuing actions in other courts that threaten the integrity of a bankrupt’s estate.’”

Beck v. Fort James Corp. (In re Crown Vantage, Inc.), 421 F.3d 963, 975-76 (9th Cir. 2005); *see also LTV Steel Co., Inc. v. Bd. Of Educ. Of Cleveland City School Dist. (In re Chateaugay Corp., Reomar, Inc.)*, 93 B.R. 26, 29 (S.D.N.Y. 1988) (“The usual grounds for injunctive relief such as irreparable injury need not be shown in a proceeding for an injunction under section 105(a). Rather, a bankruptcy court may enjoin proceedings in other courts when it is satisfied that such a proceeding would defeat or impair its jurisdiction with respect to a case before it.”).

Here, the Court finds that extension of the preliminary injunction under § 105 (a) to enjoin the State Court Actions from proceeding is necessary and appropriate to permit the Debtor to file a First Amended Joint Plan and First Amended Joint Disclosure Statement. Given the relationship between, and interdependence of, the Debtor, the Non-Debtor Entities, and Rattan, permitting the State Court Actions to proceed would defeat or impair the Court’s jurisdiction with respect to the Debtor’s case. Rattan’s participation in the Debtor’s reorganization efforts at this stage is necessary for the Debtor to formulate a viable First Amended Plan and Disclosure Statement. If Rattan is required to defend all the State Court Actions at this time, his ability to participate in the formulation of a Plan will be substantially limited, and would thus negatively impact the Debtor’s reorganization efforts. Furthermore, a finding of liability against the Non-Debtor Entities and/or Rattan will *a fortiori* harm Rideshare and Red Booth, and will impair the Debtor’s reorganization efforts.

With regards to the Mahmoudi State Action, for example, absent a § 105(a) preliminary injunction, Mahmoudi will likely obtain a right of control over the Debtor and the Debtor’s assets, and could exert managerial influence over the Debtor’s business operations as a result, in addition to a number of additional consequences which would impair the Debtor’s reorganization efforts, as well as the Court’s jurisdiction with respect to the Debtor’s case. Because the Rideshare Operating Agreement requires unanimous consent, if Mahmoudi gains control of Prime Time he will have control over the Debtor since the voting will not be unanimous. Actions requiring unanimous consent of the members include: (1) borrowing money; (2) compromising claims; (3) transferring assets; and (4) purchases in excess of \$100.00. Rideshare Operating Agreement at Art. 13. Thus, Mahmoudi could potentially affect

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the Debtor's ability to carry out actions associated with confirming a Plan such as, for example, borrowing money or transferring assets. Additionally, Article Seventeen of the Rideshare Agreement, "Grounds for Expulsion," lists among other grounds for expulsion, "If any *Equity member* . . . makes an assignment for the benefit of creditors, is declared a bankrupt, or if his/her assets are administered in any type of creditors' proceeding." Rideshare Operating Agreement at Art. 17. Expulsion, in turn, trigger's Rattan's obligation to purchase Prime Time's interest in the Debtor pursuant to Article Seventeen, subsection (C) of the Rideshare Operating Agreement. In the event Rattan fails to do so, the result is liquidation of the Debtor pursuant to Article Eighteen, subsection (C) of the Rideshare Operating Agreement.

With regards to the other Non-Debtor Entities (*i.e.* Red Vans and Airport Management), the income generated from the ongoing operations of the Non-Debtor entities will be the primary funding source for the Debtor's contemplated First Amended Plan and First Amended Disclosure Statement; therefore, the ability of the Non-Debtor Entities to continue to operate unimpaired is necessary for the contemplated reorganization, as it has been described by the Debtor, to be successful. Thus, to this extent, should the plaintiffs in the State Court Actions proceed, they will be permitted to create, perfect, and enforce a lien against the business assets, and disrupt the operations of the Non-Debtor Entities, thereby precluding them from making the new value contribution, the details of which the Debtor intends to more clearly address in the First Amended Plan and First Amended Disclosure Statement.

Lastly, the Debtor's contemplated Plan will provide "for a procedure to determine claims more expeditiously and pay allowed claim[s]" pursuant to the applicable provisions of the Bankruptcy Code.

As set forth below, as well as in the Court's tentative ruling on the Joint Disclosure Statement issued concurrently herewith (*see* Tentative Ruling, April 5, 2018 at 10:00 a.m., at Cal. No. 5), the Court has set hard deadlines by which the Debtor and Red Booth must file serve the First Amended Plan and First Amended Disclosure Statement, obtain approval of the First Amended Disclosure Statement, and confirm the First Amended Plan. The State Court Actions are in their early stages, and the extension of the preliminary injunction will cause only minor delay in the prosecution of those actions if the Debtor is unable to obtain approval of the First Amended Disclosure Statement and/or confirmation of the First Amended Plan by the

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deadlines set by the Court.

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Based on the foregoing, the Court finds that extension of the preliminary injunction under § 105(a) enjoining the State Court Actions, *see* Notes 1 & 2, from proceeding is necessary to preserve the Court's jurisdiction over the Debtor's case, and to preserve the status quo for the period set forth herein for the Debtor and Red Booth to file the First Amended Plan and First Amended Disclosure Statement, and to obtain confirmation and approval thereof.

Issuance of a § 105(a) preliminary injunction is a powerful remedy that the Court does not employ lightly; thus, the Court is only inclined to afford the Debtor the protection of a preliminary injunction for the brief period of time necessary for the Debtor to obtain timely confirmation and approval of the First Amended Plan.

III. Conclusion

In conclusion, the Court GRANTS the Debtor's Motion for extension of the preliminary injunction under § 105(a). The deadline for the Debtor and Red Booth to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtor and Red Booth to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. The preliminary injunction will terminate without further order of the Court on **July 24, 2018**.

The Debtor shall submit a conforming order within seven days of the hearing. No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor, the Non-Debtor Entities, and/or Rattan (for the purposes of this note, collectively referred to as the "State Court Defendants") are named as defendants

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in the following State Court Actions: (1) *Valo Khalatian v. State Court Defendants*, Los Angeles Superior Court ("LASC"), Case No. BC485917 (dismissed 8/29/14); (2) *Raymond Moradian [on behalf of a class of others similarly situated] v. State Court Defendants*, LASC, Case No. BC496400; (3) *Jose Diaz, et al. v. State Court Defendants*, LASC, Case No. BC529793 (dismissed, binding arbitration 4/19/17); (4) *Carlos Lizardo v. State Court Defendants*, LASC, Case No. BC599951; (5) *Roberto Martinez v. State Court Defendants*, LASC-Torrance, Case No. YC071320; (6) *Kaushaal Laxmee v. State Court Defendants*, LASC, Case No. BC633655; (7) *Hassan Mahmoudi [on behalf of a class of others similarly situated] v. State Court Defendants*, LASC, Case No. BC640240; and (8) *Ronaldo Ramos, et al. v. State Court Defendants*, LASC, Case No. BC 610192.

Note 2: *Hassan Mahmoudi [on behalf of a class of others similarly situated] v. Prime Time Shuttle, Inc.; Rideshare Port Management, LLC dba Prime Time Shuttle, LLC; Airflyer Transport Associates, LLC; and DOES 1 through 50*, LASC, Case No. BC640240 (the "Mahmoudi State Action").

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

Defendant(s):

Alex Lichterman

Represented By
Leslie A Cohen

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Represented By
Leslie A Cohen

Hassan Mahmoudi

Pro Se

Howard Miller

Represented By

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Leslie A Cohen

Jose Diaz Pro Se

Juan Martinez Pro Se

Kaushaal Laxmee Represented By
Leslie A Cohen

Raymond Moradian Pro Se

Roberto Martinez Pro Se

Ronaldo Ramos Pro Se

Valo Khalatian Represented By
Tony Forberg

Vince Olivar Pro Se

Plaintiff(s):

Rideshare Port Management, LLC Represented By
Sandford L. Frey

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2:17-22975 Red Booth, Inc.

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#4.00 *Debtors' Motion for Order Authorizing and Approving (A) the Adequacy of the Joint Disclosure Statement Describing Plan of Reorganization Proposed Jointly by Debtors; (B) the Form, Scope, and Nature of Solicitation, Balloting, Tabulation and Notices with Respect Thereto; and (C) Related Confirmation Deadlines and Notices RE: [69] Disclosure Statement (Frey, Sandford)*

Docket 69

Tentative Ruling:

4/4/2018

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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10:00 AM

2:17-25543 Norlaine, Inc,

Chapter 7

#1.00 Hearing
RE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1449 W Industrial Park Street, Covina, CA . (Long, Helen)

fr: 2-5-18

Docket 6

Tentative Ruling:

4/5/2018

This is a continued hearing. For the reasons set forth below, the Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1).

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that Automatic Stay Does Not Apply Under 11 U.S.C. § 362(I) (Unlawful Detainer) (the "Motion") [Doc. No. 6]
- 2) Trustee's Opposition to the Motion (the "Opposition") [Doc. No. 12]
- 3) Stipulation for Occupancy and Payment of Rent (the "Stipulation") [Doc. No. 18]
 - a) Order Approving the Stipulation [Doc. No. 21]

Norlaine, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on December 22, 2017 (the "Petition") [Doc. No. 1]. On January 12, 2018, Trietsch Property Enterprises, LP (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that Automatic Stay Does Not Apply Under 11 U.S.C. § 362(I) (Unlawful Detainer)" (the "Motion") [Doc. No. 6]. The Chapter 7 Trustee, David M. Goodrich (the "Trustee"), filed the Trustee's Opposition to the Motion on January 22, 2018 (the "Opposition") [Doc. No. 12].

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Norlaine, Inc,

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On February 5, 2018, David M. Goodrich, the Chapter 7 Trustee (the "Trustee") filed the "Stipulation for Occupancy and Payment of Rent" (the "Stipulation") [Doc. No. 18] entered into between the Trustee and the Movant. On February 6, 2018, the Court entered the Order Approving the Stipulation [Doc. No. 21]. The hearing on the Motion was continued in order to permit the Trustee to administer the certain Estate assets located at the Property in accordance with the terms of the Stipulation. Pursuant to the Stipulation, the Trustee needed until March 31, 2018 to administer the above-referenced assets, and the Estate, therefore, retained possession of the Property up to and including March 31, 2018. Such deadline having passed, and no further Opposition to the Motion or further Stipulation having been filed, the Court finds that the Movant is entitled to the relief sought in the Motion.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant caused notice to quit to be served on the Debtor on December 11, 2017. An unlawful detainer proceeding was commenced on December 19, 2017. Movant acquired title to the Property by foreclosure sale before the Petition was filed and recorded the deed within the period provided by state law for perfection.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Norlaine, Inc,

Represented By
James R Selth

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:18-11141 Oscar Dabid Lepe and Vivian Yvette Estrada

Chapter 7

#2.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 TOYOTA COROLLA, VIN 5YFBURHEXEP028256 . (Wang, Jennifer)

Docket 13

Tentative Ruling:

4/5/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Oscar Dabid Lepe

Represented By
Emilia N McAfee

Joint Debtor(s):

Vivian Yvette Estrada

Represented By
Emilia N McAfee

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-11676 Chana Christine Andrews

Chapter 7

#3.00 Hearing
RE: [8] Motion for Relief from Stay Under 11 U.S.C. Sec. 362.

Docket 8

***** VACATED *** REASON: CONTINUED 4-23-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chana Christine Andrews

Represented By
David Lozano

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:17-23517 Ray C Patterson

Chapter 7

#4.00 HearingRE: [51] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7520 Shore Cliff Dr., Los Angeles, CA 90045 . (O, Christina)

Docket 51

Tentative Ruling:

4/5/2018

For the reasons set forth below, The Motion is GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Additionally, the Court finds that there is sufficient evidence to GRANT relief pursuant to 11 U.S.C. § 362(d)(4).

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (the "Motion") [Doc. No. 51]
- 2) Debtor's Response to the Motion (the "Opposition") [Doc. No. 53]
 - a) Declaration of Ray C. Patterson (the "Trustee's Declaration")
- 3) Order Granting Motion to Approve Compromise [Doc. No. 47]
 - a) Motion to Approve Compromise under Rule 9019 [Doc. No. 42]

I. Facts and Summary of Pleadings

Ray C. Patterson (the "Debtor") filed a voluntary Chapter 7 petition on November 1, 2017 (the "Petition") [Doc. No. 1]. The Debtor owns certain real property located at 7520 Shore Cliff Drive, Los Angeles, CA 90045 (the "Property"). On February 9, 2018, the Chapter 7 Trustee, Wesley H. Avery (the "Trustee"), filed the "Motion for Order Approving Compromise Between Trustee and Debtor" (the "Settlement") [Doc. No. 42]. On March 1, 2018, the Court entered the Order Approving the Settlement [Doc. No. 47]. Pursuant to the terms of the Settlement, the Debtor tendered a settlement payment in the amount of \$25,000.00 for the benefit of creditors of the Estate in exchange for the Trustee's release of the Estate's interest in

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the Property, among other certain assets of the Debtor. The Property was deemed abandoned to the Debtor as of the date of entry of the Court's Order Approving the Settlement.

The Motion

On March 16, 2018, The Bank of New York Mellon fka The Bank of New York (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362" (the "Motion") [Doc. No. 51]. The Motion requests relief from the automatic stay pursuant to §§ 362(d)(1), (d)(2), and (d)(4) with regards to the Property. The Movant is the beneficiary of a note in the principal amount of \$1,467,987.91, secured by the Property (the "Note"). "Declaration of Katisha Gill" (the "Gill Declaration") [Doc. No. 51]. As of February 27, 2018, the Movant holds a total claim in the amount of \$1,907,396.28. *Id.*

The Motion requests relief from the automatic stay pursuant to: (i) § 362(d)(1) for cause, as the Movant's interest in the Property is not adequately protected by an adequate equity cushion; (ii) § 362(d)(2), as the does not have any equity in the Property, and the Property is not necessary for an effective reorganization; and (iii) § 362(d)(4) on the grounds that the bankruptcy was filed in bad faith, and the Petition was part of a scheme to delay, hinder, or defraud creditors.

The Opposition

On March 29, 2018, the Debtor filed the Opposition to the Motion (the "Opposition") [Doc. No. 53]. The Opposition disputes the Movant's valuation of the Property and the total amount of debt on the Property.

II. Findings of Fact and Conclusions of Law

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

Pursuant to the Order Approving the Settlement, and in accordance with the

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terms of the Settlement, the Estate abandoned to the Debtor all of its interest in the Property. Therefore, the Property is no longer property of the Estate. Because the Trustee will not be liquidating the Property for the benefit of creditors, there is no need for the Automatic Stay to continue to apply. To the extent the Debtor disputes the value of the Property and the Debtor's equity therein, the equity is no longer relevant considering that the Trustee will not be liquidating the Property for the benefit of creditors. Notwithstanding, the Court finds that, based on the Movant's valuation of the Property, which in turn was based upon the value of the Property listed in the Debtor's schedules, there is not sufficient equity in the Property to adequately protect the Movant's interest. The Debtor did not submit any declaration in support of the valuation of the Property claimed in the Opposition. This fact, coupled with the fact that the value claimed in the Opposition conflicts with the value listed on the Debtor's schedules without any explanation of the conflict, is not sufficient. Therefore, the Opposition is overruled.

The Court GRANTS relief under § 362(d)(4). Based upon the Debtor's Declaration testimony that he was unaware of the bankruptcy cases in which an interest in the Property was asserted, the Court declines to find that the filing of the bankruptcy case was in bad faith or that the Debtor was involved in a scheme to delay, hinder, or defraud creditors. However, the Court finds that there was, nevertheless, an apparent scheme to delay, hinder, or defraud creditors which involved the filing of multiple bankruptcy cases affecting the Property. Therefore, the Court has jurisdiction and authority to grant relief under § 362(d)(4). *See In re Vazquez*, 580 B.R. 526, 530 (Bankr. C.D. Cal. 2017) ("it is well established that, once the automatic stay has been implicated, Bankruptcy Courts have the jurisdiction and authority to grant relief from that stay, even if the property at issue is no longer part of the bankruptcy estate, such as after dismissal and closing of a case").

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

Considering that the Property is no longer property of the Estate, the 14-day stay prescribed by FRBP 4001(a)(3) is waived.

All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order

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Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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Hearing Room 1568

10:00 AM

2:18-12059 Perla Araceli Vargas

Chapter 7

#5.00 Hearing
RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 958 E. Avenue Q, Palmdale, CA 93550 .

Docket 11

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice. Oppositions, if any, will be considered at the hearing.

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Shane A. Inman in support of Motion at paragraphs 17-18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 09, 2018

Hearing Room 1568

10:00 AM

CONT...

Perla Araceli Vargas

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Perla Araceli Vargas

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-43268 PAUL BERGERON

Chapter 7

#1.00 Show Cause Hearing
RE: [20] .Application for Issuance of An Order Requiring Creditor Victor Yi to Show Cause Why He Should Not Be Held in Contempt

Docket 20

*** VACATED *** REASON: CONTINUED 4-24-18 AT 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

PAUL BERGERON

Represented By
Michael J Jaurigue
Kerry P Zeiler

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

**#2.00 APPLICANT: Attorney for Trustee (Other Firm) - ATKINSON ANDELSON
LOYA RUUD & ROMO**

Hearing re [152] and [153] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/9/2018

See Cal. No. 7 below, incorporated by reference.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#3.00 APPLICANT: Other Chapter 7 Administrative Expenses - United States Trustee

Hearing re [152] and [153] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/9/2018

See Cal. No. 7 below, incorporated by reference.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#4.00 APPLICANT: Other Chapter 7 Administrative Expenses - United States Trustee

Hearing re [152] and [153] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

4/9/2018

See Cal. No. 7 below, incorporated by reference.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#5.00 APPLICANT: Franchise Tax Board - Other State or Local Taxes (post-petition)

Hearing re [152] and [153] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/9/2018

See Cal. No. 7 below, incorporated by reference.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#6.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing re [152] and [153] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/9/2018

See Cal. No. 7 below, incorporated by reference.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#7.00 APPLICANT: Trustee - JOHN J MENCHACA

Hearing re [152] and [153] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/9/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$3,380.05

Total Expenses: \$128.60

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:10-56137 Electracash, Inc

Chapter 7

#8.00 APPLICANT: Accountant for Trustee - MENCHACA & COMPANY LLP

Hearing re [152] and [153] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

4/9/2018

Having reviewed the supplemental & final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (previously approved fees applications are now deemed final):

Fees: \$3,171.50

Expenses: \$32.59

You may submit on this tentative without appearing in court. To do so, contact Daniel Koontz or Cameron Schlagel at 213-894-1522.

Party Information

Debtor(s):

Electracash, Inc

Represented By
Douglas M Neistat
Andria M Rodriguez

Trustee(s):

John J Menchaca (TR)

Represented By
Helen R Frazer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:18-11909 Raymond Express International,LLC

Chapter 7

#9.00 Status HearingRE: [6] Addendum to voluntary petition Amended Involuntary Petition
(To Amend the Total Amount of Petitioners' Claims)

Docket 6

Tentative Ruling:

4/9/2018

Tentative Ruling:

The litigation deadlines set forth below shall govern the trial on the involuntary petition.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
 - a) Addendum to Involuntary Petition [Doc. No. 6]
 - b) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 7]
 - i) Proof of Service of Summons and Notice of Status Conference [Doc. No. 9]
- 2) Answer and Affirmative Defenses of Raymond Express International, LLC to Involuntary Petition [Doc. No. 10]

I. Facts and Summary of Pleadings

On February 21, 2018, Korean Air Lines Co., Ltd., Asiana Airlines, Inc., and Sunjin Logistics Co., Ltd. (collectively, the "Petitioning Creditors") commenced this involuntary Chapter 7 petition against Raymond Express International, LLC (the "Alleged Debtor"). The Alleged Debtor is a logistics company that transports perishable goods requiring refrigeration. On March 16, 2018, the Alleged Debtor answered the involuntary petition. This hearing is a status conference on the involuntary petition.

II. Findings and Conclusions

Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

CONT...

Raymond Express International,LLC

Chapter 7

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, . . . if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Where a petition is timely controverted, the court must enter an order for relief against the alleged debtor if, after trial, the court determines that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." § 303(h).

During the period between the commencement of an involuntary petition and the issuance of an order for relief, the Alleged Debtor enjoys the protections of the automatic stay but is not required to comply with many of the obligations imposed upon Debtors who commence voluntary petitions. To minimize the length of this period of uncertainty, the Court's policy is to set compressed litigation deadlines governing the trial on the involuntary petition.

The following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **5/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

CONT...

Raymond Express International,LLC

Chapter 7

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court FURTHER ORDERS that the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Petitioning Creditors will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Raymond Express International,LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 10, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#10.00 HearingRE: [9] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendant The Irving I. Moskowitz Foundation to Dismiss Plaintiff's Adversary Complaint; Memorandum of Points and Authorities in Support Thereof; Exhibits A-B; and Proof of Service

Docket 9

Tentative Ruling:

4/9/2018

By order entered on April 4, 2018 [Doc. No. 17], this hearing has been continued to **July 3, 2018, at 10:00 a.m.**

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By
	Samuel R Maizel
	John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation	Represented By
	Louis J Cisz III

Plaintiff(s):

Official Committee of Unsecured	Represented By
	Anthony Bisconti

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-20585 Leesa L. McLachlan

Chapter 7

#1.00 Reaffirmation Hearing Date Set
RE: [13] Reaffirmation Agreement Between Debtor and Ford Motor Credit
Company LLC (2016 Ford F150)

fr. 1-25-18

Docket 13

Party Information

Debtor(s):

Leesa L. McLachlan

Represented By
Joseph L Pittera

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-22480 Steve Delatore Sierra and Dolores Guevara Sierra

Chapter 7

#2.00 Cont'd hrg re: Reaffirmation Agreement
[Toyota Motor Credit Corporation]
fr. 2/22/18

Docket 20

Party Information

Debtor(s):

Steve Delatore Sierra

Represented By
Beatriz Chen

Joint Debtor(s):

Dolores Guevara Sierra

Represented By
Beatriz Chen

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-23592 Rafael Gonzalez and Maria Elena Gonzalez

Chapter 7

#3.00 Cont'd hrg re: Reaffirmation Agreement
[Toyota Motor Credit Corporation]
fr. 2/22/18

Docket 12

Party Information

Debtor(s):

Rafael Gonzalez

Represented By
Michael H Colmenares

Joint Debtor(s):

Maria Elena Gonzalez

Represented By
Michael H Colmenares

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-23979 Ismael De La Cruz and Brenda De La Cruz

Chapter 7

#4.00 Reaffirmation Hearing Date Set RE: [13] Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 13

Party Information

Debtor(s):

Ismael De La Cruz

Represented By
Daniel King

Joint Debtor(s):

Brenda De La Cruz

Represented By
Daniel King

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-24340 Iuta Fuamatu

Chapter 7

#5.00 Reaffirmation Hearing Date Set RE: [12] Pro se Reaffirmation Agreement Between Debtor and Regional Acceptance Corp

Docket 12

Party Information

Debtor(s):

Iuta Fuamatu

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-24422 Charles Harris

Chapter 7

#6.00 Reaffirmation Hearing Date Set RE: [19] Pro se Reaffirmation Agreement Between Debtor and JPMorgan Chase Auto Finance

Docket 19

Party Information

Debtor(s):

Charles Harris

Represented By
Daniel King

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-24481 Alma D. Cordoba

Chapter 7

#7.00 Reaffirmation Hearing Date SetRE: [11] Reaffirmation Agreement Between Debtor and Wells Fargo Dealer Services

Docket 11

Party Information

Debtor(s):

Alma D. Cordoba

Represented By
Lauren M Foley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25330 Jose I Rivas

Chapter 7

#8.00 Cont'd hrg re: Reaffirmation Agreement
[Toyota Motor Credit Corporation]
fr. 2/22/18

Docket 7

Party Information

Debtor(s):

Jose I Rivas

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25360 Adrian Lucatero and Rocio Lucatero

Chapter 7

#9.00 Reaffirmation Hearing Date Set RE: [9] Reaffirmation Agreement Between Debtor and
Flagship Credit Acceptance

Docket 9

Party Information

Debtor(s):

Adrian Lucatero

Represented By
Omar Zambrano

Joint Debtor(s):

Rocio Lucatero

Represented By
Omar Zambrano

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25360 Adrian Lucatero and Rocio Lucatero

Chapter 7

#10.00 Reaffirmation Hearing Date Set RE: [14] Pro se Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A.

Docket 14

Party Information

Debtor(s):

Adrian Lucatero

Represented By
Omar Zambrano

Joint Debtor(s):

Rocio Lucatero

Represented By
Omar Zambrano

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25525 Dina Maritza Posada

Chapter 7

#11.00 Reaffirmation Hearing Date Set RE: [14] Pro se Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation

Docket 14

Party Information

Debtor(s):

Dina Maritza Posada

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25535 Nancy E Sandoval

Chapter 7

#12.00 Reaffirmation Hearing Date Set RE: [13] Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc., dba Chrysler Capital

Docket 13

Party Information

Debtor(s):

Nancy E Sandoval

Represented By
Yelena Gurevich

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10184 Samuel Alejandro Cubas Varela and Fatima Cecilia Cubas

Chapter 7

#13.00 Reaffirmation Hearing Date Set RE: [23] Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 23

Party Information

Debtor(s):

Samuel Alejandro Cubas Varela

Represented By
Joseph S Park

Joint Debtor(s):

Fatima Cecilia Cubas

Represented By
Joseph S Park

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10216 Ruth J Arvizu Islas

Chapter 7

#14.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and TD Auto Finance LLC (2012 Nissan Versa)

Docket 11

Party Information

Debtor(s):

Ruth J Arvizu Islas

Represented By
Mark J Markus

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10323 Jennifer Elizabeth Patino

Chapter 7

#15.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Cotton, Julian)

Docket 10

Party Information

Debtor(s):

Jennifer Elizabeth Patino

Represented By
Daniel King

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10348 Edwin E Galindo

Chapter 7

#16.00 Reaffirmation Hearing Date Set RE: [23] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 23

Party Information

Debtor(s):

Edwin E Galindo

Represented By
Britney L. Mark

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10511 Yvette Whitfield

Chapter 7

#17.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Priority One Credit Union

Docket 11

Party Information

Debtor(s):

Yvette Whitfield

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10722 Miguel Hernandez-Gil

Chapter 7

#18.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Cotton, Julian)

Docket 9

Party Information

Debtor(s):

Miguel Hernandez-Gil

Represented By
Michael H Colmenares

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10772 James Howson

Chapter 7

#19.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.

Docket 11

Party Information

Debtor(s):

James Howson

Represented By
Steven A Wolvek

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10897 Luis Coto and Isabel Coto

Chapter 7

#20.00 Reaffirmation Hearing Date Set RE: [15] Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 15

Party Information

Debtor(s):

Luis Coto

Represented By
Daniel King

Joint Debtor(s):

Isabel Coto

Represented By
Daniel King

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10946 Briana Angelique Johnson

Chapter 7

#21.00 Reaffirmation Hearing Date Set RE: [11] Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 11

Party Information

Debtor(s):

Briana Angelique Johnson

Represented By
Matthew D Resnik

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11154 Irene Marshall

Chapter 7

#22.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and Fifth Third Bank (Cotton, Julian)

Docket 10

Party Information

Debtor(s):

Irene Marshall

Represented By
Todd B Becker

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11298 Marilou F. Hislop

Chapter 7

#23.00 Reaffirmation Hearing Date Set RE: [9] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Cotton, Julian)

Docket 9

Party Information

Debtor(s):

Marilou F. Hislop

Represented By
Julie J Villalobos

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11298 Marilou F. Hislop

Chapter 7

#24.00 Reaffirmation Hearing Date Set RE: [8] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Cotton, Julian)

Docket 8

Party Information

Debtor(s):

Marilou F. Hislop

Represented By
Julie J Villalobos

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11751 Rene Antoinette Porte

Chapter 7

#25.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and Reliant Financial Corp. dba Gold Acceptance

Docket 10

Party Information

Debtor(s):

Rene Antoinette Porte

Represented By
Nicholas M Wajda

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-25529 Daniel Schonviesner

Chapter 7

#26.00 Reaffirmation Hearing Date SetRE: [12] Reaffirmation Agreement Between Debtor and Harley-Davidson Credit Corp. (Cotton, Julian)

Docket 12

Party Information

Debtor(s):

Daniel Schonviesner

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1545 Calendar**

Wednesday, April 11, 2018

Hearing Room 1545

10:00 AM

2:18-11383 Jose Evenor Vanegas

Chapter 7

#27.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and The Bank of New York Mellon F/K/A The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Trust 2006-AR8 Mortgage Pass-Through Certificates Series 2006-AR8

Docket 10

Party Information

Debtor(s):

Jose Evenor Vanegas

Represented By
D Justin Harelik

Trustee(s):

Peter J Mastan (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11383 Jose Evenor Vanegas

Chapter 7

#28.00 Reaffirmation Hearing Date Set RE: [11] Reaffirmation Agreement Between Debtor and
THE BANK OF NEW YORK MELLON

Docket 11

Party Information

Debtor(s):

Jose Evenor Vanegas

Represented By
D Justin Harelik

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:17-24481 Alma D. Cordoba

Chapter 7

#29.00 Reaffirmation Hearing Date Set RE: [13] Pro se Reaffirmation Agreement Between Debtor and LBS Financial Credit Union

Docket 13

Party Information

Debtor(s):

Alma D. Cordoba

Represented By
Lauren M Foley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11383 Jose Evenor Vanegas

Chapter 7

#30.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and The Bank of New York Mellon F/K/A The Bank of New York as successor in interest to JP Morgan Chase Bank, N.A. as Trustee for Structured Asset Mortgage Investments II Trust 2006-AR8 Mortgage Pass-Through Certificates Series 2006-AR8

Docket 10

Party Information

Debtor(s):

Jose Evenor Vanegas

Represented By
D Justin Harelik

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-10722 Miguel Hernandez-Gil

Chapter 7

#31.00 Reaffirmation Hearing Date Set RE: [10] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Cotton, Julian)

Docket 10

Party Information

Debtor(s):

Miguel Hernandez-Gil

Represented By
Michael H Colmenares

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 11, 2018

Hearing Room 1568

10:00 AM

2:18-11110 Robert James Cole

Chapter 7

#32.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Kia Motors Finance

Docket 9

Party Information

Debtor(s):

Robert James Cole

Represented By
Michael E Clark

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 12, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#1.00 Hearing

RE: [171] Motion to Approve Compromise Under Rule 9019 Chapter 7 Trustee's Motion for Order Approving Proposed Compromise Among Trustee and BevTech, Inc. Green CO2 IP, LLC, Michael K. Schutte and Daniel Schneider, Settlement Agreement and Mutual Release and Related Relief; Declaration of Rosendo Gonzalez in Support Thereof (Melissinos, C)

Docket 171

***** VACATED *** REASON: PER ORDER ENTERED 4-9-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 12, 2018

Hearing Room 1568

10:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#2.00 Hearing
RE: [48] Motion to Withdraw as Attorney

Docket 48

***** VACATED *** REASON: RESCHEDULED 4-16-2018 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Pro Se

Nadeen AbouZanad Dorian

Pro Se

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 12, 2018

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia and Johanna Arias Bhatia

Chapter 11

#100.00 Hearing
RE: [171] Motion For Final Decree and Order Closing Case.

Docket 171

***** VACATED *** REASON: PER ORDER ENTERED 4-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes
Noah Green
Luis A Solorzano

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes
Luis A Solorzano

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, April 13, 2018

Hearing Room 1568

2:30 PM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#1.00 HearingRE: [3] Motion Regarding Chapter 11 First Day Motions Debtor's Emergency Motion for Order Authorizing Payment of Certain Pre-Petition Wages, Salaries and Payroll Taxes

Docket 3

Tentative Ruling:

4/13/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to grant the Motion to pay prepetition wages in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Motion for Order Authorizing Payment of Certain Prepetition Wages, Salaries and Payroll Taxes [Doc. No. 3] (the "Motion")
 - a) Declaration of Kevin Tang Re Notice and Service Re Emergency Motion for Order Authorizing Payment of Certain Prepetition Wages, Salaries and Payroll Taxes [Doc. No. 6]
- 2) Order Setting Hearing on First Day Motion [Doc. No. 4]

I. Facts and Summary of Pleadings

Henderson Mechanical Systems, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on April 9, 2018. The Debtor operates in the mechanical contractors business within the special trade contractors sector.

The Debtor seeks authorization to pay prepetition wages, in the aggregate amount of \$9,689.81. The Debtor has ten employees. The wages represent payment for the two business days preceding the petition date—April 5 and April 6, 2018. The Debtor pays its employees on a weekly basis.

II. Findings and Conclusions

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim. Additionally, § 507(a)(4) imposes a limit of \$12,850.00 for each individual employee for priority

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, April 13, 2018

Hearing Room 1568

2:30 PM

CONT... Henderson Mechanical Systems, Inc.

Chapter 11

status. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify ‘first day’ orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor’s ability to satisfy claims through the third priority could justify the order under section 105.

COLLIER ON BANKRUPTCY ¶ 507.06[2] (16th ed. 2017). Local Bankruptcy Rule 2081-1(a) provides that a motion to pay prepetition payroll must be supported by evidence that establishes the following: "(A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect of reorganization; (E) Whether the employees are insiders; (F) Whether the employees’ claims are within the limits established by 11 U.S.C. § 507; and that (G) The payment will not render the estate administratively insolvent."

Having reviewed the declaration of James Lee, the Debtor’s owner, the Court finds that the Debtor has established the necessity of paying the prepetition wages as requested in the Motion. The employees that are the subject of the Motion remain employed by the Debtor and are critical to the Debtor’s continued operations. The aggregate amount of wages to be paid to all ten employees is \$9,689.81. The most that any single employee will receive is \$1,491.34; thus, the wages to be paid fall well below the §507(a)(4) priority claim limit of \$12,850. None of the employees who will receive payment are insiders. The estate has cash on hand in the estimated amount of \$127,388.88, so the payments will not render the estate administratively insolvent. Finally, the Debtor has made a sufficient showing that it has a reasonable prospect of reorganization.

Based upon the foregoing, the Motion is GRANTED in its entirety.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 16, 2018

Hearing Room 1568

11:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#1.00 Hearing
RE: [48] Motion to Withdraw as Attorney

fr. 4-12-18

Docket 48

***** VACATED *** REASON: ADVERSARY DISMISSED ON 4-4-18**

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Pro Se

Nadeen AbouZanad Dorian

Pro Se

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:08-10666 Lars Erik Hanson

Chapter 7

Adv#: 2:08-01391 Blue Cross and Blue Sheild of Alabama et al v. Hanson et al

#1.00 Status Hearing: [1] Adversary case 2:08-ap-01391. Complaint by Blue Cross and Blue Sheild of Alabama et al against Lars Erik Hanson. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Shemano, David) ---

fr. 6-19-08; 7-17-08; fr. 12-18-08; 6-18-09; 2-17-2010; 6-17-10; 12-9-10; 6-22-11, 12-15-11, 1-5-12, 7-5-12; 2-7-13; 8-15-13; 9-5-13; 3-20-14; 9-25-14; 10-2-14; 4-14-15; 10-13-15; 4-12-16; 10-11-16; 4-11-17; 10-17-17

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 10:00 A.M.**

Tentative Ruling:

12/16/2009

Hearing continued per stipulation.

Party Information

Debtor(s):

Lars Erik Hanson

Represented By
Sam X J Wu

Defendant(s):

Lars Erik Hanson

Pro Se

JAMES L BROWN

Pro Se

Sam X J Wu

Pro Se

Plaintiff(s):

Blue Cross and Blue Sheild of

Represented By
David B Shemano
Marvin Wexler

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT... Lars Erik Hanson

Chapter 7

Trustee(s):

James L Brown

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#2.00 Status Hearing RE: [21] Amended Complaint Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In The Alternative, For Sale Of Real Property Pursuant To 11 U.S.C. § 363(h); (3) For Turnover; (4) For Violation Of Automatic Stay; And (5) For Dissolution Of Limited Liability Company with Proof of Service by Zev Shechtman on behalf of Brad D. Krasnoff, Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (91 (Declaratory judgment)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) filed by Plaintiff Brad D. Krasnoff, Chapter 7 Trustee). (Shechtman, Zev)

Docket 21

Tentative Ruling:

4/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The dates previously set by way of the *Scheduling Order Re: First Amended Complaint Filed 1/22/2018* [Doc. No. 24] shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **5/17/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **7/31/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **8/30/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Anne Lan Peterson

Chapter 7

expert discovery, is **9/18/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

- e) The last day for dispositive motions to be heard is **9/25/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **9/29/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **10/16/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **10/29/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order; Plaintiff shall submit the order assigning the matter to mediation.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT... Anne Lan Peterson

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01063 Goodrich v. G & H Textiles Trading, Inc., a California corpora

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01063. Complaint by David M. Goodrich against G & H Textiles Trading, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

***** VACATED *** REASON: DISMISSED 2-16-18**

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. The Court has approved a settlement of this action. The Trustee anticipates that the settlement payment will be made within the next two weeks.

A status conference to monitor consummation of the settlement will be held on **April 17, 2018, at 10:00 a.m.** The status conference will go off calendar in the event that the settlement payment is made and the action is dismissed. The Trustee shall submit an order with respect to the status conference within seven days of the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

G & H Textiles Trading, Inc., a

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#4.00 Hearing
RE: [24] Motion for Default Judgment Under LBR 7055-01
fr: 10-18-17

Docket 24

Tentative Ruling:

4/16/2018

The Clerk of the Court entered default against the Defendant on March 21, 2017, Doc. No. 16. On October 18, 2017, the Court conducted a hearing on the Trustee's Motion for Default Judgment. As a result of Defendant's commencement of a voluntary Chapter 7 petition, the hearing on the Motion for Default Judgment was taken off calendar and this Status Conference was set.

The Defendant's Chapter 7 bankruptcy has now been closed. A hearing on the Motion for Default Judgment shall take place on **May 22, 2018, at 10:00 a.m.** The Trustee shall re-serve the Motion for Default Judgment, and file a proof of service so indicating, by no later than **May 1, 2018.**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

fr: 2-13-18

Docket 1

*** VACATED *** REASON: DISMISSED ON 3-23-18

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. This matter has settled, the settlement payment has been made, and the Trustee is in the process of preparing a motion to obtain Court approval of the settlement. A continued status conference will be held on **April 17, 2018, at 10:00 a.m.** The status conference will go off calendar if the settlement is approved.

The dates previously set by the Court in the Scheduling Order issued on November 1, 2017 [Doc. No. 12] are VACATED. Within seven days of the hearing, the Trustee shall submit a conforming order.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

CONT... West Coast Psychiatry Inc.

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17

Docket 1

Tentative Ruling:

4/16/2018

On March 15, 2017, the Court stayed this non-dischargeability action, pending resolution of the underlying state court action (the "State Court Action") which seeks to establish the indebtedness that Plaintiffs allege is non-dischargeable.

The parties failed to file a Joint Status Report. Defendant filed a Unilateral Status Report in response to the Court's Order to Comply. Plaintiffs failed to respond to the Order to Comply. Defendant asserts that Plaintiffs have failed to prosecute both this action and the underlying State Court Action.

The Court has reviewed the docket in the State Court Action, and agrees with Defendant's assertion that Plaintiffs have failed to prosecute the State Court Action. On January 25, 2018, the State Court set a hearing on an Order to Show Cause Re: Dismissal, based upon Plaintiffs' failure to serve the Complaint upon Defendant. The OSC hearing was initially set for April 4, 2018, but has been continued to April 24, 2018.

By separate order, the Court will require the Plaintiffs to appear and show cause why this action should not be dismissed for failure to prosecute, pursuant to Civil Rule 41.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

**United States Bankruptcy Court
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10:00 AM

CONT... Kevin Thomas Roy

Chapter 7

please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

Adv#: 2:18-01027 Gonzalez v. Cazares, as Trustee of the 2016 Rafael Cazares Tor

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01027. Complaint by Rosendo Gonzalez against Ricardo Cazares, as Trustee of the 2016 Rafael Cazares Torres Family Irrevocable Trust Dated February 19, 2016. (Charge To Estate). Trustee's Complaint: (1) To Avoid and Recover Fraudulent Transfer; and (2) For Turnover Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Shechtman, Zev)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 4-9-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Defendant(s):

Ricardo Cazares, as Trustee of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Zev Shechtman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

**United States Bankruptcy Court
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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01540 Liberty Asset Management Corporation v. Pan

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01540. Complaint by Liberty Asset Management Corporation against Yonggan Pan. (Fee Not Required). / Complaint for: (1) Slander of Title; (2) Disallowance of Claim [11 U.S.C. § 502(b)]; (3) Avoidance of Lien; [FRBP 7001] (4) Declaratory Relief; (5) Violation of Cal. Civ. Code § 2943; (6) Punitive Damages; and (7) Attorneys' Fees and Costs (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (91 (Declaratory judgment)), (81 (Subordination of claim or interest)) (Golubchik, David)

fr: 2-13-18

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-27-18**

Tentative Ruling:

2/12/2018

This hearing is vacated and no appearances are required. Plaintiff has filed a Motion for Default Judgment which is set for hearing on February 22, 2018. A continued status conference will be held on **April 17, 2018, at 10:00 a.m.** The continued status conference will go off calendar in the event default judgment is entered.

Plaintiff shall submit an order continuing the status conference within seven days of the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

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Tuesday, April 17, 2018

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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Sandford L. Frey

Defendant(s):

Yonggan Pan

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#9.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01028. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center against The Irving I. Moskowitz Foundation. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

***** VACATED *** REASON: CONTINUED 7/3/18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By Samuel R Maizel John A Moe
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Defendant(s):

The Irving I. Moskowitz Foundation	Pro Se
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Plaintiff(s):

Official Committee of Unsecured	Represented By Anthony Bisconti
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**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#10.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Oganessian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

FR. 2-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 6-5-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman

Pro Se

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Pro Se

Hassan Mahmoudi

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Rideshare Port Management, LLC

Chapter 11

Howard Miller	Pro Se
Jose Diaz	Pro Se
Juan Martinez	Pro Se
Kaushaal Laxmee	Pro Se
Raymond Moradian	Pro Se
Roberto Martinez	Pro Se
Ronaldo Ramos	Pro Se
Valo Khalatian	Pro Se
Vince Olivar	Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:13-32201 Darra Cleveland

Chapter 7

Adv#: 2:17-01167 Cleveland v. Educational Credit Management Corp. et al

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01167. Complaint by Darra Cleveland against Educational Credit Management Corp., Deutsche Bank ELT Navient & SLM Trusts, JP Morgan Chase N.A., CITIBANK ELT STUDENT LOAN CORP, Wells Fargo ELT Navient Student Loan Trust, U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

FR. 8-15-17; 2-13-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 4-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darra Cleveland

Represented By
Jennifer Ann Aragon
Christine A Kingston

Defendant(s):

Educational Credit Management	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
JP Morgan Chase N.A.	Pro Se
CITIBANK ELT STUDENT LOAN	Pro Se
Wells Fargo ELT Navient Student	Pro Se
U.S. Department of Education	Pro Se

Plaintiff(s):

Darra Cleveland

Represented By

**United States Bankruptcy Court
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11:00 AM

CONT... Darra Cleveland

Christine A Kingston

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:15-20174 Arnold Montano

Chapter 7

Adv#: 2:16-01436 Ehrenberg v. Montano, Jr. et al

#101.00 Pretrial re Complaint for Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548 and 550(a)

(transferred from Judge Donovan to Judge Robles)

fr. 11-16-16, 1-18-17, 3-8-17; 4-19-17; 8-15-17; 10-17-17

Docket 1

***** VACATED *** REASON: DISMISSED 1-18-18**

Tentative Ruling:

10/16/2017

Tentative Ruling:

In April 2017, the parties reached a settlement in principle. At the previous status conference, conducted in August 2017, the Defendants advised the Court that they had not yet raised the funds necessary to perform under the settlement agreement. The Court continued the status conference to give the Defendants one final opportunity to raise the settlement funds, but advised that if Defendants failed to raise the settlement funds by the continued status conference, a trial date would be set. Defendants have not raised the settlement funds. Accordingly, the Court HEREBY ORDERS that the following dates will apply to this proceeding:

- 1) The last day to amend pleadings and/or join other parties is **11/17/2017**.
- 2) The last day to disclose expert witnesses and expert witness reports is **1/30/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/1/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **3/27/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-

**United States Bankruptcy Court
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11:00 AM

CONT...

Arnold Montano

Chapter 7

calendar, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendar.)

- 5) The last day for dispositive motions to be heard is **4/3/2018**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/10/2018**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
- 7) A Pretrial Conference is set for **4/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **4/30/2018**. The trial day commences at 9:00 a.m. The Court will set the exact date of the trial at the pretrial conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522, by no later than one hour prior to the hearing. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Arnold Montano

Represented By

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

CONT... **Arnold Montano**

Chapter 7

Steven Ibarra

Defendant(s):

Arnold Montano, Jr.

Represented By
Steven Ibarra

Michael Montano

Represented By
Steven Ibarra

Plaintiff(s):

Howard M Ehrenberg

Represented By
Elissa Miller
Jason Balitzer

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#102.00 Pre-Trial Conference re [15] Amended Complaint (FIRST) Objecting To Discharge of Debt and Requesting Determination of Nondischargeability

fr: 7-11-17; 7-11-17

Docket 0

***** VACATED *** REASON: ADVERSARY DISMISSED ON 4-4-18**

Tentative Ruling:

2/5/2018

The parties have failed to submit a Joint Pretrial Stipulation as directed by the Court's Order to Comply. The Order to Comply directed Plaintiff to submit a separate proposed Pretrial Stipulation in the event that Defendant refused to cooperate in the preparation of a Joint Pretrial Stipulation. Plaintiff has failed to comply with this requirement.

By separate order, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute.

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Represented By
Raymond H. Aver

Nadeen AbouZanad Dorian

Represented By
Raymond H. Aver

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

**United States Bankruptcy Court
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11:00 AM

CONT... Robert Bassem Dorian

Chapter 7

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-13104 Thomas Michael Garcia

Chapter 7

Adv#: 2:17-01336 Torrance Community Federal Credit Union v. Garcia

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01336. Complaint by Torrance Community Federal Credit Union against Thomas Garcia. false pretenses, false representation, actual fraud)) (Ferns, Amanda)

Docket 1

***** VACATED *** REASON: PRETRIAL 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Michael Garcia

Represented By
Daniel King

Defendant(s):

Thomas Garcia

Pro Se

Plaintiff(s):

Torrance Community Federal Credit

Represented By
Amanda N Ferns

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d), (e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: CONTINUED 6-12-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

Antony Thekkek

Represented By

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11:00 AM

CONT... Felicidad Ferrer

Chapter 7

Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01335 HCF Insurance Agency v. Ferrer et al

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01335. Complaint by HCF Insurance Agency against Felicidad Ferrer, Renato Ferrer. willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Schiff, Stefanie)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 3-23-18**

Tentative Ruling:

4/16/2018

Stipulated judgment was entered in this action on March 23, 2018. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

HCF Insurance Agency

Represented By
Stefanie A Schiff

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11:00 AM

CONT... Felicidad Ferrer

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-14457 Theresa Christine Wahl

Chapter 7

Adv#: 2:17-01367 Lemus v. Wahl et al

#106.00 Pre-Trial Conference
RE: [1] Complaint by Juan Antonio Lemus against Theresa Christine Wahl.
willful and malicious injury)) (Younessi, Ramin). Warning: Item subsequently
amended by docket entry no 2. When the complaint was filed, it was not linked
to the main bankruptcy case. The complaint is now linked to the main
bankruptcy case 2:17-bk-14457-ER. Modified on 7/26/2017 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-5-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa Christine Wahl

Represented By
Nicholas M Wajda

Defendant(s):

Theresa Wahl

Pro Se

Does 1 Through 20, Inclusive

Pro Se

Plaintiff(s):

Juan Antonio Lemus

Represented By
Ramin R Younessi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01357. Complaint by Chasen Kyle Stanley against Education Finance Partners, ACS Loan Science, Asset Recovery Solutions, LLC, DEPARTMENT OF EDUCATION, Navient, Federal Loan Services, National Payment Center, Sallie Mae, Associated Recovery Systems. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Potier, Amanda)

Docket 1

***** VACATED *** REASON: CONTINUED 6-5-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners	Pro Se
ACS Loan Science	Pro Se
Asset Recovery Solutions, LLC	Pro Se
Navient	Pro Se
Federal Loan Services	Pro Se
National Payment Center	Pro Se
Sallie Mae	Pro Se
Associated Recovery Systems	Pro Se
US Department of Education	Pro Se
DOES 1 through 4, et al	Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-24505 Sandra Monica Derpic

Chapter 7

#108.00 Hearing
RE: [23] Motion to Dismiss Case for Abuse and Notice of Motion (BNC)
Pursuant to 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to
Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's
Discharge; Memorandum of Points and Authorities and Declaration of Wendy
Carole Sadovnick in Support Thereof (Attachments: # 1 Exhibit 2 (cont.) to 5 #
2 Exhibit 5 (cont.) to 6) (Mar, Alvin)

Docket 23

***** VACATED *** REASON: CONTINUED 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Monica Derpic

Represented By
Donald A Hayes

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#109.00 PRETRIAL
RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17; 1-16-18

Docket 1

Tentative Ruling:

4/16/2018

The Final Joint Pretrial Stipulation Between the Official Committee of Unsecured Creditors, Tsai Luan Ho, and Benjamin Kirk (the "Pretrial Stipulation") will be approved by the Court, with some minor modifications. Specifically, the Court has amended ¶¶91–93 to remove the finding that Liberty Asset Management Corporation ("Liberty") operated as a Ponzi scheme. Although the Court has found that Benjamin Kirk and Lucy Gao breached their fiduciary duties to Liberty by failing to use funds contributed to Liberty by investors for their intended purpose, the Court has not found that Liberty operated as a Ponzi scheme as that term is defined under Ninth Circuit law. *See Hayes v. Palm Seedlings Partners (In re Agricultural Research and Technology Group, Inc.)*, 916 F.2d 528 (9th Cir. 1990) (setting forth the characteristics of a Ponzi scheme).

Trial shall take place on **May 29 and May 30, 2018**. The parties shall comply with the *Order Re: Courtroom Procedures* [Doc. No. 24] with respect to the submission of exhibits, exhibit lists, and trial briefs. The Court notes that ¶¶ 32 and 35 of the Pretrial Stipulation omit the identification of the exhibits referenced in those paragraphs. The parties should insure that all exhibits upon which they intend to rely at trial are delivered to the Court in accordance with the *Order Re: Courtroom Procedures*.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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11:00 AM

CONT... Liberty Asset Management Corporation Chapter 11

Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

fr. 3-13-18

Docket 1

Tentative Ruling:

4/16/2018

The initial Pretrial Conference in this matter was conducted on March 13, 2018. In connection with the March 13 Pretrial Conference, both parties submitted proposed Unilateral Pretrial Orders. The Court continued the Pretrial Conference and directed the parties to submit a proposed Joint Pretrial Stipulation. The parties failed to agree upon a Joint Pretrial Stipulation; once again, both parties have submitted proposed Unilateral Pretrial Orders.

The Court has reviewed the proposed Unilateral Pretrial Orders as well as the e-mail correspondence between counsel for both parties, in an attempt to ascertain the facts which remain subject to genuine dispute. The Court intends to enter the Pretrial Order in the form set forth below as Exhibit A.

The trial shall take place on May 1 and May 2, 2018. The parties are directed to comply with the *Order Re: Courtroom Procedures* with respect to the submission of trial briefs, exhibit lists, and exhibit binders. As set forth in the Pretrial Order below, any motions *in limine* or motions to exclude evidence must be filed by no later than **April 24, 2018**. Any opposition to any such motions is due by no later than **April 27, 2018**. Reply briefs will not be accepted.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Exhibit A—Pretrial Order

1) THE FOLLOWING FACTS ARE ADMITTED AND REQUIRE NO PROOF:

- a) Defendant filed a petition for relief under Chapter 7 on January 5, 2017 (the "petition date").
- b) Plaintiff filed an adversary complaint on June 9, 2017.
- c) Prior to the petition date, between December 2008 and December 2016, Defendant owned and/or managed the property located at 1136 – 1138 E. 81st St., Los Angeles, CA, including 1138 ½ E. 81st St., Los Angeles, CA ("the subject property"). Defendant owned the subject property located at 1136, 1138 & 1138 1/2 E. 81st Street, Los Angeles, CA 90001 ("subject property") intermittently between April 2007 through October 27, 2008 and December 4, 2014 through February 2016. From October 27, 2008 through December 4, 2014, the subject property was owned by THE LIVING TRUST OF RODOLFO TEJEDA & WENDY TEJEDA DATED OCTOBER 27, 2008 wherein Rodolfo Tejada and Wendy Tejada were Trustees (the "Living Trust").
- d) As the owner and operator of rental property in California, the Defendant impliedly warranted that any property she rented to tenants was habitable.
- e) Between April 2007 and January 2013, Defendant maintained an account with Golden State Water Company ("GSWC"), to furnish water to the subject property.
- f) Between December 18, 2014 through February 2016, the subject property was owned by Defendant.
- g) On or about January 8, 2015, Menbere Mekbebe, EHS III ("Mekbebe"), from the Public Health Office called and spoke with Defendant, informing her of an office hearing scheduled for the following day (January 9, 2015) due to the 3 complaints for lack of running water at the subject property.
- h) On January 9, 2015, Plaintiff and Defendant attended an Office Hearing at the Los Angeles County Department of Public Health, conducted by Chief

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Environmental Health Specialist, Fahrudin Dean Zulcic. During the Office Hearing, Mr. Zulcic ordered Defendant to immediately restore water utility service to the subject property.

- i) On January 9, 2015, during the Office Hearing, Mr. Zulcic called Golden State Water Company ("GSWC" and/or "Golden State") and verified that someone other than Defendant had a utility account under their names for all units at the subject property (due to the property having a master-meter).
 - j) On or about March 25, 2015, Debtor/Defendant's mortgage lender executed a Notice of Default ("NOD") which was recorded at the Los Angeles County Recorder's Office on April 2, 2015, instrument number 20150362193.
 - k) On or about October 22, 2015, due to the continued mortgage default, a Notice of Trustee's Sale ("NOTS") was executed and recorded at the Los Angeles County Recorder's Office on October 26, 2015, instrument number 20151307619.
 - l) Since the purchase of the subject property by Defendant through the date of short sale (February 2016), the water utility service at the subject property was measured by one master-meter for all units. Defendant has no knowledge of the water utility meter set up after the short sale of the subject property.
 - m) Between September 2016 through the present, Defendant was employed as a realtor for Century 21.
- 2) THE FOLLOWING ISSUES OF FACT, AND NO OTHERS, REMAIN TO BE LITIGATED:**
- a) Whether Defendant terminated her utility account with GSWC because she lacked the financial ability to continue making payments on the utility account.
 - b) Whether Defendant's financial inability to make payments on the GSWC account resulted from Defendant's inability to collect rent from tenants residing at the subject property.
 - c) Whether Plaintiff and Defendant entered into an agreement pursuant to which Defendant leased the subject property to Plaintiff on or about September 1, 2012.
 - d) Whether Plaintiff's Exhibit 1 (the lease agreement) is a valid contract, or whether the lease agreement was forged.
 - e) Whether Plaintiff agreed to make monthly rental payments to Defendant.
 - f) Whether Defendant agreed to furnish the subject property with water utility service.
 - g) Whether Plaintiff paid rent to Defendant and/or to Defendant's husband,

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Rodolfo Tejada.

- h) Whether Plaintiff advised tenants of the subject property of her intent to close her account with GSWC prior to terminating her utility account with GSWC.
- i) Whether Defendant had any plan for how tenants of the subject property would receive water utility services after Defendant closed her account with GSWC.
- j) Whether, at the time she closed her account with GSWC, Defendant knew if a tenant would or could open an account with GSWC so that the subject property could continue to receive water utility service.
- k) Whether, between January 3, 2013 and February 2016, water utility service for the subject property was under the names of various parties other than the Defendant.
- l) Whether Defendant closed her account with GSWC for the purpose of causing tenants to vacate the property, or whether Defendant closed the account because she lacked the financial ability to continue paying for water utility service.
- m) Whether Defendant's motive in notifying the Los Angeles County Department of Children and Family Services ("DCFS") that the property lacked water service was to harass Plaintiff so that she would abandon the property, or whether instead Defendant notified DCFS because she was instructed to do so in order to avoid liability.
- n) Whether Defendant attempted to open a new GSWC account on or about January 2015, but was unable to do so because she could not afford to pay the outstanding balance of the existing account, which was under someone else's name at the time.
- o) Whether Defendant offered to reduce Plaintiff's rent after discontinuing her account with GSWC.
- p) Whether Plaintiff was required to purchase, on a daily basis, five 5-gallon containers of water as a result of the lack of water service at the property.
- q) Whether Plaintiff was required to purchase more expensive and less nutritious food as a result of the lack of water service at the property.
- r) The amount of damages suffered by Plaintiff in the event the Court finds that the Defendant is liable.

3) THE FOLLOWING ISSUES OF LAW, AND NO OTHERS, REMAIN TO BE LITIGATED:

- a) Whether Defendant intended to inflict willful and malicious injury upon Plaintiff, within the meaning of §523(a)(6), by failing to furnish water service

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to the property in accordance with a rental agreement.

4) EXHIBITS TO BE OFFERED BY EACH PARTY:

- a) Attached hereto as **Exhibit A** is a list of exhibits to be offered by Plaintiff, other than exhibits to be used for impeachment only.
- b) Attached hereto as **Exhibit B** is a list of exhibits to be offered by Defendant, other than exhibits to be used for impeachment only.

5) WITNESSES TO BE OFFERED BY EACH PARTY:

- a) Attached hereto as **Exhibit C** is a list of witnesses Plaintiff expects to call at trial.
- b) Attached hereto as **Exhibit D** is a list of witnesses Defendant expects to call at trial.

6) OTHER MATTERS THAT MIGHT AFFECT TRIAL:

- a) Any motions *in limine* or motions to exclude evidence must be filed by no later than **April 24, 2018**. Any opposition to any such motions is due by no later than **April 27, 2018**. Reply briefs will not be accepted.

7) DISCOVERY:

- a) All discovery is complete.

8) TRIAL READINESS:

- a) The parties are ready for trial.

9) EFFECT OF PRETRIAL ORDER:

- a) This Pretrial Order supersedes the pleadings and governs the course of trial of this cause, unless modified to prevent manifest injustice.

IT IS SO ORDERED.

###

Exhibit A—Plaintiff's Exhibit List

Exhibit 1: Lease Agreement, dated September 1, 2012

Exhibit 2: Los Angeles County Department of Public Health, Official Inspection Report, dated 1/8/2015

Exhibit 3: Los Angeles County Department of Public Health, Official Inspection Report, dated 1/9/2015

Exhibit 4: Los Angeles County Department of Public Health, Official Inspection Report, dated 2/4/2015

Exhibit 5: Los Angeles County Department of Public Health, Complaint Investigation

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Form, dated 2/13/2015

Exhibit 6: Los Angeles County Department of Public Health, Office Hearing Report, dated 1/9/2015

Exhibit 7: Emails between Los Angeles County Department of Public Health, and District Attorney's Office, dated 1/26/2015

Exhibit 8: Misdemeanor Filing Worksheet

Exhibit 9: Emails between Los Angeles County Department of Public Health, and District Attorney's Office, dated 2/5/2015

Exhibit 10: Los Angeles County Department of Public Health Internal Notes

Exhibit 11: Emails of Chief Environmental Health Specialist, Fahrudin Dean Zulcic, re: lack of running water

Exhibit 12: Golden State Water Company Account Summaries

Exhibit 13: Golden State Water Company, Reminder Notice, dated 11/28/2012

Exhibit 14: Golden State Water Company, Reminder Notice, dated 10/26/2012

Exhibit 15: Golden State Water Company, Reminder Notice, dated 9/28/2012

Exhibit 16: Golden State Water Company, Reminder Notice, dated 5/25/2012

Exhibit 17: Golden State Water Company, Reminder Notice, dated 4/30/2012

Exhibit 18: Golden State Water Company, Reminder Notice, dated 2/27/2012

Exhibit 19: Golden State Water Company, Reminder Notice, dated 1/26/2012

Exhibit 20: Golden State Water Company Account Summary, dated 3/11/2014

Exhibit 21: Golden State Water Company Account Summary, dated 12/4/2014

Exhibit 22: Golden State Water Company Account Summaries, dated 1/9/2015

Exhibit 23: Golden State Water Company Account Summary, dated 1/12/2015

Exhibit 24: Declaration of Carlos Jauregui

Exhibit 25: Supplemental Declaration of Carlos Jauregui

Exhibit 26: Letter from Brenda Lima, MSW, of Department of Children and Family Services re: lack of running water

Exhibit 27: Notice of Trustee's Sale

Exhibit 28: County of Los Angeles Victim Notification

Exhibit 29: City Attorney's Office Victim Assistance Program Claims Application

Exhibit 30: Progressive City Home Rentals Contract

Exhibit 31: Letter to defense counsel re: Defendant's tax returns, dated 1/25/2017

Exhibit 32: Letter to Defendant from Plaintiff's counsel re: lack of running water, dated 2/9/2015

Exhibit 33: Photograph of property (street view)

Exhibit 34: Photograph of property (2nd floor units)

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- Exhibit 35:** Photograph of property (right-side view)
- Exhibit 36:** Photograph of property (side clutter)
- Exhibit 37:** Photograph of Plaintiff's water dispenser
- Exhibit 38:** Photograph of Plaintiff's water supply
- Exhibit 39:** Photograph of Plaintiff's bathing buckets
- Exhibit 40:** Photograph of Plaintiff's shower
- Exhibit 41:** Photograph of property
- Exhibit 42:** Plaintiff's First Amended Complaint in state court action, BC 575138
- Exhibit 43:** Deposition transcripts of Defendant, Wendy Tejada
- Exhibit 44:** Defendant's responses to discovery in state court action, BC 575138
- Exhibit 45:** Defendant's responses to discovery in adversary proceeding
- Exhibit 46:** Los Angeles County Department of Public Works Notice of Violations and Fines
- Exhibit 47:** Letter from Los Angeles County District Attorney's Office, dated 05/07/2015.

Exhibit B—Defendant's Exhibit List

Exhibit A: Quitclaim Deed: transferred ownership and control of the subject property from WENDY TEJEDA, a married woman, as her sole and separate property, to RODOLFO TEJEDA & WENDY TEJEDA, as Trustees of the Living Trust of Rodolfo Tejada & Wendy Tejada dated October 27, 2008.

Exhibit B: Grant Deed: transferred ownership and control of the subject property from WENDY TEJEDA, a married woman as her sole and separate property, as seller of the subject property to KOSOO INVESTMENTS LLC, the purchaser of the subject property.

Exhibit C: Golden State Water Company ("GSWC") - Field Activity Report: Inspection report conducted by GSWC on June 16, 2014 after shut-off of water services occurred on June 5, 2014 at the subject property at the request of GSWC's customer, ELENA RUIZ on June 3, 2014.

Exhibit D: GSWC Notice of Termination (15-Day Notice) – Notice that water services were to be turned off served by Alfredo Orozco ("Orozco"), GSWC's Water Distribution Operator 2, to "a heavy set Hispanic woman [who] approached [Orozco]

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from inside and said she was in charge."

Exhibit E: GSWC's account summaries

Exhibit F: GSWC Account Billing History for customer, ELENA RUIZ LUNA

Exhibit G: Plaintiff's Complaint filed in the Civil Action, BC 575138.

Exhibit H: Plaintiff's *Ex Parte* Application for Order to Show Cause and Temporary Restraining Order ("TRO Application") filed on March 16, 2015 in the Civil Action, BC 575138 (heard on March 17, 2015).

Exhibit I: Notice of Default ("NOD") recorded at the Los Angeles County Recorder's Office on April 2, 2015, instrument number 20150362193.

Exhibit J: GSWC's Memorandum of Points and Authorities in Opposition to the Motion for Preliminary Injunction and supporting Evidentiary Objections ("Opp to Preliminary Injunction") filed on April 1, 2015 in the Civil Action, BC 575138.

Exhibit K: Plaintiff's Additional Declaration of Sorayda Velasquez in Support of Plaintiffs' Motion for Preliminary Injunction ("Add Decl of Ms. Velasquez") filed on April 15, 2015 in the Civil Action, BC 575138.

Exhibit L: ORDER Denying Plaintiff's Motion for Preliminary Injunction entered on April 16, 2015 by The Superior Court Judge in the Civil Action, BC 575138.

Exhibit M: GSWC's Notice of Demurrer and Demurrer ("Demurrer") filed on April 27, 2015 in the Civil Action, BC 575138.

Exhibit N: Plaintiff's First Amended Complaint for Injunctive Relief ("FAC") filed on May 19, 2015 in the Civil Action, BC 575138.

Exhibit O: GSWC's Notice of Demurrer and Demurrer to the FAC ("FAC Demurrer") filed on May 28, 2015 in the Civil Action, BC 575138.

Exhibit P: ORDER entered on July 21, 2015 by the Superior Court Judge regarding

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the FAC Demurrer in the Civil Action, BC 575138.

Exhibit Q: Plaintiff's Notice of Entry of Default filed on September 9, 2015 indicating a default was entered against Defendant WENDY TEJEDA on August 21, 2015 ("Notice of Entry of Default") in the Civil Action, BC 575138.

Exhibit R: Notice of Trustee's Sale ("NOTS") recorded at the Los Angeles County Recorder's Office on October 26, 2015, instrument number 20151307619.

Exhibit S: Plaintiff's Request for Court Judgment ("Request for Entry of Default Judgment") filed on November 16, 2015 in the Civil Action, BC 575138.

Exhibit T: Plaintiff's Proposed Judgment by Court After Entry of Default ("Judgment by Court After Entry of Default") filed on November 16, 2015 in the Civil Action, BC 575138.

Exhibit U: Defendant WENDY TEJEDA's Notice of Motion to Set Aside Default and Default Judgment and for Leave to Defend the Action ("Motion to Set Aside Default & Default Judgment") filed on April 12, 2016 in the Civil Action, BC 575138.

Exhibit V: Plaintiff's Opposition to Defendant's Motion to Set Aside Default & Default Judgment ("Opp to Motion to Set Aside Default") filed on April 21, 2016 in the Civil Action, BC 575138.

Exhibit W: ORDER by the Superior Court Judge RULING that Defendant's Motion to Set Aside Default & Default Judgment was GRANTED and Defendant to file and serve stand-alone copy of answer ("ORDER Vacating Default Judgment") filed and entered on June 1, 2016 in the Civil Action, BC 575138.

Exhibit X: Defendant WENDY TEJEDA's Answer to the FAC ("Answer") filed on June 1, 2016 in the Civil Action, BC 575138.

Exhibit Y: Attorney Manuel Duran's Notice of Stay of Proceedings related to the Automatic Stay caused by the instant bankruptcy case filed on January 12, 2017 in the Civil Action, BC 575138.

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Exhibit Z: Forged rental agreements and receipts of payments made by ELENA RUIZ to DAISY IMELDA NOLASCO PINEDA ("Daisy") and FRANCISCO QUEZADA [aka FRANCISCO QUEZADA S. (DOMINGO)] provided by Daisy.

Exhibit AA: Memorandum Decision filed in the *Solomon* case on January 29, 2013, Chapter 7, case no. 10-59862-CN, in the Northern District of California pursuant to LBR 9013-2(b)(4). Previously, Plaintiff's counsel cited this case entitled *In re Solomon*.

Exhibit C—Plaintiff's Witness List and Summary of Expected Testimony

1. Sorayda Velasquez - Will testify that:
 - A. Plaintiff rented residential property from Defendant.
 - B. The Plaintiff and Defendant agreed that Defendant would pay for all utilities, including the water service, and Plaintiff would pay \$975 each month in rent.
 - C. The Defendant maliciously and with intent to illegally evict Plaintiff, refused to restore water utility service to the property.
 - D. The Plaintiff was forced to live without running water for over a year.

Estimated Direct: 2 hours

Estimated Cross-examination: 45 minutes

2. Daisy Nolasco - Will testify that:
 - A. She rented a unit neighboring Plaintiff's from the Defendant.
 - B. The Defendant maliciously terminated water utility services to the property by refusing to restore utility service or pay for it.
 - C. She attended the Los Angeles County Department of Public Health Office Hearing with Plaintiff and Defendant.
 - D. That the Los Angeles County Department of Public Health Chief Environmental Health Specialist ordered Defendant to immediately restore water utility service to the property Plaintiff and Ms. Nolasco rented.

Estimated Direct: 1 hour

Estimated Cross-examination: 30 minutes

3. Fahrudin Dean Zulcic, REHS - Will testify that:

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- A. He ordered Defendant to restore water utility service to the property.
- B. The Defendant maliciously terminated water utility services to the property because she no longer wanted to have any tenants living at the property.
 - Estimated Direct: 1 hour
 - Estimated Cross-examination: 30 minutes
- 4. Shannon Sathkimana, EHS - Will testify that:
 - A. She inspected the property owned by Defendant, including Plaintiff's rental unit, and determined the entire property lacked running water.
 - B. She visited repeatedly over the course of two months and the water utility service was never restored to the property.
 - Estimated Direct: 1 hour
 - Estimated Cross-examination: 30 minutes
- 5. Brenda Lima, Er CSW MSW, DCFS - Will testify that:
 - A. She inspected the property owned by Defendant, including Plaintiff's rental unit, and determined the entire property lacked running water.
 - B. She wrote to the Housing and Urban Development Department's Section 8 Program in order to assist Plaintiff with vacating the property owned by Defendant because the property lacked running water.
 - C. Defendant was an innocent victim living in uninhabitable conditions created by her landlord, the Defendant.
 - Estimated Direct: 1 hour
 - Estimated Cross-examination: 30 minutes
- 6. Carlos Jauregui, organizer, Strategic Actions for a Just Economy - Will testify that:
 - A. He spoke to Plaintiff and Golden State Water Company in an attempt to restore water utility service to the property owned by Defendant.
 - B. Golden State Water Company would not furnish any running water to the property unless the Defendant paid an outstanding amount due.
 - C. Defendant was an innocent victim living in uninhabitable conditions created by her landlord, the Defendant.
 - Estimated Direct: 1 hour

**Exhibit D—Defendant's Witness List and Summary of Expected
Testimony**

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1. **WENDY TEJEDA** – will testify that:
 - a. Defendant did NOT rent or otherwise agree to lease the subject property to Plaintiff.
 - b. Defendant did NOT receive ANY rent from Plaintiff at ANY time.
 - c. Defendant closed out her water utility service with GSWC on or about January 2013 without the intent to evict Plaintiff or any other occupant of the subject property.
 - d. Defendant did NOT rent or otherwise agree to lease the subject property to Daisy Nolasco.
 - e. Defendant did NOT receive ANY rent from Daisy Nolasco at ANY time.
 - f. Defendant called GSWC and attempted to have the water utility services placed under her name after she was contacted by and attended an office hearing with the Los Angeles County Department of Public Health but was refused due to outstanding invoices held in other parties' names since the closure of Defendant's account with GSWC.
 - g. Defendant did NOT willfully, intentionally or maliciously intend to create an uninhabitable condition on the subject property to evict Plaintiff or any other occupant.
 - h. Defendant's life was threatened by Elena Ruiz Luna and Ignacio when she inspected the subject property prior to listing the property for sale.

ESTIMATED DIRECT: 1 HOUR

ESTIMATED CROSS-EXAMINATION: 30 MINUTES

2. **ALFREDO OROZCO**, Water Distribution Operator 2 for Golden State Water Company (GSWC) – will testify that:
 - a. He worked the Central Basin West area for GSWC, which includes within its geographic scope the subject property, from June 2, 2014 until February 9, 2015.
 - b. He was first sent to the subject property on June 5, 2014, at the request of GSWC's customer, ELENA RUIZ LUNA, to shut-off the water service.
 - c. He returned to the subject property on June 16, 2014 to ensure that the service was off and discovered that the water service had been turned

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back on without authorization.

- d. He turned off the water to the subject property on June 16, 2014.
- e. He returned to the subject property on November 13, 2014 and posted a 15-day Notice of Termination ("Notice"), even though the service had already been disconnected on September 2, 2014.
- f. On November 13, 2014, he handed the Notice to a heavy set Hispanic woman who approached him from inside the subject property and said she was in charge and she would take care of it.
- g. He returned to the subject property on December 4, 2014 and turned off the water meter, which disconnected the property from access to GSWC's water.
- h. Later that day, on December 4, 2014, he returned to check on the water meter and found that someone had already turned it back on. So, he removed the water meter to make tampering with it more difficult.
- i. He returned to the subject property on January 8, 2015 to check for tampering and found that a "jumper" was connected to GSWC's water line, feeding GSWC's water to the property without having it metered or being charged for it.
- j. He returned to the subject property on January 12, 2015 after GSWC received a complaint from a neighbor seeing a water hose from the property to an adjacent property.

ESTIMATED DIRECT: 1 HOUR

ESTIMATED CROSS-EXAMINATION: 30 MINUTES

- 3. **MARIA VILLA**, Customer Care and Billing Business Analyst for GSWC – will testify that:
 - a. She was responsible for providing support to all end users at GSWC of CC&B, which is the customer information system for GSWC. The customer information system contains information on the customers of GSWC, including dates that they became customers and the dates that they terminated their relationship with GSWC, the customer's name and account number, the property location, among other things.
 - b. She provided a declaration in the Civil Action on behalf of GSWC which contained screen shots of various customers' records from 04/03/2007 through 12/04/2014.
 - c. That WENDY TEJEDA was a customer of GSWC for the subject

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property from 04/03/2007 to 01/03/2013, account number 4283730000.

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ESTIMATED CROSS-EXAMINATION: 30 MINUTES

4. **ROBERT NILA**, Superintendent for GSWC – will testify that:
- a. As Superintendent of Central Basin West, his responsibilities included oversight of office staff, including customer service personnel, water distribution operations, billing issues, PUC complaints or issues, customer complaints, decisions to disconnect or reconnect customer service, and other related supervisory issues.
 - b. Jessica Munoz became the customer of record for water service on the subject property on June 27, 2013. On August 8, 2013, she applied for monthly credits on the water service for low-income households under a program approved by the California Public Utilities Commission ("PUC"), titled "California Alternative Rates for Water" and commonly called "CARW." Her application was approved, and the monthly credits were provided. The net effect was that the water service bills to Ms. Munoz were lower than they would be if at prevailing market rates.
 - c. On November 18, 2013, Ms. Munoz requested to be removed as the customer of record. On December 6, 2013, another occupant at the property, ELENA RUIZ LUNA, became the customer of record with GSWC under account number 6842618686. Almost immediately, Ms. Luna fell behind in paying the bills, requiring GSWC to send her a reminder notice the very first month the account was placed in her name.
 - d. By March 6, 2014, there was a balance owing of \$1,092.48 on Ms. Luna's account. Ms. Luna complained that she thought that there were leaks in the water lines but refused GSWC's offer to have the lines inspected.
 - e. On May 13, 2014, GSWC issued a 15-day Notice of Termination to Ms. Luna, and on June 3, 2014, the service was disconnected at Ms. Luna's request.
 - f. On June 5, 2014, two days after the service had been disconnected at Ms. Luna's request, GSWC's service operator reported that the

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- occupants had taken over the meter and turned it back on without authorization, so he had GSWC disconnect the meter again.
- g. On June 16, 2014, he dispatched Alfredo Orozco to return to the subject property to check on the meter. It was reported to him that the meter had been tampered with. His estimate based on meter reading data, was that occupants of the subject property had helped themselves to 15,708 gallons of water during the 11 days the water was supposed to have been disconnected.
 - h. On June 20, 2014, Ms. Luna contacted GSWC and asked that she be reinstated as customer of record. He authorized the reinstatement and Ms. Luna was assigned a new account number, number 0893738721. As a condition of reinstatement, Ms. Luna agreed to make a partial payment on the overdue amount and agreed to a payment plan to repay the remainder that was in arrears. Ms. Luna made the initial partial payment of \$700.00 and GSWC reconnected the water service. However, Ms. Luna reneged on honoring the repayment plan and the unpaid balance escalated monthly.
 - i. On August 24, 2014, with Ms. Luna owing \$1,793.84, he authorized the posting of a 15-day Notice of Termination on the subject property. On September 2, 2014, he authorized the disconnection of water service to the subject property. Even though the water meter service had been disconnected, Ms. Luna remained the customer of record on the account.
 - j. Ms. Luna's account balance had increased from \$1,793.84 in August 2014 to \$4,649.50 on November 6, 2014 due to the unauthorized tampering and taking of GSWC's water.
 - k. On December 4, 2014, he dispatched Mr. Orozco to disconnect water service to the property. At that time, the unpaid balance due by Ms. Luna was \$5,443.56.
 - l. He did not speak with Carlos Jauragui from SAJE until January 19, 2015, at which time he explained the water theft and multiple customers being removed as customers of record to avoid the financial obligation that went with being a customer of record since WENDY TEJEDA closed her account.

ESTIMATED DIRECT: 1 HOUR
ESTIMATED CROSS-EXAMINATION: 30 MINUTES

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Courtroom 1568 Calendar**

Tuesday, April 17, 2018

Hearing Room 1568

11:00 AM

CONT... Wendy Tejada

Chapter 7

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 18, 2018

Hearing Room 1568

10:00 AM

2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

- #1.00** Hearing
RE: [20] Motion For Summary Judgment Memorandum of Points and Authorities
in Support Thereof

Docket 20

Tentative Ruling:

4/17/2018

For the reasons set forth below, the Motion for Summary Judgment is denied without prejudice. Prosecution of this action is stayed pending entry of final judgment in the appeal of the Malicious Prosecution Judgment. A Status Conference shall take place on July 17, 2018, at 10:00 a.m.

Pleadings Filed and Reviewed:

- 1) Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §523(a)(6) [Doc. No. 1] (the "Complaint")
- 2) Plaintiff Moysey Chernyavsky's Motion for Summary Judgment [Doc. No. 21] (the "Motion")
 - a) Plaintiff's Proposed Statement of Uncontroverted Facts and Conclusions of Law [Doc. No. 22]
 - b) Plaintiff Moysey Chernyavsky's Corrected Notice of Hearing on Motion for Summary Judgment [Doc. No. 24]
- 3) Opposition to Motion for Summary Judgment [Doc. No. 27] (the "Opposition")
 - a) Defendant Michael Dekhtyar's Separate Concise Statement of Genuine Issues Filed in Opposition to Plaintiff's Motion for Summary Judgment [Doc. No. 28]
- 4) Reply in Support of Plaintiff Moysey Chernyavsky's Motion for Summary Judgment [Doc. No. 30] (the "Reply")
 - a) Evidentiary Objections to the Declaration of Michael Dekhtyar in Connection with Plaintiff's Motion for Summary Judgment [Doc. No. 31]

I. Facts and Summary of Pleadings

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On November 10, 2015, Moysey Chernyavsky (the "Plaintiff") filed a *Second Amended Complaint for Malicious Prosecution* (the "Malicious Prosecution Complaint") against Michael Dekhtyar (the "Defendant") in the Los Angeles Superior Court (the "LASC"). Plaintiff alleged that Defendant had engaged in malicious prosecution in connection with three actions: (1) *Chernyavsky v. Dekhtyar*, LASC Case No. BC440114 (filed June 21, 2010); (2) *Dekhtyar v. Cothran and Chernyavsky*, LASC Case No. BC460343 (filed April 27, 2011); and (3) *Sanchez v. Dekhtyar*, LASC Case No. TC26535 (filed June 6, 2012).

On February 29, 2016, the LASC entered judgment in Plaintiff's favor in the Malicious Prosecution Complaint, in the amount of \$25,500 (the "Malicious Prosecution Judgment"). The LASC found that Defendant had engaged in malicious prosecution in connection with a cross-complaint that Defendant had filed in the BC440114 action. The LASC did not find that Defendant had engaged in malicious prosecution with respect to the BC460343 or TC26535 actions. Defendant has appealed the Malicious Prosecution Judgment, and briefing on the appeal has been completed.

The cross-complaint filed in the BC440114 action that was the basis for the Malicious Prosecution Judgment (the "BC440114 Cross-Complaint") was dismissed with prejudice on February 6, 2013. The LASC stated that the dismissal was based upon Defendant's failure to timely file an amended cross-complaint after the LASC had sustained Plaintiff's demurrer.

On August 18, 2017, Plaintiff filed the instant action, alleging that the indebtedness established by the Malicious Prosecution Judgment is non-dischargeable pursuant to §523(a)(6). Plaintiff now moves for summary judgment.

Summary of Plaintiff's Motion for Summary Judgment

Plaintiff makes the following arguments in support of the Motion:

Defendant is collaterally estopped from contesting liability under §523(a)(6), because the elements of a malicious prosecution claim mirror those of a §523(a)(6) action. Under California law, to establish a cause of action for malicious prosecution, "a plaintiff must demonstrate that the prior action (1) was initiated by or at the direction of the defendant and legally terminated in the plaintiff's favor, (2) was brought without probable cause, and (3) was initiated with malice." *Siebel v. Mittlesteadt*, 41 Cal. 4th 735, 740, 161 P.3d 527, 530 (2007).

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful

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and malicious' injury to another person or to the property of another. The 'willful' and "malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146-47 (9th Cir. 2002) (internal citations omitted).

To obtain the Malicious Prosecution Judgment, Plaintiff was required to establish that Defendant acted with malice. A showing that Defendant acted with malice is equivalent to a showing that Defendant inflicted willful injury within the meaning of § 523(a)(6). Consequently, Plaintiff is entitled to judgment that the Malicious Prosecution Judgment is excepted from Defendant's discharge.

Summary of Defendant's Opposition to the Motion

Defendant makes the following arguments in Opposition to the Motion:

Plaintiff is not entitled to summary judgment on collateral estoppel grounds because the issues raised in the Malicious Prosecution Complaint are not the same as the issues raised in the instant non-dischargeability action. Entry of the Malicious Prosecution Judgment was based in part on the dismissal with prejudice of the BC440114 Cross-Complaint. But the LASC erred in dismissing the BC440114 Cross-Complaint. After the LASC sustained Plaintiff's demurrer to the BC440114 Cross-Complaint, it ordered Defendant to file an amended cross-complaint within fifteen days. That order was issued on December 17, 2012, meaning that normally Defendant would have been required to file the amended cross-complaint on January 1, 2013. However, January 1, 2013, was a court holiday, so the actual deadline for Defendant to file the amended cross-complaint was January 2, 2013. Defendant filed the amended cross-complaint on January 2, 2013.

The LASC dismissed the BC440114 Cross-Complaint pursuant to Cal. Code Civ. Proc. §581(f)(2), which authorizes dismissal of a pleading if an amended pleading is not timely filed. Because Defendant did timely file an amended cross-complaint, the dismissal was in error. Consequently, the subsequent judgment that Defendant

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engaged in malicious prosecution in connection with the BC440114 Cross-Complaint was also in error. To prevail on a malicious prosecution claim, Plaintiff must establish that the action upon which the malicious prosecution claim is predicated was "legally terminated in plaintiff's favor." *Siebel v. Mittlesteadt*, 41 Cal. 4th 735, 740, 161 P.3d 527, 530 (2007). Plaintiff cannot meet this standard given that dismissal of the BC440114 Cross-Complaint was the result of judicial error.

Summary of Plaintiff's Reply in Support of the Motion for Summary Judgment

Plaintiff makes the following arguments in his Reply in support of the Motion for Summary Judgment:

Defendant's argument that the dismissal of the BC440114 Cross-Complaint was dismissed in error does not defeat Plaintiff's entitlement to entry of judgment. Defendant could have moved to set aside the dismissal of the BC440114 Cross-Complaint, but he failed to do so. Further, the fact that two demurrers were granted with respect to the BC440114 Cross-Complaint establishes that the cross-complaint was frivolous, which is why the LASC subsequently entered the Malicious Prosecution Judgment.

The Court should take judicial notice of a Chapter 13 petition that Defendant filed before Judge Zurzolo in 2011. Defendant's Chapter 13 petition was dismissed and Defendant was permanently barred from commencing future bankruptcy petitions.

[Note 1] Defendant commenced the subsequent LASC actions to exact revenge upon Plaintiff for the role that Plaintiff played in securing the dismissal and bar.

II. Findings and Conclusions

At the outset, the Court declines to take judicial notice of Defendant's prior Chapter 13 petition. The issue in the present action is whether the indebtedness established by the Malicious Prosecution Judgment is non-dischargeable pursuant to § 523(a)(6). Defendant's prior Chapter 13 petition is not relevant to this issue. Further, the probative value of the litigation that occurred between Plaintiff and Defendant in the prior Chapter 13 petition is substantially outweighed by the danger of unfair prejudice and waste of time. Finally, Plaintiff's request for judicial notice was not proper because it was presented for the first time in Plaintiff's reply papers, which deprived Defendant of any opportunity to respond.

Turning to the merits, summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to

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judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

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

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

First, the Malicious Prosecution Judgment is not entitled to preclusive effect because it is not final, given the pending appeal. "Unlike the federal rule and that of

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several states, in California the rule is that the finality required to invoke the preclusive bar of res judicata is not achieved until an appeal from the trial court judgment has been exhausted or the time to appeal has expired." *Franklin & Franklin v. 7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1168, 1174, 102 Cal. Rptr. 2d 770, 774 (2000).

Second, at this juncture, according preclusive effect to the Malicious Prosecution Judgment would contravene the public policies of promoting judicial economy and preserving the integrity of the judicial system. An appeal of the Malicious Prosecution Judgment is pending before the Second Appellate District. The appeal has been fully briefed and the parties are awaiting a hearing date. The Court expresses no opinion as to Defendant's chances of obtaining reversal of the Malicious Prosecution Judgment. However, in view of the circumstances surrounding the dismissal of the BC440114 Cross-Complaint, the Court does not view the appeal solely as a delay tactic. Judicial economy would not be served were the Court to give preclusive effect to a judgment which might be overturned.

The Court will stay prosecution of the instant action pending entry of final judgment in the appeal of the Malicious Prosecution Judgment. All litigation deadlines previously set by the Court are VACATED. A Status Conference shall take place on **July 17, 2018, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the appeal, must be submitted by no later than fourteen days prior to the hearing.

Depending upon the outcome of the appeal, the public policy considerations which prevent the Court from according preclusive effect to the Malicious Prosecution Judgment might no longer apply in the future. Therefore, the denial of the Motion for Summary Judgment is without prejudice to Plaintiff's ability to bring a renewed motion at a later date, should circumstances warrant.

The Court will enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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Rulings on Plaintiff's Evidentiary Objections to Defendant's Declaration

- 1) **Defendant's Decl. ¶3:** "The State Court Judgment ultimately arose from a business relationship between Plaintiff and me. We have jointly owned a number of Denny's restaurants in Southern California. In 2003, I was introduced by Plaintiff to Herman Cothran ("Cothran"), who claimed to own a patent on a unique type of food over/smoker devise. Based on representations by both Cothran and Plaintiff, I invested in updating Cothran's smoker. Plaintiff owned an interest, but had made no investment. After I invest over a million dollars into the patent and restaurant project, I learned that Cothran had defrauded me and that Plaintiff has played a part. We tried to work things out, but these disputes lead to law suits between Plaintiff, Cothran and myself in the California Superior Court."

Plaintiff's Objections: Improper legal conclusion, lack of competence, lack of foundation, improper opinion testimony, bias, hearsay, Federal Rules of Evidence 104, 402, 601, 602.

Ruling: Objections overruled. However, the Court does not consider the testimony offered in ¶3 because it is not relevant to the issues raised by the Motion for Summary Judgment—namely, whether Defendant is precluded from contesting that the indebtedness established by the Malicious Prosecution Judgment is non-dischargeable pursuant to §523(a)(6).

- 2) **Defendant's Decl. ¶6:** "This was an error by the court because the fifteenth day after the December 17 hearing fell on January 1, 2013, a court holiday and I had until January 2, 2013 to file the amended cross-complaint. A true and correct copy of the conformed faced page of the cross complaint showing it was filed on January 2, 2013 is attached hereto as Exhibit "D" and is incorporated by reference. I'm not asking for the Court to accept my allegations as true, just that the document was filed on January 2, 2013, the very first day the court was open for business after the last day to file fell on the January 1, 2013, New Year's Day holiday. I should have been given the extra day pursuant to California court rules."
- Plaintiff's Objections:** Improper legal conclusion, lack of competence, lack of foundation, improper opinion testimony, bias, hearsay, Federal Rules of Evidence 104, 402, 601, 602.

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Ruling: Objections overruled. Defendant is qualified to testify that, in his opinion, the LASC erred in dismissing the BC440114 Cross-Complaint. Plaintiff's objections go to the weight of the evidence, not its admissibility.

- 3) **Defendant's Decl. ¶7:** "I have lost everything because of my relationship with Plaintiff. I truly believe he is at least partially responsible for my slide into insolvency. I am informed and believe that part of introducing me to Herman Cothran was so Cothran could raise funds to repay an obligation he owed Plaintiff. I truly believe that my claims against Plaintiff were and are justified and that I pursued my claims to recover damages I believed he caused me. I had no intent to cause him any harm, economic or otherwise, by filing the cross-complaint in the BC440114 state court action. Certainly, its dismissal in Plaintiff's favor was not on the merits as was because by an error by the Superior Court."

Plaintiff's Objections: Improper legal conclusion, lack of competence, lack of foundation, improper opinion testimony, bias, hearsay, Federal Rules of Evidence 104, 402, 601, 602.

Ruling: Objections overruled. However, the Court does not consider the testimony offered in ¶7 because it is not relevant to the issues raised by the Motion for Summary Judgment—namely, whether Defendant is precluded from contesting that the indebtedness established by the Malicious Prosecution Judgment is non-dischargeable pursuant to §523(a)(6).

Note 1

The Court notes that Defendant obtained relief from the order barring him from commencing any future bankruptcy petitions. Thus, Defendant was authorized to file the instant petition. *See* Order Vacating Bar and Granting Motion for Permission to File a Chapter 7 Bankruptcy Case [Doc. No. 59, Case No. 2:11-bk-19548-VZ].

Party Information

Debtor(s):

Michael Dekhtyar

Pro Se

Defendant(s):

Michael Dekhtyar

Pro Se

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Plaintiff(s):

Moysey Chernyavsky

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:16-10799 BBeautiful, LLC, a California limited liability co

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#2.00 Post confirmation Status Hearing

fr. 6-7-17; 10-18-17

Docket 259

Tentative Ruling:

4/17/2018

No appearances are required. The Reorganized Debtor has filed its status report ("Report") in which it requests dismissal of the case. In order to have a clear record, based upon the Report the Court will sua sponte issue an Order to Show Cause Re Dismissal pursuant to 11 U.S.C. section 1112(4)(M). No further status reports will be required.

Party Information

Debtor(s):

BBeautiful, LLC, a California

Represented By
Steven Werth
Michael Jay Berger
Michael S Fox
Thomas Fleming
Matteo J Rosselli

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2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 11

#1.00 FINAL HEARING RE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2278 Canyonback Road, Los Angeles, CA 90049 .

fr: 2-20-18

Docket 17

Tentative Ruling:

4/20/2018

Hearing required with respect to the issue of equity and adequate protection. Set forth below are the court's rulings on the evidentiary matters as raised by the parties.

I. Procedural Background

Deepak and Mira Vasandani (the "Debtors") filed a voluntary Chapter 11 petition on January 8, 2018 (the "Petition") [Doc. No. 1]. On January 25, 2018, Grandpoint Bank (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay with Supporting Declarations REAL PROPERTY RE: 2278 Canyonback Road, Los Angeles, CA 90049" (the "Motion") [Doc. No. 17]. On February 6, 2018, the Debtors filed the Opposition to the Motion (the "Opposition") [Doc. No. 27]. The Movant filed its Reply to the Opposition on February 13, 2018 (the "Reply") [Doc. No. 36]. The central dispute between the parties is the value of the subject property for the purposes of determining the Motion. The Court held a hearing on the Motion on February 20, 2018, and entered the Order Continuing Hearing on the Motion on February 22, 2018 [Doc. No. 45]. In the Order Continuing Hearing on the Motion, the Court stated that the purpose of the continued hearing was to take testimony from live witnesses to establish the burdens of proof set forth in § 362(g) on the issues of adequate protection and equity in the Property.

Both the Movant and the Debtors submitted supplemental briefs and additional evidence in connection with the continued hearing. On March 23, 2018, the Movant filed the "Movant's Supplemental Brief in Support of the Motion" (the "Movant's Supplemental Brief") [Doc. No. 48]. The Movant concurrently filed the

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"[Supplemental] Declaration of Jorge Varela in Support of the Motion" (the "Supp. Varela Decl.") [Doc. No. 49]. On April 16, 2018, the Debtors filed the "Debtors' Supplemental Opposition Brief to Movant's Supplemental Brief and the Motion" (the "Debtors' Supplemental Opposition") [Doc. No. 51]. On April 17, 2018, the Debtors filed the "Supplemental Declaration of Appraiser Michael Yates in Support of the Motion" (the "Supp. Yates Decl.") [Doc. No. 53].

II. Evidentiary Objections & Motions to Strike

A. Movant's Evidentiary Objections to the Declaration of Deepak B. Vasandani

On April 18, 2018, the Movant filed its "Evidentiary Objections to Supplemental Declaration of Deepak B. Vasandani and Motion to Strike Exhibits" (the "Evidentiary Objections") [Doc. No. 55]. The Movant objects to the Supplemental of Deepak B. Vasandani (the "Supp. Vasandani Decl.") [Doc. No. 51] on the following grounds:

- (1) **Supp. Vasandani Decl. at ¶ 4:** "Attached hereto as Exhibit '1' and incorporated herein by this reference is a true and correct copy of a payoff statement provided to me by Grandpoint in December 2018 [*sic*], in relation to the payoff amount due on the second deed of trust as of September 28, 2018 [*sic*]."

Movant's Objection: Best Evidence, Fed. R. Evid. 1002.

Ruling: OVERRULED. Fed. R. Evid. 1003 provides that, "A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate." The Movant has not raised a genuine issue about the original's authenticity or how, if at all, the circumstances make it unfair to admit the duplicate. *Cf. Maxwell Macmillan Realization Liquidating Tr. v. Aboff (In re Macmillan)*, 186 B.R. 35, 48 (Bankr. S.D.N.Y. 1995) (finding that the debtors raised legitimate questions as to the authenticity of a photocopy).

- (2) **Supp. Vasandani Decl. at ¶ 5:** "Attached hereto as Exhibit '2' and incorporated herein by this reference is a true and correct copy of a payoff statement provided to me by Grandpoint in December 2018 [*sic*], in

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relation to the payoff amount due on the third deed of trust as of September 28, 2018 [*sic*]."

Movant's Objection: Best Evidence, Fed. R. Evid. 1002.

Ruling: OVERRULED. Fed. R. Evid. 1003 provides that, "A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate." The Movant has not raised a genuine issue about the original's authenticity or how, if at all, the circumstances make it unfair to admit the duplicate. *Cf. Maxwell Macmillan Realization Liquidating Tr. v. Aboff (In re Macmillan)*, 186 B.R. 35, 48 (Bankr. S.D.N.Y. 1995) (finding that the debtors raised legitimate questions as to the authenticity of a photocopy).

- 3) **Supp. Vasandani Decl. at ¶ 6:** "On April 11, 2018, Michael Yates, a California Certified General Real Estate Appraiser, BRE ID No. AG 026353, came to our home and did an updated Appraisal and value analysis on our Property for the purpose of arriving at an updated opinion of value."

Movant's Objection: Lacks Foundation, Fed. R. Evid. 602.

Ruling: OVERRULED. The Supplemental Vasandani Declaration sufficiently establishes that, based on the fact of his ownership of the Property where the Vasandani family currently resides, Supp. Vasandani Decl. at ¶ 3, Mr. Vasandani has personal knowledge that Mr. Yates came to their Property on April 11, 2018, for the purpose of conducting his appraisal. *See also id.* at ¶ 1 ("I have personal knowledge of the matters set forth in this declaration . . .").

- (4) **Supp. Vasandani Decl. at ¶ 7:** "This updated appraisal report was provided to us on April 16, 2018."

Movant's Objection: Lacks Foundation, Fed. R. Evid. 602.

Ruling: OVERRULED. The Supplemental Vasandani Declaration sets

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forth sufficient facts that Mr. Vasandani has personal knowledge that the Updated Appraisal Report was provided to him on April 16, 2018. The Court notes that the testimony of the Michael Yates, *see* "Supplemental Declaration of Appraiser Michael Yates" (the "Supp. Yates Decl") [Doc. No. 53], describes the investigation and its results and therefore cures any authentication or foundation problems. *See Fortier v. Dona Anna Plaza Partners*, 747 F.3d 1324, 1332 (10th Cir. 1984).

- (5) **Supp. Vasandani Decl. at ¶ 8:** "Attached hereto as Exhibit '3' and incorporated herein by reference is a true and correct copy of the opinion of value analysis report ('Appraisal Report') appraiser Michael Yates prepared which substantiates the methods used to arrive at the estimated market value."

Movant's Objections: Hearsay, Fed. R. Evid. 802; Lack of Authentication, Fed. R. Evid. 901–902; Lacks Foundation, Fed. R. Evid. 602

Ruling: SUSTAINED. The Supplemental Vasandani Declaration does not lay sufficient foundation. Furthermore, to the extent that the document is being offered for its truth, and no hearsay exception applies with regards to Mr. Vasandani, the objection is SUSTAINED as hearsay. The court notes, however, that the Updated Appraisal Report attached to the Supplemental Yates Declaration has been admitted into evidence.

- (7) **Supp. Vasandani Decl. at ¶ 9:** "The reported analysis, opinions and conclusions are limited only by their reported assumptions and the limiting conditions set forth in the report. As a result of the valuation and an analysis of relevant data, in the Appraisal opinion, as of April 11, 2018, the estimated market value of the subject property was \$2,050,000."

Movant's Objection: Best Evidence, Fed. R. Evid. 1002; Lacks Foundation, Fed. R. Evid. 602.

Ruling: The Movant's objection under Fed. R. Evid. 1002 is OVERRULED. The Movant's objection under Fed. R. Evid. 602 is SUSTAINED as to the statement regarding the reported analysis, opinions

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and conclusions; the Movant's objection under Fed. R. Evid. 602 is **OVERRULED** as to the statement regarding valuation because the Supplemental Vasandani Declaration sets forth sufficient facts that Mr. Vasandani has personal knowledge of the Updated Appraisal Report based on it being provided to him on April 16, 2018.

- (8) **Supp. Vasandani Decl. at ¶ 12:** "I believe Movant's updated appraisal is even more inaccurate, inconclusive, intentionally misleading, and more inherently flawed than the drive-by appraisal."

Movant's Objection: Lacks Foundation, Fed. R. Evid. 602.

Ruling: SUSTAINED. The statement lacks foundation.

- (9) **Supp. Vasandani Decl. at ¶ 13:** "Comp 1 is a property located on the opposite side of the street from the Property, and the side of the street Comp 1 is located do not have any view [*sic*], whereas the side Debtors' Property is located on have [*sic*] panoramic and golf course views. This accounts for a significant difference in market value."

Movant's Objection: Improper expert opinion, Fed. R. Evid. 702; Improper lay opinion, Fed. R. Evid. 701; Lacks Foundation and Personal Knowledge, Fed. R. Evid. 602.

Ruling: SUSTAINED under Fed. R. Evid. 701 as to the statement that "This accounts for a significant difference in market value." SUSTAINED under Fed. R. Evid. 602 as to the statement that "the side of the street Comp 1 is located do not have any view [*sic*]"

- (10) **Supp. Vasandani Decl. at ¶ 14:** "Comp 2 is a property [*sic*] does not have a golf course view. This accounts for a significant difference in market value."

Movant's Objection: Improper expert opinion, Fed. R. Evid. 702; Improper lay opinion, Fed. R. Evid. 701; Lacks Foundation and Personal Knowledge, Fed. R. Evid. 602.

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Hearing Room 1568

10:00 AM

CONT...

Deepak B. Vasandani and Mira Vasandani

Chapter 11

Ruling: SUSTAINED under Fed. R. Evid. 701 as to the statement that "This accounts for a significant difference in market value." SUSTAINED under Fed. R. Evid. 602 as to the statement that "the side of the street Comp 1 is located do not have any view [*sic*]".

- (11) **Supp. Vasandani Decl. at ¶ 15:** "Comp 3 is a 2-bedroom and 2.5 bathroom property, whereas the Debtor's Property is a 3-Bedroom and 3.5-bathroom property. This accounts for a significant difference in market value."

Movant's Objection: Improper expert opinion, Fed. R. Evid. 702; Lacks Personal Knowledge , Fed. R. Evid. 602; Best Evidence, Fed. R. Evid. 1002.

Ruling: SUSTAINED under Fed. R. Evid. 702 as to the statement that "This accounts for a significant difference in market value." SUSTAINED under Fed. R. Evid. 602 as to the statement that "Comp 3 is a 2-bedroom and 2.5 bathroom property".

- (12) **Supp. Vasandani Decl. at ¶ 16:** "Comp 5 is 2 bedrooms, whereas the Debtor's Property is 3 Bedrooms. This accounts for a significant difference in market value."

Movant's Objection: Improper expert opinion, Fed. R. Evid. 702; Lacks Personal Knowledge , Fed. R. Evid. 602; Best Evidence, Fed. R. Evid. 1002.

Ruling: SUSTAINED under Fed. R. Evid. 702 as to the statement that "This accounts for a significant difference in market value." SUSTAINED under Fed. R. Evid. 602 as to the statement that "Comp 5 is 2 bedrooms".

- (13) **Supp. Vasandani Decl. at ¶ 17:** "Based on my review of the Movant's Faulty Appraisal Report, it appears Movant's appraiser handpicked the lowest comps for this area, which is the reason why all comps are either for properties located on the opposite side of the street, or are significantly smaller, or do not have a view or a view as desirable as Debtors' Property."

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CONT...

Deepak B. Vasandani and Mira Vasandani

Chapter 11

Movant's Objection: Improper expert opinion, Fed. R. Evid. 702; Lacks Foundation and Personal Knowledge, Fed. R. Evid. 602; Best Evidence, Fed. R. Evid. 1002.

Ruling: SUSTAINED.

- (14) **Supp. Vasandani Decl. at ¶ 18:** "My opinion that these comps were handpicked is supported by the fact that Movant's appraisal does not include sales that are on Canyonback Road, the street Debtors' Property is located on and share the same panoramic golf course view as Debtors' Property."

Movant's Objection: Lacks Foundation and Personal Knowledge, Fed. R. Evid. 602; Best Evidence, Fed. R. Evid. 1002.

Ruling: SUSTAINED.

- (15) **Supp. Vasandani Decl. Exhibits 1 & 2:** Payoff letters.

Movant's Objection: Hearsay, Fed. R. Evid. 802.

Ruling: OVERRULED.

- (16) **Supp. Vasandani Decl. Exhibit 3:** Yates Appraisal.

Movant's Objection: Lack of Authentication, Fed. R. Evid. 901-902; Hearsay, Fed. R. Evid. 802.

Ruling: OVERRULED. The Court notes that the testimony of the Michael Yates, *see* "Supplemental Declaration of Appraiser Michael Yates" (the "Supp. Yates Decl") [Doc. No. 53], describes the investigation and its results and therefore cures any authentication or foundation problems. *See Fortier v. Dona Anna Plaza Partners*, 747 F.3d 1324, 1332 (10th Cir. 1984).

B. The Grandpoint Motion to Strike

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Hearing Room 1568

10:00 AM

CONT... Deepak B. Vasandani and Mira Vasandani

Chapter 11

On April 18, 2018, the Movant filed the "Motion to Strike Late-Filed Declaration of Michael Yates and All Exhibits Attached Thereto" (the "Grandpoint Motion to Strike") [Doc. No. 56]. The Movant requests that the Court strike the Supplemental Yates Declaration on the grounds that it was filed one day later than the deadline set by the Court in the "Order Continuing Hearing on the Motion" (the "Order Continuing Hearing") [Doc. No. 45].

The Grandpoint Motion to Strike is DENIED. The Court may, in its discretion, allow a late-filed declaration. Mr. Yates states that his Supplemental Declaration was not timely filed because he had "a personal family emergency." Supp. Yates Decl. at ¶ 21. Based on this, the Court finds sufficient cause exists to excuse the late filing of the Supplemental Yates Declaration.

C. The Debtors' Motion to Strike

On April 19, 2018, the Debtors filed the "Debtors' Motion to Strike: (1) Grandpoint Bank's Evidentiary Objections to Supplemental Declaration of Deepak B. Vasandani and Motion to Strike Exhibits; and (2) Grandpoint Bank's Motion to Strike Late-Filed Declaration of Michael Yates and All Exhibits Attached Thereto" [Doc. No. 60]. The Debtors argue that the above referenced motions filed by the Movant exceed the scope of the Court's Order Continuing Hearing [Doc. No. 45] in which the Court set a briefing schedule which included the Supplemental Briefs and list of witnesses only.

The Debtors' Motion to Strike is DENIED. This is an evidentiary hearing and the Court does not consider either the Grandpoint Evidentiary Objections or the Grandpoint Motion to Strike "additional briefing" as that term was used in the Court's Order Continuing Hearing.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
Sheila Esmaili

Joint Debtor(s):

Mira Vasandani

Represented By

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10:00 AM

CONT...

Deepak B. Vasandani and Mira Vasandani

Sheila Esmaili

Chapter 11

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Central District of California
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Hearing Room 1568

10:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 11

#1.10 HearingRE: [56] Motion to strike Late Filed Declaration of Michael Yates and All Exhibits Attached Thereto

Docket 56

Tentative Ruling:

4/20/2018

See above Tentative for cal. 1.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
Sheila Esmaili

Joint Debtor(s):

Mira Vasandani

Represented By
Sheila Esmaili

**United States Bankruptcy Court
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 11

#1.20 HearingRE: [60] Motion to strike 1) Grandpoint Banks Evidentiary Objections to Supplemental Declaration of Deepak B. Vasandani and Motion to Strike Exhibits [Doc. 55]; and 2) Grandpoint Banks Motion to Strike Late-Filed Declaration of Michael Yates and All Exhibits Attached Thereto [Doc. 56]; Proof of Service;

Docket 60

Tentative Ruling:

See Cal. No. 1 above, incorporated by reference.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
Sheila Esmaili

Joint Debtor(s):

Mira Vasandani

Represented By
Sheila Esmaili

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#2.00 Hearing

RE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2395 Roanoke Road, San Marino, CA 91108 . (Wilkinson, Reilly)

fr: 2-20-18; 3-19-18

Docket 28

Tentative Ruling:

4/20/2018

No appearances required. Having reviewed the Trustee's Status Report [Doc. No. 56] requesting a continuance of the Motion and no opposition having been filed, the hearing on the Motion is CONTINUED to **June 18, 2018 at 10:00 a.m.**

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:16-17549 Ronnie David Yona and Caroline Yona

Chapter 7

#3.00 Hearing

RE: [176] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Subaru WRX VIN: JF1VA1D68F9815077 with proof of service. (Hanawalt, Jamie)

Docket 176

***** VACATED *** REASON: MOTION WITHDRAWN ON 4-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronnie David Yona

Represented By
Keith S Dobbins

Joint Debtor(s):

Caroline Yona

Represented By
Keith S Dobbins

Trustee(s):

Wesley H Avery (TR)

Represented By
David R. Weinstein

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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-11853 Miguel A Garcia

Chapter 7

#4.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Chevrolet Malibu .

Docket 13

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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10:00 AM

CONT... Miguel A Garcia

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Miguel A Garcia

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-11217 Aurora Linares

Chapter 7

#5.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 NISSAN ROGUE, VIN KNMAT2MTXGP594836 . (Wang, Jennifer)

Docket 11

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the "[Amended] Chapter 7 Individual Debtor's Statement of Intention" [Doc. No. 13] filed on April 11, 2018, in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... Aurora Linares

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Aurora Linares

Represented By
Francis Guilardi

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-12665 Win Plus, Inc.

Chapter 7

#6.00 HearingRE: [6] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3785 Wilshire Blvd., Suite 228 D, E & F, Los Angeles, CA 90010 .

Docket 6

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant cause a notice to quit to be served on the Debtor on January 11, 2018. The Movant filed an unlawful detainer action on January 23, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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10:00 AM

CONT...

Win Plus, Inc.

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Win Plus, Inc.

Represented By
M Teri Lim

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-13098 Brian Lopez

Chapter 7

#7.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 16754 EAST BENWOOD STREET COVINA, CA 91722 . (Sugars, Steven)

Docket 8

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on September 18, 2017. The Movant filed an unlawful detainer action on December 27, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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CONT... Brian Lopez

Chapter 7

The Court also finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Steven L. Sugars in support of Motion at paragraph 18.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Brian Lopez

Pro Se

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10:00 AM

CONT... Brian Lopez

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-24716 Leslie P Martinez and Enrique H Martinez

Chapter 7

#8.00 HearingRE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 Honda Pilot-V6, Vin 5FNYP3H57AB013429 . (Wang, Jennifer)

Docket 19

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Leslie P Martinez and Enrique H Martinez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Leslie P Martinez

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Enrique H Martinez

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-11542 Cynthia M. Lawrence-Hansen

Chapter 7

#9.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CR-V, VIN: 2HKR M3H5 2GH5 00865 .

Docket 8

Tentative Ruling:

4/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Cynthia M. Lawrence-Hansen

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Cynthia M. Lawrence-Hansen

Represented By
Halli B Heston

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 23, 2018

Hearing Room 1568

10:00 AM

2:18-11676 Chana Christine Andrews

Chapter 7

#10.00 HearingRE: [13] Motion to Avoid Lien Judicial Lien with Mardean E. Alesso, Donald Kenneth Black and Steven Edward Black ;Declarations in Support (With Proof of Service)

Docket 13

Tentative Ruling:

4/20/2018

For the reasons set forth below: (1) the Debtor's Motion to Avoid Lien is DENIED; and (2) the Alesso Defendants' Stay-Relief Motion is GRANTED under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (the "Stay-Relief Motion") [Doc. No. 8]
 - a) Debtor's Limited Opposition to the Stay-Relief Motion (the "Stay-Relief Opposition") [Doc. No. 14]
 - b) Alesso Reply Memorandum to Stay-Relief Opposition (the "Stay-Relief Reply") [Doc. No. 15]
 - c) Order (1) Setting Hearing on Motion to Avoid Lien; and (2) Continuing Hearing on Stay-Relief Motion (the "Continued Hearing Order") [Doc. No. 18]
- 2) Debtor's Motion to Avoid Lien with Mardean E. Alesso, Donald Kenneth Black, and Steven Edward Black (the "Lien Avoidance Motion") [Doc. No. 13]
 - a) Notice of Opposition and Request for a Hearing filed by Interested Party Mardean E. Alesso (the "Lien Avoidance Opposition") [Doc. No. 16]
 - b) Debtor's Reply to the Lien Avoidance Opposition (the "Lien Avoidance Reply") [Doc. No. 22]

I. Facts and Summary of Pleadings

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Los Angeles
Judge Ernest Robles, Presiding
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CONT... Chana Christine Andrews

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Chana Christine Andrews (the "Debtor") filed a voluntary Chapter 7 petition on February 15, 2018 (the "Petition") [Doc. No. 1]. On February 28, 2018 Mardean E. Alesso, Donald Kenneth Black, and Steven Edward Black (the "Alesso Defendants") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362" (the "Stay-Relief Motion") [Doc. No. 8]. On March 20, 2018, the Debtor filed the "Motion to Avoid Lien with Mardean E. Alesso, Donald Kenneth Black, and Steven Edward Black" (the "Lien Avoidance Motion") [Doc. No. 13]. On March 23, 2018, the Debtor filed the "Limited Opposition to the Stay-Relief Motion" (the "Stay-Relief Opposition") [Doc. No. 14], in which the Debtor stated her non-opposition to the relief sought by Stay-Relief Motion, but requested that the Court determine resolve the Lien Avoidance Motion before granting relief from stay in order to determine the Debtor's interest in the personal property that is the subject of both the Stay-Relief Motion and the Lien Avoidance Motion. On April 5, 2018, the Court entered the "Order (1) Setting Hearing on Motion to Avoid Lien; and (2) Continuing Hearing on Stay-Relief Motion" (the "Continued Hearing Order") [Doc. No. 18]. The Continued Hearing Order continued the hearing on the Stay-Relief Motion to be heard concurrently with the Lien Avoidance Motion.

Background

Pre-Petition, the Debtor and the Alesso Defendants were parties to the certain action in the Los Angeles Superior Court captioned *Andrews et al. vs. Alesso et al.*, Case No. MC025119 (the "State Action"). On December 29, 2014, the Debtor and Jessica Andrews (the "Andrews") commenced the State Action against two dozen parties, including the Alesso Defendants. The State Action asserted claims on multiple intentional tort and contract theories arising out of the Andrews' purchase of a home from the Alesso Family Trust. "Declaration of Jason Wallach in Opposition to Motion to Avoid Lien" (the "Wallach Decl.") [Doc. No. 16] at ¶ 2. The State Court bifurcated the claims in the State Action against the Alesso Defendants (the "Alesso Claims"), and held a six day bench trial on the Alesso Claims. *Id.* On March 14, 2016, the State Court entered the "Judgment After Trial" on the Alesso Claims. *Id.* at ¶ 3; *see id.*, Exhibit 1 (the "Amended Judgment"). The Judgment After Trial granted the Alesso Defendants dismissal of all the Alesso Claims and granted recovery of costs and attorney's fees against the Andrews jointly and severally. *Id.* at ¶ 3; *see also* Amended Judgment. On May 4, 2016, the State Court amended the Judgment After Trial and awarded the Alesso Defendants "Total costs of \$7,503.75 plus additional

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Cost of \$3,436.12 and Attorney Fees of \$160,988.00," *id.* at ¶ 4, for a judgment in favor of the Alesso Defendants in the total amount of \$171,927.87, *id.* at ¶ 5; *see also* Amended Judgment. Interest on the Amended Judgment has accrued from May 4, 2016 through February 26, 2018 at the rate of 10% per year. *Id.* at ¶ 5. The Amended Judgment was affirmed by the California Court of Appeal. *Id.* at ¶ 6. During the period from approximately May 4, 2016 through June 17, 2016, the Andrews entered into three separate settlements with other of the remaining defendants in the State Action which, in the aggregate, awarded the Andrews a total of \$96,000.00 (the "Settlement Proceeds")¹ [Note 1]. *Id.* at ¶ 10; "Declaration of Chana Christine Andrews" (the "Andrews Decl.") [Doc. No. 13] at ¶ 5. The Settlement Proceeds were deposited in the Client Trust Account of Attorney Henry M. Lee the "Attorney Account," where such funds currently remain held. Andrews Decl. at ¶ 5.

On March 22, 2016, after the entry of the Judgment After Trial but prior to the entry of the Amended Judgment, the Alesso Defendants filed a Notice of Lien upon the Andrews' remaining claims in the State Action in the amount of \$7,503.75 (the "Original Lien"). Wallach Decl. at ¶ 8; *id.*, Exhibit 2; Andrews Decl. at ¶ 7. On June 3, 2016—after the State Court entered Amended Judgment and the JA Approval Order on May 4, 2016—the Alesso Defendants filed the Amended Notice of Lien in the amount of \$171,872.87 (the "Amended Lien"). Wallach Decl. at ¶ 9; *id.*, Exhibit 3; Andrews Decl. at ¶ 8.

The Stay-Relief Motion

The Motion

The Stay-Relief Motion filed by the Alesso defendants seeks relief from the automatic stay with regards to the \$96,000.00 currently being held in the Attorney Account—in which the Debtor has claimed a 1/2 interest, *see* Debtor's Schedule A/B [Doc. No. 1] at ¶ 25—pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2). The Alesso Defendants contend that relief should be granted under § 362(d)(1) on the basis that the Debtor does not have an equity cushion in her share of the Settlement Funds because the Alesso Defendants have a lien on those funds in the total amount of \$220,000.00; thus, the Alesso Defendants' interest in the Settlement Funds is not adequately protected. Stay-Relief Motion, Memorandum of Points and Authorities at 2. For the same reasons, the Alesso Defendants contend that the Debtor does not have any equity in the Settlement Funds, and the funds are not necessary for an effective

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reorganization because this is a Chapter 7 case.

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The Debtor's Limited Opposition

The Stay-Relief Opposition does not oppose the relief sought by the Stay-Relief Motion, but rather, stated the reasons why the Lien Avoidance Motion must be determined concurrently with the Stay-Relief Motion.

The Stay-Relief Reply

The Stay-Relief Reply filed by the Alesso Defendants states that the Debtor acknowledges, in her Schedules and/or the Stay-Relief Opposition, that (a) she only has an interest in half of the Settlement Funds, (b) if the Debtor's claimed exemption of \$19,825.00 is upheld, it still will not cover \$25,175.00 of her half of the Funds or the other half of the Funds which she has no interest in, and (c) the Debtor's state court attorney, who is currently holding the Funds in the Attorney Account, may claim a right to a portion of the Funds. The Stay-Relief Reply further argues that the aforementioned issues and the Alesso Defendants' rights to the funds are uniquely state law issues, and the Alesso Defendants should be granted relief from stay to proceed in the State Court on those issues with the understanding that this Court's ruling on the Lien Avoidance Motion and the related issue of the Debtor's exemption will be binding on the parties.

The Lien Avoidance Motion

The Motion

The Debtor claims a "wild card" exemption in the Settlement Funds pursuant to Cal. Code Civ. P. § 703.140(b)(5) in the amount of \$19,825.00 (the "Wild Card Exemption"). Lien Avoidance Motion at 2; Andrews Decl. at ¶ 3. The Lien Avoidance Motion seeks to avoid the Amended Lien to the extent that the Amended Lien impairs the Debtor's Wild Card Exemption. Andrews Decl. at ¶ 9.

The Lien Avoidance Opposition

On April 2, 2018, the Alesso Defendants filed the "Notice of Opposition and

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Request for a Hearing" (the "Lien Avoidance Opposition") [Doc. No. 16]. The Alesso Defendants oppose the Lien Avoidance Motion on basis that, given the time of the filing of the Original Lien and the Amended Lien, coupled with the State Court's language in the Amended Judgment and the respective Settlement Orders, there was no "fixing of a lien upon an interest of the debtor" in the temporal sense, and § 522(f) does not apply. Lien Avoidance Opposition at 4 (citing *Farrey v. Sanderfoot*, 500 U.S. 291, 298 (1991)). The Alesso Defendants contend that because the State Court clearly recognized the pre-existing Amended Lien and ordered that the Settlement Funds were "subject to the lien of the Alesso Defendants," *see, e.g.*, Termite Approval Order [Wallach Decl., Exhibit 5], earlier than the creation of the Debtor's asset and property of the estate, the Amended Lien existed and, at the latest, the Amended Lien attached to the Settlement Funds simultaneously with the approval of the creation of that asset. Lien Avoidance Opposition at 2.

The Lien Avoidance Reply

The Debtor's Reply to the Lien Avoidance Opposition rejects the argument of the Alesso Defendants and argues that the Debtor obtained an interest in the property prior to the Alesso Defendants perfection of the Original Lien and/or Amended Lien. Specifically, the Debtor argues that her interest was acquired prior to the filing of the State Action, when the Debtor's damages claimed in the State Action accrued. Lien Avoidance Reply at 2. The Debtor further contends that *Sanderfoot* is distinguishable because the Settlements did not extinguish the Debtor's previous interest—*i.e.*, her injury.

II. Findings of Fact and Conclusions of Law

Lien Avoidance Motion

Section 522(f) sets forth the standard for avoidance of a lien that impairs an exemption to which the Debtor is entitled. Section 522(f)(1) states:

Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

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(1) a judicial lien

The Supreme Court has explained that, as the term is used in § 522(f), "The gerund 'fixing' refers to a temporal event" and that such event—*i.e.*, "the fastening of liability"—"presupposes an object onto which the liability can fasten. The statute defines this pre-existing object as 'an interest of the debtor in property.' Therefore, unless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, he or she cannot avoid the fixing of the lien under the terms of § 522(f)(1)." *Farrey v. Sanderfoot*, 500 U.S. 291, 297 (1991). Thus, in circumstances where the Debtor "at no point possessed the interest without the judicial lien" then § 522(f) does not permit the Debtor to avoid the lien because "[t]here [is] no fixing to avoid." *Id.* at 298.

Here, the Court finds that given the chronology of events in the State Action, there was no "fixing of a lien upon an interest of the debtor" and, therefore, the Debtor cannot avoid the lien of the Alesso Defendants under § 522(f). It is clear from the facts that the Debtor did not exercise control over the Settlement Funds or have an interest in the Settlement Funds at any time prior to the point in time when the Original Lien (and subsequently, the Amended Lien) was "fixed" on the Settlement Funds. The Alesso Defendants filed the Original Lien against the Debtor's remaining causes of action in the State Action on March 22, 2016. Section 708.410(a) of the California Code of Civil Procedure, which governs the fixing of a lien of a judgment creditor in pending actions or proceedings, states:

A judgment creditor who has a money judgment against a judgment debtor who is a party to a pending action or special proceeding may obtain a lien under this article, to the extent required to satisfy the judgment creditor's money judgment, on both of the following:

- (1) Any cause of action of such judgment debtor for money or property that is the subject of the action or proceeding.
- (2) The rights of such judgment debtor to money or property under any judgment subsequently procured in the action or proceeding.

Thus, as of the filing of the Original Lien in accordance with Cal. Code Civ. P. § 708.410(a) on March 22, 2016, the Alesso Defendants' lien was fixed upon both the Debtor's causes of action against the remaining defendants in the State Action as well

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as the rights of the Debtor "to money or property under any judgment subsequently procured" in the State Action. Thus, on May 4, 2016 when the State Court entered the JA Approval Order (the first of the three Settlements), *see* Wallach Decl., Exhibit 4, the Alesso Defendants' pre-existing lien attached to the Settlement Funds as soon as they were created. Therefore, the Debtor "at no point possessed the interest without the judicial lien," *Sanderfoot*, 500 U.S. at 298, and, accordingly, the Alesso Defendants' lien cannot be avoided under § 522(f) because "[t]here [is] no fixing to avoid," *id.*

The Court is not persuaded by the Debtor's argument that the Debtor had an interest in the JA Settlement Funds before the Alesso Defendants filed their Original Lien based on the finding of the State Court in the JA Approval Order that JA "tendered the funds due to [the Andrews] *before* the Motion was filed and *before* the Alesso Defendants filed their Notice of Lien." *See* JA Approval Order at 3. Notwithstanding the transfer of funds from the JA defendants to the Debtor prior to the entry of the JA Approval Order—and this is true of each of the respective Settlements—no property interest in the Settlement Funds was created until the State Court entered the respective orders approving the Settlements, *i.e.* May 4, 2016 and/or June 17, 2016.

For the same reasons, the Court is not persuaded by the Debtor's argument that her interest—her injury—in the funds preceded the "fixing" of the Alesso Defendants' lien. For the reasons previously stated, this argument is not supported by the facts. First, the Debtor cites no authority in support of the argument that the Debtor somehow had a property interest in the Settlement Funds prior to commencing the State Action, and before those funds were ever created. The Court is not persuaded by the Debtor's logic with respect to this argument. Furthermore, in each of the three Settlement Orders the State Court ordered that the particular settlement funds, which were to be held in the Attorney Account, "are subject to the lien of the Alesso Defendants . . ." *See* Wallach Decl., Exhibits 4–6. This language appears to the Court to have been included for the express purpose of placing the Settlement Funds in trust, subject to Alesso Defendants' pre-existing lien, pending the final resolution of any and all of the disputes between the Andrews and the Alesso Defendants. Thus, the Debtor never controlled or had any interest in the Settlement Funds, and such disposition of the Settlement Funds became final when the California Court of Appeal affirmed the Amended Judgment in favor of the Alesso Defendants.

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Based on the foregoing, the Debtor's Lien Avoidance Motion is DENIED.

The Stay-Relief Motion

For the reasons set forth below, the Stay-Relief Motion is GRANTED pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit the Alesso Defendants, their successors, transferees and assigns, to enforce their remedies to foreclose upon and obtain possession of the property in accordance with applicable law. The Alesso Defendants may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

11 U.S.C. § 362(d)(1)

Under § 362(d)(1), the court shall grant relief “for cause, including the lack of adequate protection of an interest in property of such party in interest.” Generally, what constitutes cause for purposes of § 362(d) “has no clear definition and is determined on a case-by-case basis.” *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *see also Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In the Matter of Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986) (relief from the automatic stay may “be granted ‘for cause,’ a term not defined in the statute so as to afford flexibility to the bankruptcy courts”). However, cause under § 362(d)(1) expressly includes a lack of adequate protection. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984); *see Downey Sav. & Loan Ass’n v. Helionetics, Inc. (In re Helionetics, Inc.)*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor’s interest in its collateral).

Here, the Alesso Defendants have established that cause exists to grant relief under § 362(d)(1). The Debtor does not have an equity cushion in her share of the Settlement Funds because the Alesso Defendants have a lien on those funds in the

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total amount of \$220,000.00; thus, the Alesso Defendants' interest in the Settlement Funds is not adequately protected.

11 U.S.C. § 362(d)(1)

Under § 362(d)(2), relief from the automatic stay must be granted if the debtor has no equity in the property, and the property is not necessary to an effective reorganization. Since a Chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (8th Cir. BAP 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Here, for the reasons stated above, the Court finds that the Debtor does not have any equity in the in the Settlement Funds because the Alesso Defendants have a lien on those funds in the total amount of \$220,000.00.

III. Conclusion

Based on the foregoing: (1) the Debtor's Motion to Avoid Lien is DENIED; and (2) the Alesso Defendants' Stay-Relief Motion is GRANTED under 11 U.S.C. §§ 362(d)(1) and 362(d)(2).

The Alesso Defendants shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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NOTE 1: The State Court entered the following orders approving the three separate settlements between the Andrews and certain of the other defendants in the State Court Action: (1) on May 4, 2016, the State Court entered an order approving the Andrews' settlement with defendants James Abraham and JA Inspection Services in the amount of \$24,000.00, *see* Wallach Decl., Exhibit 4 (the "JA Approval Order"); Andrews Decl., Exhibit 2; (2) on June 17, 2016, the State Court entered an order approving the Andrews' settlement with defendants Mark Bauknecht and High Desert Termite & Pest in the amount of \$24,000.00, *see* Wallach Decl., Exhibit 5 (the "Termite Approval Order"); Andrews Decl., Exhibit 2; and (3) also on June 17, 2016, the State Court entered an order approving the Andrews' settlement with defendants Maxi Case and Doug Anderson & Associates, Inc. in the amount of \$48,000.00, *see* Wallach Decl., Exhibit 6 (the "Anderson Approval Order"); Andrews Decl., Exhibit 2.

Party Information

Debtor(s):

Chana Christine Andrews

Represented By
David Lozano

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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2:18-11676 Chana Christine Andrews

Chapter 7

#11.00 Hearing
RE: [8] Motion for Relief from Stay Under 11 U.S.C. Sec. 362.
fr. 4-9-18

Docket 8

Tentative Ruling:

4/20/2018

See Cal. No. 10 above, incorporated by reference.

Party Information

Debtor(s):

Chana Christine Andrews

Represented By
David Lozano

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-13885 Farrid Garcia

Chapter 7

#12.00 Hearing
RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 14905 South Denker Avenue Gardena, CA 90247 . (O'Connor, Barry)

Docket 7

***** VACATED *** REASON: RESCHEDULED 4-30-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Farrid Garcia

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, April 24, 2018

Hearing Room 1568

10:00 AM

2:17-11911 Dicran Garo Kuftedjian

Chapter 7

Adv#: 2:17-01287 Parts Network, Inc. v. Kuftedjian et al

#1.00

Hearing

RE: [28] Order Requiring Plaintiff To Appear And Show Cause Why This Action Should Not Be Dismissed For Failure To Prosecute

Docket 0

Tentative Ruling:

4/23/2018

This action is dismissed, pursuant to Civil Rule 41(b), based upon Plaintiff's failure to prosecute.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute [Doc. No. 28] (the "OSC")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 30]

I. Facts and Summary of Pleadings

On March 16, 2018, the Court issued an *Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute* [Doc. No. 28] (the "OSC"). The OSC required Plaintiff to show cause why this action should not be dismissed for failure to prosecute and failure to comply with the Court's orders, pursuant to Civil Rule 41(b), based upon the following:

- 1) In connection with a Pretrial Conference conducted on March 13, 2018, at 10:00 a.m., Plaintiff failed to take any action to comply with its obligations regarding the preparation of either a proposed Joint Pretrial Stipulation or proposed Unilateral Pretrial Order, notwithstanding the Court's issuance of an *Order to Comply With Local Bankruptcy Rule 7016-1 Re: Pretrial and Trial Procedures* [Doc. No. 25] (the "Order to Comply"). The Order to Comply warned Plaintiff that non-compliance could result in dismissal of the action. Further, Plaintiff did not appear at the Pretrial Conference.
- 2) At the first Status Conference, the Court ordered Plaintiff to submit an

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order assigning this matter to mediation (the "Mediation Order"). After Plaintiff failed to timely submit the Mediation Order, the Court issued an *Order Directing Plaintiff to Lodge Completed Request for Assignment to Mediation Program as Previously Ordered by the Court* [Doc. No. 23], which Plaintiff likewise disregarded.

OSC at 1–2.

The OSC ordered Plaintiff to file a written response by no later than April 10, 2018. Plaintiff has failed to respond to the OSC.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Moneymaker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

Here, factors one, two, three, and five weigh in favor of dismissing the action for lack of prosecution. The Court finds that dismissal is warranted as a result of Plaintiff's failure to prosecute.

1. Public's Interest in Expeditious Resolution of Litigation

To dismiss a case for lack of prosecution, "the court must find unreasonable delay." *Eisen*, 41 F.3d at 1451. The Court finds that Plaintiff has unreasonably delayed the prosecution of this case. First, Plaintiff failed to submit the Mediation Order, notwithstanding the fact that Plaintiff was twice ordered to do so by the Court. Second, Plaintiff failed to take any action in connection with the Pretrial Conference. Finally, Plaintiff has failed to respond to the OSC.

2. The Court's Need to Manage its Docket

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"This factor is usually reviewed in conjunction with the public's interest in expeditious resolution of litigation to determine if there is unreasonable delay." *Eisen*, 31 F.3d at 1452. As discussed above, Plaintiff has engaged in unreasonable delay in the prosecution of this action. This factor weighs in favor of dismissal.

3. The Risk of Prejudice to the Defendants

"[T]he failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the absence of a showing of actual prejudice to the defendant from the failure.... The law presumes injury from unreasonable delay." *Eisen*, 31 F.3d at 1452. If the Plaintiff offers "an excuse for his delay that is anything but frivolous, the burden of production shifts to the defendant to show at least some actual prejudice." *Id.* at 1453. "Prejudice itself usually takes two forms—loss of evidence and loss of memory by a witness." *Nealey v. Transportacion Maritima Mexicana, S. A.*, 662 F.2d 1275, 1281 (9th Cir. 1980).

Because Plaintiff has offered no explanation for the delay, this factor weighs in favor of dismissal.

4. The Public Policy Favoring the Disposition of Cases on Their Merits

"[C]ourts weigh this factor against the plaintiff's delay and the prejudice suffered by the defendant." *Eisen*, 31 F.3d at 1454. "Although there is indeed a policy favoring disposition on the merits, it is the responsibility of the moving party to move towards that disposition at a reasonable pace, and to refrain from dilatory and evasive tactics." *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991).

The public policy favoring resolution of disputes on their merits does not outweigh Plaintiff's unreasonable delay in prosecuting this action.

5. The Availability of Less Drastic Sanctions

Plaintiff has failed to comply with multiple orders of the Court. Plaintiff failed to submit the Mediation Order, despite being ordered to do so twice. In addition, Plaintiff failed to take any action in connection with the Pretrial Conference, and failed to respond to the OSC. These repeated failures to comply with the Court's orders and to take any action to prosecute the case show that less drastic sanctions would not remediate Plaintiff's dilatory conduct.

III. Conclusion

Based upon the foregoing, the Court will dismiss this action for failure to

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prosecute, with prejudice. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Defendant(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Plaintiff(s):

Parts Network, Inc.

Represented By
Michael Avanesian

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 24, 2018

Hearing Room 1568

10:00 AM

2:10-43268 PAUL BERGERON

Chapter 7

#2.00 Show Cause Hearing
RE: [20] .Application for Issuance of An Order Requiring Creditor Victor Yi to Show Cause Why He Should Not Be Held in Contempt

FR. 4-10-18

Docket 20

***** VACATED *** REASON: STIPULATION ENTERED 4-20-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

PAUL BERGERON

Represented By
Michael J Jaurigue
Kerry P Zeiler

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 24, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#3.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendant The Irving I. Moskowitz Foundation to Dismiss Plaintiff's Adversary Complaint; Memorandum of Points and Authorities in Support Thereof; Exhibits A-B; and Proof of Service

fr: 4-10-18

Docket 9

***** VACATED *** REASON: CONTINUED 7-3-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation

Represented By
Louis J Cisz III

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 24, 2018

Hearing Room 1568

10:00 AM

2:18-10926 Walker Family Trust

Chapter 7

Adv#: 2:18-01021 Walker Family Trust et al v. Thrower et al

- #4.00** Hearing RE: [7] Order Requiring Plaintiff To Appear And Show Cause (1) Why This Action Should Not Be Remanded To The Los Angeles Superior Court And (2) Why The Court Should Not Sua Sponte Grant Relief From The Automatic Stay To Permit The Remanded Action To Proceed

Docket 0

Tentative Ruling:

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause (1) Why this Action Should Not be Remanded to the Los Angeles Superior Court and (2) Why the Court Should Not *Sua Sponte* Grant Relief from the Automatic Stay to Permit the Remanded Action to Proceed [Doc. No. 7] (the "OSC")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 9]

I. Facts and Summary of Pleadings

On March 23, 2018, the Court issued an *Order Requiring Plaintiff to Appear and Show Cause (1) Why this Action Should Not be Remanded to the Los Angeles Superior Court and (2) Why the Court Should Not Sua Sponte Grant Relief from the Automatic Stay to Permit the Remanded Action to Proceed* [Doc. No. 7] (the "OSC"). The OSC set forth the Court's *Preliminary Findings and Conclusions*, and required Plaintiff to file a written response by April 10, 2018. Any response to the OSC by the Chapter 7 Trustee or other interested parties was also due by April 10, 2018. No responses to the OSC are on file.

II. Findings and Conclusions

The *Preliminary Findings and Conclusions* set forth in the OSC shall become the findings of the Court. Those findings are as follows:

A. Background Information

The Debtor, the Walker Family Trust, commenced a voluntary Chapter 7 petition on January 29, 2018. The petition was signed by Kenneth Adler in his capacity as

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Los Angeles
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CONT... Walker Family Trust

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“Managing Trustee” of the Debtor. According to its schedules, the Debtor is a real estate investment company that has been in existence since October 2015. *See* Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy (Official Form 207) [Bankr. Doc. No. 7] at ¶25.1. The only assets scheduled by the Debtor are (1) real property located at 5701 7th Avenue, Los Angeles, California (which the Debtor values at \$190,000) and (2) claims for forfeiture against Gregory William Walker and Nicole Renee Thrower (which the Debtor values at \$126,666.66). *See* Schedule A/B [Bankr. Doc. No. 7] at ¶¶55.1 and 74.

On January 29, 2018—the same date that the petition was filed—the Debtor removed to the Bankruptcy Court the action *Walker Family Trust v. Nicole Renee Thrower and Gregory William Walker* (the “Probate Action”). Because the Debtor failed to comply with Bankruptcy Rule 9027(a)(1) [**Note 1**], the Court has only a partial record of the proceedings in the Probate Action. A significant issue in the Probate Action is whether Ms. Thrower and Ms. Walker effectively transferred their interests in the estate of Alfredo William Walker into the Walker Family Trust. Ms. Thrower and Mr. Walker are the children of Alfredo William Walker, who died intestate.

B. Equitable Grounds Support Remand of the Probate Action

Title 28 U.S.C §1452 provides that the Court may remand an action “on any equitable ground.” Courts consider the following factors in determining whether equitable grounds support remand:

- 1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- 2) the extent to which state law issues predominate over bankruptcy issues;
- 3) the difficult or unsettled nature of applicable law;
- 4) the presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- 5) the jurisdictional basis, if any, other than § 1334;
- 6) the degree of relatedness or remoteness of proceeding to main bankruptcy case;

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CONT...

Walker Family Trust

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- 7) the substance rather than the form of an asserted core proceeding;
- 8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 9) the burden on the bankruptcy court's docket;
- 10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- 11) the existence of a right to a jury trial;
- 12) the presence in the proceeding of nondebtor parties;
- 13) comity; and
- 14) the possibility of prejudice to other parties in the action.

Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.), 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003).

Here, multiple *Enron* factors support remand. The most salient factor is that remanding the action will not interfere with the administration of the bankruptcy estate (factor one). The State Court can adjudicate the issues raised by the Probate Action. Because the Court will not lift the stay of the enforcement of any final judgment reached by the State Court at this time, such adjudication will not interfere with administration of the bankruptcy estate. Parties will retain the ability to object, before the Bankruptcy Court, to the enforcement of any final judgment that the State Court may ultimately enter.

Factor ten, the likelihood that the removal involved forum shopping, strongly supports remand. The only creditors scheduled by the Debtor are Ms. Thrower and Mr. Walker, who are both parties to the Probate Action. The only liabilities scheduled by the Debtor are the disputed claims of Ms. Thrower and Mr. Walker. Thus, it appears that the Debtor's primary objective in filing the petition was to facilitate removal of the Probate Action to the Bankruptcy Court, rather than to achieve other legitimate objectives under the Bankruptcy Code.

Factor two supports remand, because the Probate Action arises entirely under state law. Factor eleven supports remand, because the Debtor has demanded a jury trial.

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CONT... Walker Family Trust

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[**Note 2**] Factors eleven (the presence of nondebtor parties) and thirteen (comity) also support remand. The remaining factors are either neutral or do not apply.

C. Stay Relief is Appropriate to Permit the Remanded Action to Proceed

The Court further finds that it is appropriate to lift the automatic stay, pursuant to §362(d)(1), to permit the Probate Action to proceed to final judgment in the State Court, provided that any final judgment entered by the State Court may not be enforced absent further order of this Court.

III. Conclusion

Based upon the foregoing, this action is remanded to the Los Angeles Superior Court. The Court will *sua sponte* lift the automatic stay, pursuant to §362(d)(1), to permit the Probate Action to proceed to final judgment in the State Court. The Court will enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

Note 2

The Court does not find that the Debtor would be entitled to a jury trial in the

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CONT... Walker Family Trust

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event that this action remained in the Bankruptcy Court. However, because the Bankruptcy Court cannot conduct a jury trial absent the consent of all parties, the Debtor's mere demand for a jury trial supports remand.

Party Information

Debtor(s):

Walker Family Trust	Pro Se
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Defendant(s):

Nicole Renee Thrower	Pro Se
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Gregory William Walker	Pro Se
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Plaintiff(s):

Walker Family Trust	Represented By Joseph C Rosenblit
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Kenneth Adler, Trustee	Represented By Joseph C Rosenblit
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Trustee(s):

Rosendo Gonzalez (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, April 24, 2018

Hearing Room 1568

11:00 AM

2:17-24457 8590 Sunset A-FS, LLC dba Cafe Primo

Chapter 7

#100.00 Hearing
RE: [67] Motion to Assume Lease or Executory Contract Notice of Motion and Trustees Motion to Assume Lease Re Property Located at 8590 W. Sunset Blvd., West Hollywood, CA 90069 with proof of service (Singh, Sonia)

Docket 67

***** VACATED *** REASON: MOTION WITHDRAWN ON 4-20-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

8590 Sunset A-FS, LLC dba Cafe

Represented By
Michael Jay Berger

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Sonia Singh
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#1.00 Show Cause Hearing re [148] Order To Show Cause Why Green CO2 IP, LLC, Bevtch, Inc., Michael K. Shutte, Daniel Schneider, Brette Schutte, Randall Willard, And Willard & Associates, P.C. Should Not Be Held In Contempt For Violation Of The Automatic Stay

fr. 2-21-18

Docket 0

***** VACATED *** REASON: CONTINUED 7-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#2.00 Status Conference re: RE: Confirmation of the debtor's chapter 11 plan
fr. 12-5-17; 2-21-18

Docket 38

Tentative Ruling:

See Cal. No. 3 below, incorporated by reference.

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#3.00 Hearing
RE: Confirmation of the debtor's chapter 11 plan

fr. 12-5-17; 2-21-18

Docket 38

Tentative Ruling:

4/24/2018

No appearances required

The hearing on the Debtor's Motion for Confirmation of the Debtor's First Amended Plan of Reorganization is CONTINUED to **June 6, 2018 at 10:00 a.m.** in order for the Debtor to make the contemplated modifications to the treatment of the Class 5(b) Impaired Secured Claim of Homestreet Bank, and to file a Second Amended Plan, subject to the following deadlines:

- (1) The Debtor shall have through and including **May 16, 2018** to file the Second Amended Plan;
- (2) The deadline for any supplemental opposition to the Second Amended Plan to be filed is **May 23, 2018**;

The Court finds that the Debtor is not required to re-solicit votes because the proposed plan modifications: (a) will not affect the contemplated distributions to other classes of creditors under the Plan; and (b) the proposed modifications attempt to resolve the objections of secured creditor Homestreet Bank. *See* 11 U.S.C. § 1127(a) (providing that the proponent of a plan may modify such plan at any time before confirmation).

The Court will prepare the Order Continuing the Confirmation Hearing.

Party Information

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CONT... Marco Antonio Cueto

Chapter 11

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

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Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

2:18-13238 Oh Hyung Kim

Chapter 7

#4.00 HearingRE: [28] Motion to Reconsider NOTICE OF DEBTORS MOTION FOR RELIEF FROM 10/26/2016 ORDER GRANTING RELIEF FROM AUTOMATIC STAY IN 2:15-BK12452-RK. AND TO VACATE TRUSTEES SALE OF 3/26/2018

Docket 28

Tentative Ruling:

4/24/2018

For the reasons set forth below, the Motion—which seeks relief from the *in rem* provisions of a previously-entered lift-stay order—is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Debtor's Motion for Relief from 10/26/2016 Order Granting Relief from Automatic Stay in 2:15-bk-12452-RK and to Vacate Trustee's Sale of 3/26/2018 [Doc. No. 28] (the "Motion")
 - a) Order Setting Hearing on Debtor's [Motion] [Doc. No. 34]
 - b) Notice of Hearing [Doc. No. 36]
 - c) Proof of Service [Doc. No. 37]
 - d) Notice of Errata Re [Motion] [Doc. No. 40]
- 2) Opposition to Debtor's [Motion] [Doc. No. 39] (the "Opposition")
- 3) No Reply is on file

I. Facts and Summary of Pleadings

Oh Hyung Kim (the "Debtor") seeks relief from the *in rem* provisions of an order granting stay relief entered in the Chapter 7 petition of Chul Hyun Gong (Case No. 2:15-bk-12452-ER) on October 26, 2016 (the "RFS Order"). The RFS Order granted *in rem* relief, pursuant to §362(d)(4), to U.S. Bank, National Association ("U.S. Bank") with respect to property located at 818 East Acacia Avenue, Unit C, Glendale, CA 91205 (the "Property").

In August 2011, the Debtor became delinquent in payments on the Property's mortgage. The Debtor retained Town Bancorp to avoid foreclosure of the Property. Based upon Town Bancorp's advice, the Debtor transferred two-thirds of his interest in the Property to Town Bancorp and Hancock Corporation on September 6, 2011.

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CONT...

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Town Bancorp and Hancock Corporation transferred their interest in the Property to Unimae and Pax America Development, LLC on June 19, 2012. The Debtor asserts that he was not informed of the transfer. Subsequent to 2012, the Property was involved in the following seven bankruptcy petitions:

- 1) Esther Bak, dba Town Bancorp, Case No. 2:11-bk-52937-EC;
- 2) Seung In Kim, dba Hancock Corporation, Case No. 2:11-bk-54640-BB;
- 3) Kwang Jae Lee, dba Town Bancorp, Case No. 2:12-bk-11919-TD;
- 4) Sook Yang Ha, dba Hancock Corporation, Case No. 2:12-bk-12902-RK;
- 5) Don Ho Kim, dba Town Bancorp, Case No. 2:12-bk-17636-RN;
- 6) Ok Hui Kim, dba Unimae, Case No. 2:14-bk-21316-ER;
- 7) Chul Hyun Gong, dba Pax America Development, Case No. 2:15-bk-12452-RK.

The Debtor states that he became disillusioned with Town Bancorp's efforts to assist him in avoiding foreclosure, and concluded that the best way to avoid foreclosure was through a short sale. On September 22, 2015, the Debtor filed an action to quiet title in the Los Angeles Superior Court (the "State Court"). On March 24, 2016, the Debtor obtained a judgment quieting title in his name and removing Unimae and Pax America Development, LLC from title. The judgment was recorded on April 22, 2016.

On October 26, 2016, U.S. Bank obtained stay-relief with respect to the Property in the case of Chul Hyun Gong, Case No. 2:15-bk-12452-RK. In his bankruptcy petition, Mr. Gong stated that he had done business using the name "Pax America Development." The Court granted relief under §362(d)(4), based on findings that the filing of the petition was part of a scheme to hinder, delay, or defraud creditors that involved multiple bankruptcy cases affecting the Property and the transfer of an ownership interest in the Property without the consent of the secured creditor or court approval.

Debtor commenced a voluntary Chapter 7 petition, Case No. 2:18-bk-10687-ER (the "First Petition") on January 22, 2018. The First Petition was a face-sheet filing. On February 9, 2018, the Court dismissed the First Petition based on Debtor's failure to file multiple schedules. On March 22, 2018, Wesley H. Avery, who had been appointed as the Chapter 7 Trustee with respect to the First Petition, filed a negative-notice motion seeking to side aside the dismissal of the First Petition. In the motion, Trustee Avery argued that the dismissal should be set aside because administration of the Property could benefit creditors. The Court has not yet ruled upon Trustee Avery's

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CONT... Oh Hyung Kim

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motion to set aside the dismissal.

On March 23, 2018, the Debtor commenced a second voluntary Chapter 7 petition, Case No. 2:18-bk-13238-ER (the "Second Petition"). Carolyn A. Dye has been appointed as the Chapter 7 Trustee. The instant Motion seeking relief from the RFS Order has been filed in the Second Petition.

On February 20, 2018, a *Notice of Trustee's Sale* was recorded with respect to the Property. On March 26, 2018, the Property was sold at a non-judicial foreclosure sale. Nationstar, in its capacity as servicer for U.S. Bank, asserts that the foreclosure sale was appropriate, notwithstanding the pendency of the Debtor's Second Petition, because RFS Order's *in rem* provisions.

In addition to seeking to set aside the *in rem* provisions of the RFS Order, the Debtor also moves to vacate the March 26, 2018 foreclosure sale.

Summary of the Debtor's Motion

The Debtor argues that the *in rem* provisions of the RFS Order should be set aside, and that the March 26, 2018 foreclosure sale should be vacated, for the following reasons:

- 1) Debtor never received notice of U.S. Bank's lift-stay motion. Debtor does not know, and has never met, Mr. Gong.
- 2) The RFS Order applied to the Property based on the fact that Mr. Gong had done business under the name "Pax America Development." However, Pax America Development was removed from title to the Property on March 24, 2016, as a result of the quiet title judgment that the Debtor obtained in the State Court. Further, Mr. Gong's name does not appear on any of the documents that Pax America Development has filed with the California Secretary of State. Mr. Gong has not recorded in Los Angeles County a Fictitious Business Name Statement indicating that he conducted business under the name "Pax America Development." Thus, it was not proper for U.S. Bank to obtain stay-relief with respect to the Property based on a purported connection between Mr. Gong and Pax America Development.
- 3) Because the RFS Order should never have been issued, the foreclosure sale was improper and should be vacated.

Summary of Nationstar's Opposition to the Motion

Nationstar, in its capacity as servicer for U.S. Bank, opposes the Motion. Nationstar makes the following arguments and representations in support of its

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CONT... Oh Hyung Kim

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Opposition:

- 1) The Debtor has admitted that he transferred a two-thirds interest in the Property, by way of an unauthorized Grant Deed, to Town Bancorp and Hancock Corporation. Further, Debtor has admitted that he is severely delinquent. Therefore, the §362(d)(4) relief granted in the RFS Order was appropriate. The Debtor has failed to show "good cause" for relief from the *in rem* provisions.
- 2) The Court lacks jurisdiction to vacate the RFS Order because it was entered in a different case. If the RFS Order were vacated, the Chapter 7 Trustee in Mr. Gong's case would have an interest in the Property.
- 3) The Motion effectively seeks recovery of the Property by seeking to rescind the foreclosure sale. Pursuant to Bankruptcy Rule 7001(1), proceedings to "recovery money or property" are adversary proceedings, not contested matters. The Debtor cannot obtain the relief he seeks by way of a motion.
- 4) Although the Debtor claims he did not receive notice of the motion that resulted in entry of the RFS Order, the motion was mailed to the Debtor's address and the mail was not returned. *See* Decl. of Richard Jamison at ¶¶3-6.
- 5) The Debtor has provided no evidence as to why Civil Rule 59(e) regarding the finality of the RFS Order does not apply, nor has the Debtor demonstrated that he qualifies for relief from the RFS Order under Civil Rule 60. Throughout 2017 the Debtor has been involved in litigation against Nationstar before the State Court. In view of this litigation, the Debtor had the obligation to exercise reasonable diligence in reviewing the property records for the Property. Had the Debtor exercised such diligence, he would have discovered the RFS Order. The Debtor offers no explanation for why he has waited fourteen months subsequent to entry of the RFS Order to bring the instant Motion.

II. Findings and Conclusions

Section 362(d)(4) allows a secured creditor to obtain stay-relief with respect to real property, "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." If properly recorded, orders granting stay-relief under §362(d)(4) "shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court."

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CONT... Oh Hyung Kim

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However, "a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown."

The Debtor has failed to establish that he is entitled to be relieved of the *in rem* provisions of the RFS Order. First, the Court rejects the Debtor's argument that he must be relieved from the RFS Order because he did not receive notice of the corresponding lift-stay motion (the "RFS Motion"). The Proof of Service attached to the RFS Motion indicates that the motion was served upon the Debtor at the Property's address. Richard Jamison, who is employed as the office manager of the law firm that filed the RFS Motion, testifies that he mailed the RFS Motion to the Property's address in accordance with the firm's normal business practices, and that he did not receive any return mail. The Debtor offers no evidence controverting Mr. Jamison's testimony that he followed the firm's ordinary business practices in mailing the RFS Motion. Debtor simply states that he did not receive the RFS Motion.

In *Mahon v. Credit Bureau of Placer Cty. Inc.*, 171 F.3d 1197, 1201–02 (9th Cir. 1999), the Ninth Circuit rejected arguments similar to those made by the Debtor. In *Mahon*, the Mahons testified that they had not received a notice from Credit Bureau. Credit Bureau established that the notice had been mailed to the Mahons in accordance with its customary business practices. The *Mahon* court concluded that mere testimony that the notice was not received was insufficient to create a genuine issue of material fact:

The Mahons offered no evidence that the Credit Bureau failed to follow its ordinary business procedure in sending them the Notice. They simply say they did not receive the Notice, just as they say they did not receive any of the monthly statements sent to them by Dr. Bowen's office over a period of more than two years.

We conclude there is no genuine dispute of the fact that the Credit Bureau sent the required Validation of Debt Notice to the Mahons.

Mahon, 171 F.3d at 1202.

Here, the Court finds that the Proof of Service attached to the RFS Motion, accompanied by Mr. Jamison's testimony that the RFS Motion was mailed to the Debtor in accordance with ordinary business practices, establishes that the Debtor received notice of the RFS Motion. Similar to the situation in *Mahon*, the Court makes this finding notwithstanding the Debtor's testimony that he did not receive the RFS Motion.

Second, the Court finds that the Debtor has not established good cause to set aside the *in rem* provisions of the RFS Order. Although the Debtor asserts that he was not

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CONT... Oh Hyung Kim

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informed that Town Bancorp and Hancock Corporation transferred their interest in the Property to Unimae and Pax America Development, the Debtor admits that he transferred a two-thirds interest in the Property to Town Bancorp and Hancock Corporation. The Debtor further admits that the purpose of this transfer was to “avoid a foreclosure” of the Property. Debtor’s Decl. at ¶¶7–8 [Doc. No. 28]. Town Bancorp and Hancock Corporation proved highly successful at delaying the foreclosure of the Property. Subsequent to the transfer, the Property was involved in at least seven bankruptcy petitions:

- 1) Esther Bak, dba Town Bancorp, Case No. 2:11-bk-52937-EC;
- 2) Seung In Kim, dba Hancock Corporation, Case No. 2:11-bk-54640-BB;
- 3) Kwang Jae Lee, dba Town Bancorp, Case No. 2:12-bk-11919-TD;
- 4) Sook Yang Ha, dba Hancock Corporation, Case No. 2:12-bk-12902-RK;
- 5) Don Ho Kim, dba Town Bancorp, Case No. 2:12-bk-17636-RN;
- 6) Ok Hui Kim, dba Unimae, Case No. 2:14-bk-21316-ER;
- 7) Chul Hyun Gong, dba Pax America Development, Case No. 2:15-bk-12452-RK.

The Debtor’s own testimony establishes that he was part of a scheme to delay, hinder, or defraud creditors involving both the transfer of the Property without the consent of the secured creditor and multiple bankruptcies affecting the Property. The *in rem* provisions of the RFS Order were fully warranted. The Debtor has failed to demonstrate changed circumstances sufficient to set aside the RFS Order. For example, the Debtor has not asserted that he has now brought the delinquent mortgage payments current, or even that he has any realistic possibility of curing the arrearages.

The Debtor argues that the RFS Order was not appropriate because at the time it was issued, Pax America Development had been removed from title as a result of the Debtor’s quiet title action. (As discussed, the Debtor in the case in which the RFS Order was entered conducted business under the name Pax America Development.) Along similar lines, the Debtor argues that there is no connection between Mr. Gong and Pax America Development, based upon the absence of Mr. Gong’s name in Pax America’s filings with the California Secretary of State. The Court finds that these issues are irrelevant. What matters is that as a result of the Debtor’s transfer of the Property to Town Bancorp and Hancock Corporation, the secured creditor was repeatedly hindered from exercising its foreclosure rights. Whether Pax America actually held any legal or beneficial interest in the Property at the time of issuance of the RFS Order is immaterial; the key is that Pax America asserted an interest in the

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Property, for the purpose of preventing the secured creditor from pursuing its state law remedies. Section 362(d)(4) was enacted to address precisely this situation.

The Debtor seeks relief from the RFS Order only under §362(d)(4), not under Civil Rules 59(e) or 60. However, based upon the analysis set forth above, the Court finds that the Debtor would likely not be entitled to relief under either Civil Rules 59 (e) or 60, even if the Debtor had invoked those provisions. But, the Court here is not ruling on such relief.

Based upon the foregoing, the Motion is DENIED. Nationstar shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Oh Hyung Kim

Represented By
Steven J Barkin

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#5.00 HearingRE: [5] Motion to Use Cash Collateral Notice of Motion and Motion in Individual Case for Order Authorizing Use of Cash Collateral

Docket 5

Tentative Ruling:

4/24/2018

Tentative Ruling:

For the reasons set forth below, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including July 24, 2018, in accordance with the terms of the Motion. A hearing on whether the Debtor may use cash collateral subsequent to July 24, 2018 will take place on July 17, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by June 26, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by July 3, 2018. Any reply may be filed and served by July 10, 2018.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral (the "Motion") [Doc. No. 5]
- 2) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Samuel Antonio Acevedo and Lucy Acevedo (the "Debtors") commenced a voluntary Chapter 11 petition on April 3, 2018 (the "Petition") [Doc. No. 1]. The Debtor owns certain real property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Property").

Concurrent with the filing of the Petition, the Debtor filed the "Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral" (the "Motion") [Doc. No. 5]. The Debtor seeks authorization to use cash collateral with respect to the Property. The Debtor states that the Property has a value

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

of \$475,000.00. Motion at 4. The Property generates rental income in the total amount of \$2,200.00 per month which are paid to the Debtor pursuant to the certain "Lease Agreement" attached as "Exhibit 1" to the Motion. The Property is encumbered by the lien of Wells Fargo Bank, N.A., in the total amount of \$381,367.03 (the "Wells Fargo DOT"). The Debtor's monthly payments on the Wells Fargo DOT are \$2,322.85. The Debtor has prepetition arrears in the amount of \$111,415.34. The Debtor claims equity in the Property in the amount of \$93,633.00.

The Debtor offers the following as adequate protection: (1) the equity in the Property; (2) the maintenance of the Property; (3) payments in the following amounts to Wells Fargo from the rental income: (a) property insurance payments in the amount of \$58 per month; (b) property tax payments in the amount of \$422 per month; (c) reserve \$200 per month for maintenance and repair; and (d) the remaining \$1,520 per month to Wells Fargo; and (4) the Debtor offers a lien in the Replacement Collateral.

No opposition has been filed.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court finds that the secured creditor's interest in the Property is adequately protected based upon the terms set forth in the Motion and the Budget. Therefore, the Court authorizes the use of cash collateral on an interim basis in accordance with the terms of the Motion and the Budget attached thereto through and including July 24, 2018.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, April 25, 2018

Hearing Room 1568

10:00 AM

CONT... Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

Conclusion

In conclusion, for the reasons set forth above, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including July 24, 2018, in accordance with the terms of the Motion. A hearing on whether the Debtor may use cash collateral subsequent to July 24, 2018 will take place on July 17, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by June 26, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by July 3, 2018. Any reply may be filed and served by July 10, 2018.

The Debtor shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Kevin Tang

Joint Debtor(s):

Lucy Acevedo

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

#1.00 Other Expenses: International Sureties, LTD.

Hearing

RE: [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 42

Tentative Ruling:

4/25/2018

See Cal. No. 5 below, incorporated by reference.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

#2.00 Charges, U.S. Bankruptcy Court

Hearing

RE: [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 42

Tentative Ruling:

4/25/2018

See Cal. No. 5 below, incorporated by reference.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

#3.00 APPLICANT: Accountant for Trustee - Menchaca & Company LLP

Hearing

RE: [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 42

Tentative Ruling:

4/25/2018

See Cal. No. 5 below, incorporated by reference.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

#4.00 APPLICANT: Attorney for Trustee - SulmeyerKupetz

Hearing

RE: [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 42

Tentative Ruling:

4/25/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$14,022.00

Expenses: \$338.97

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:15-20174 Arnold Montano

Chapter 7

#5.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing

RE: [44] and [45] Trustee's Final Report and Applications for Compensation

Docket 42

Tentative Ruling:

4/25/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,250.00

Total Expenses: \$55.98

Menchaca & Company LLP: fees and expenses previously awarded to this applicant are now deemed final.

Charges, U.S. Bankruptcy Court: \$350.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Arnold Montano

Represented By
Steven Ibarra

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

CONT...

Arnold Montano

Jason Balitzer

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:17-20920 Patricio Diaz Guevarra

Chapter 7

#6.00 HearingRE: [46] Motion to Approve Compromise Under Rule 9019 (with proof of service) (Curlee, Brett)

Docket 46

Tentative Ruling:

4/25/2018

The Court, finding the terms of the Stipulation to Compromise to be fair, reasonable, and adequate, GRANTS the Trustee's Motion.

Pleadings Filed and Reviewed:

- 1) Trustee's Motion for Approval of Compromise (the "Motion") [Doc. No. 46]
- 2) No opposition on file

I. Facts and Summary of Pleadings

Patricio Diaz Guevarra (the "Debtor") filed a voluntary Chapter 7 petition on September 6, 2017 (the "Petition") [Doc. No. 1]. On March 31, 2018, the Trustee filed the "Trustee's Motion for Approval of Compromise" (the "Motion") [Doc. No. 46]. The Motion seeks approval of the certain "Stipulation to Compromise Controversy" (the "Stipulation") [Doc. No. 46, Exhibit 1] entered into between the Trustee and the Debtor.

At the time the Petition was filed, the Debtor listed a 50% interest in his residence. The Trustee investigated and determined that the Debtor's residence had at least \$30,000.00 in equity that could be liquidated for the benefit of the Estate. Furthermore, contrary to the 50% interest claimed by the Debtor in the Debtor's Schedules, the Trustee contended that the Debtor either owned his residence or had a 2/3 interest therein. Upon learning of the Trustee's contention in this regard, the Debtor filed the "Motion to Convert Case from Chapter 7 to 13" [Doc. No. 14], which is currently pending. The Trustee and the Debtor entered into settlement discussions

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Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

after the trustee received a full price offer of \$479,050.00 for the residence. These negotiations culminated in the execution of the Stipulation, which the Motion now seeks approval.

The Proposed Settlement Agreement

The material terms of the Stipulation, *see* Motion at Ex. 1, are as follows:

1. Debtor's Payment to the Estate: The Debtor has agreed to pay the Estate \$58,500.00 in exchange for the Estate releasing any and all claims it may have against the Debtor and abandoning all of the assets of the Estate, whether known or unknown.
2. Receipt of Payment: The Trustee has received payment in full from the debtor in the above-described amount.
3. Waiver of Exemption: The Debtor agrees to waive any exemption in the funds paid pursuant to the Stipulation.

The Stipulation is a favorable compromise for the Estate. "Declaration of Wesley H. Avery" ("Avery Decl.") [Doc. No. 46] at ¶ 17.

No opposition to approval of the Settlement Agreement has been filed.

II. Findings of Fact and Conclusions of Law

Motion to Approve Settlement

The Court approves the Settlement Agreement. Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, April 26, 2018

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10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851 (B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

The *A&C Properties* factors weigh in favor of approving the Amended Settlement Agreement. Applying the *A&C Properties* factors, the Court finds that the compromise is adequate, fair, and reasonable.

(1) Probability of Success in the Litigation and Complexity of the Litigation, and the Expense, Inconvenience and Delay Necessarily Attending It

Under the circumstances, these factors are the most pertinent, and they weigh strongly in favor of approving the Stipulation. The Trustee has a well-founded belief that the Trustee would prevail in opposing the Debtor's Motion to Convert the Case. The Stipulation, however, minimizes the costs and expenses that would necessarily be incurred in such litigation. The compromise amount is substantially more than the value that the Trustee would recover from the sale of the Property.

The Stipulation brings a significant sum of money into the Estate and avoids litigation between the Debtor and the Estate.

(2) Paramount Interests of Creditors

The Stipulation is in the best interest of creditors in that they stand to receive a 100% dividend on their claims.

III. Conclusion

Based upon the foregoing, the Trustee's Motion to Approve the Stipulation between the Trustee and the Debtor is GRANTED.

The Trustee shall submit a conforming order, incorporating this tentative

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:14-31581 Rosales Meat Distributors Inc

Chapter 11

#7.00 HearingRE: [410] Motion For Final Decree and Order Closing Case. [Motion of the Liquidating Trustee for Final Decree and Closing the Case]

Docket 410

Tentative Ruling:

4/25/2018

For the reasons set forth below, the Liquidating Trustee's Motion for entry of a final decree closing the case is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion of the Liquidating Trustee for Final Decree and Closing the Case [Doc. No. 410] (the "Motion")
 - a) Notice of Motion of the Liquidating Trustee for Final Decree and Closing the Case
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 8, 2016, the Court entered an order confirming the *First Amended Liquidating Plan of Rosales Meat Distributors, Inc.* (the "Plan"). Doc. No. 317. The Plan provided for the appointment of a Liquidating Trustee to liquidate the Debtor's assets. The Liquidating Trustee now seeks entry of a final decree closing the case.

On August 26, 2016, the Liquidating Trustee sold the Debtor's vehicles, inventory, and furniture, fixtures, and equipment to Rosales Food Services, Inc. for \$56,304.85. The Liquidating Trustee has collected \$93,650.70 of the Debtor's outstanding receivables. The Liquidating Trustee has paid all allowed administrative claims; has paid all post-confirmation tax liabilities; and has made payments to holders of priority tax claims and holders of unsecured claims in accordance with the Plan. The Liquidating Trustee may receive \$41,983.92 from a release of a deed of trust. The only remaining assets are (1) additional receivables and (2) the possible recovery in connection with the release of the deed of trust.

II. Findings and Conclusions

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

CONT... Rosales Meat Distributors Inc

Chapter 11

Bankruptcy Rule 3022 provides:

After an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.

To determine whether an estate has been fully administered, the Court considers:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (B.A.P. 9th Cir. 1997) (quoting the Advisory Committee's notes for Rule 3022).

All of the applicable *Ground Systems* factors have been satisfied. Accordingly, the Court finds that the estate has been fully administered.

With respect to factor one, the order confirming the Plan has become final. Factor two does not apply because the Plan did not require any deposits to be made. With respect to factor three, all of the Debtor's assets were transferred to the custody of the Liquidating Trustee on or shortly after the Effective Date of the Plan. With respect to factor four, the property dealt with under the Plan has been liquidated by the Liquidating Trustee. With respect to factor five, payments under the Plan have commenced—in fact, virtually all payments contemplated by the Plan have been made. With respect to factor six, the only adversary proceeding commenced by the Liquidating Trustee was resolved by a judgment in favor of the defendants that was entered on September 17, 2017.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Liquidating Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

**United States Bankruptcy Court
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Los Angeles
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Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

CONT... Rosales Meat Distributors Inc

Chapter 11

please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rosales Meat Distributors Inc

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#8.00 HearingRE: [218] Application for Compensation Second And Final Application For Allowance Of Fees And Reimbursement Of Expenses Of Weintraub & Selth, APC; Declarations Of James R. Selth And Matthew Alderson In Support Thereof for James R Selth, Debtor's Attorney, Period: 6/1/2017 to 3/29/2018, Fee: \$169,263.29, Expenses: \$2,979.67.

Docket 218

Tentative Ruling:

4/25/2018

Having reviewed the second and final application for fees and expenses ("Application") filed by this applicant [Doc. No. 218], the court approves the Application and awards the fees and expenses set forth below. Previous interim fee application(s) and order(s) thereon are now deemed FINAL.

Fees: \$169,263.29

Expenses: \$2,979.67

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, April 26, 2018

Hearing Room 1568

11:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#100.00 HearingRE: [102] Motion Notice Of Motion And Motion For Order Approving Payment Of U.S. Trustee Fees From Trust Account; Declaration Of Robert P. Goe In Support Thereof with proof of service

Docket 102

Tentative Ruling:

4/25/2018

The Debtor's Motion—which seeks to pay UST fees from sales proceeds currently held in the Debtor's attorney's client-trust account—is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Approving Payment of U.S. Trustee Fees from Trust Account [Doc. No. 102] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The Debtor's principal asset was a Denny's-franchised restaurant located at 601 Long Beach Blvd., Long Beach, CA 90802 (the "Restaurant"). On December 8, 2017, the Court approved the sale of the Restaurant for \$1,010,000. *See* Doc. No. 57. The sale closed on December 28, 2017.

The Debtor's counsel, Goe & Forsythe, LLP ("G&F"), currently holds \$838,809.92 in sales proceeds in its client trust account. G&F seeks authorization to pay quarterly fees to the United States Trustee (the "UST") for the first quarter of 2018. Fees of \$1,625.00 are due by April 30, 2018.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. The Court approves the payment of the UST fees as requested in the Motion.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, April 26, 2018

Hearing Room 1568

11:00 AM

CONT... Beach Dans, Inc.

Chapter 11

shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:13-32201 Darra Cleveland

Chapter 7

Adv#: 2:17-01167 Cleveland v. Educational Credit Management Corp. et al

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01167. Complaint by Darra Cleveland against Educational Credit Management Corp., Deutsche Bank ELT Navient & SLM Trusts, JP Morgan Chase N.A., CITIBANK ELT STUDENT LOAN CORP, Wells Fargo ELT Navient Student Loan Trust, U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

FR. 8-15-17; 2-26-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 4-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darra Cleveland

Represented By
Jennifer Ann Aragon
Christine A Kingston

Defendant(s):

Educational Credit Management	Pro Se
Deutsche Bank ELT Navient & SLM	Pro Se
JP Morgan Chase N.A.	Pro Se
CITIBANK ELT STUDENT LOAN	Pro Se
Wells Fargo ELT Navient Student	Pro Se
U.S. Department of Education	Pro Se

Plaintiff(s):

Darra Cleveland

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 30, 2018

Hearing Room 1568

9:00 AM

CONT... Darra Cleveland

Christine A Kingston

Chapter 7

Trustee(s):

Alberta P Stahl (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:15-20174 Arnold Montano

Chapter 7

Adv#: 2:16-01436 Ehrenberg v. Montano, Jr. et al

#2.00 Trial re Complaint for Avoidance and Recovery of Fraudulent Conveyance Pursuant to 11 U.S.C. §§ 544, 548 and 550(a)

(transferred from Judge Donovan to Judge Robles)

fr. 11-16-16, 1-18-17, 3-8-17; 4-19-17; 8-15-17; 10-17-17

Docket 1

***** VACATED *** REASON: DISMISSED 1-18-18**

Tentative Ruling:

10/16/2017

Tentative Ruling:

In April 2017, the parties reached a settlement in principle. At the previous status conference, conducted in August 2017, the Defendants advised the Court that they had not yet raised the funds necessary to perform under the settlement agreement. The Court continued the status conference to give the Defendants one final opportunity to raise the settlement funds, but advised that if Defendants failed to raise the settlement funds by the continued status conference, a trial date would be set. Defendants have not raised the settlement funds. Accordingly, the Court HEREBY ORDERS that the following dates will apply to this proceeding:

- 1) The last day to amend pleadings and/or join other parties is **11/17/2017**.
- 2) The last day to disclose expert witnesses and expert witness reports is **1/30/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/1/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **3/27/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-

**United States Bankruptcy Court
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9:00 AM

CONT...

Arnold Montano

Chapter 7

- calendar, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendar.)
- 5) The last day for dispositive motions to be heard is **4/3/2018**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
 - 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/10/2018**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
 - 7) A Pretrial Conference is set for **4/17/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - 8) Trial is set for the week of **4/30/2018**. The trial day commences at 9:00 a.m. The Court will set the exact date of the trial at the pretrial conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a scheduling order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522, by no later than one hour prior to the hearing. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Arnold Montano

Represented By

**United States Bankruptcy Court
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CONT... **Arnold Montano**

Chapter 7

Steven Ibarra

Defendant(s):

Arnold Montano, Jr.

Represented By
Steven Ibarra

Michael Montano

Represented By
Steven Ibarra

Plaintiff(s):

Howard M Ehrenberg

Represented By
Elissa Miller
Jason Balitzer

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Jason Balitzer

**United States Bankruptcy Court
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9:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#3.00 Trial Date Set re [15] Amended Complaint (FIRST) Objecting To Discharge of Debt and Requesting Determination of Nondischargeability

fr: 7-31-17; **2-28-18**

Docket 0

***** VACATED *** REASON: ADVERSARY DISMISSED ON 4-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Represented By
Raymond H. Aver

Nadeen AbouZanad Dorian

Represented By
Raymond H. Aver

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

**United States Bankruptcy Court
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9:00 AM

CONT... Robert Bassem Dorian

Chapter 7

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:16-19069 Robert Bassem Dorian

Chapter 7

Adv#: 2:16-01456 Chaaban et al v. Dorian et al

#4.00 Order Requiring Plaintiffs to Appear and Show Cause why this action should not be dismissed for failure to prosecute, if plaintiffs fail to appear for trial or fail to adequately prepare for the pretrial conference

Docket 1

***** VACATED *** REASON: ADVERSARY DISMISSED ON 4-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Robert Bassem Dorian

Represented By
David H Chung

Defendant(s):

Robert Bassem Dorian

Pro Se

Nadeen AbouZanad Dorian

Pro Se

Joint Debtor(s):

Nadeen AbouZanad Dorian

Represented By
David H Chung

Plaintiff(s):

Walid Chaaban

Represented By
David J Habib Jr

Wissam Elbayoud

Represented By
David J Habib Jr

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:17-13104 Thomas Michael Garcia

Chapter 7

Adv#: 2:17-01336 Torrance Community Federal Credit Union v. Garcia

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01336. Complaint by Torrance Community Federal Credit Union against Thomas Garcia. false pretenses, false representation, actual fraud)) (Ferns, Amanda)

Docket 1

***** VACATED *** REASON: PRETRIAL 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Michael Garcia

Represented By
Daniel King

Defendant(s):

Thomas Garcia

Pro Se

Plaintiff(s):

Torrance Community Federal Credit

Represented By
Amanda N Ferns

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d), (e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: CONTINUED 6-25-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

Antony Thekkek

Represented By

**United States Bankruptcy Court
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

CONT... Felicidad Ferrer

Hamid R Rafatjoo

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 30, 2018

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9:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01335 HCF Insurance Agency v. Ferrer et al

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01335. Complaint by HCF Insurance Agency against Felicidad Ferrer, Renato Ferrer. willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Schiff, Stefanie)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 3-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

HCF Insurance Agency

Represented By
Stefanie A Schiff

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:17-14457 Theresa Christine Wahl

Chapter 7

Adv#: 2:17-01367 Lemus v. Wahl et al

#8.00 Trial Date Set

RE: [1] Complaint by Juan Antonio Lemus against Theresa Christine Wahl. willful and malicious injury)) (Younessi, Ramin). Warning: Item subsequently amended by docket entry no 2. When the complaint was filed, it was not linked to the main bankruptcy case. The complaint is now linked to the main bankruptcy case 2:17-bk-14457-ER. Modified on 7/26/2017 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-5-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa Christine Wahl

Represented By
Nicholas M Wajda

Defendant(s):

Theresa Wahl

Pro Se

Does 1 Through 20, Inclusive

Pro Se

Plaintiff(s):

Juan Antonio Lemus

Represented By
Ramin R Younessi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#9.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01357. Complaint by Chasen Kyle Stanley against Education Finance Partners, ACS Loan Science, Asset Recovery Solutions, LLC, DEPARTMENT OF EDUCATION, Navient, Federal Loan Services, National Payment Center, Sallie Mae, Associated Recovery Systems. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Potier, Amanda)

Docket 1

***** VACATED *** REASON: CONTINUED 6-25-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners	Pro Se
ACS Loan Science	Pro Se
Asset Recovery Solutions, LLC	Pro Se
Navient	Pro Se
Federal Loan Services	Pro Se
National Payment Center	Pro Se
Sallie Mae	Pro Se
Associated Recovery Systems	Pro Se
US Department of Education	Pro Se
DOES 1 through 4, et al	Pro Se

**United States Bankruptcy Court
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, April 30, 2018

Hearing Room 1568

9:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#10.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

fr: 3-26-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-1-18 and 5-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, April 30, 2018

Hearing Room 1568

10:00 AM

2:17-23527 Maria Julia Villafana Licon

Chapter 7

#100.00 Hearing

RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 NISSAN PATHFINDER, VIN 5N1AR2MN3EC707171 . (Wang, Jennifer)

fr. 2-27-18

Docket 9

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 3-2-18**

Tentative Ruling:

2/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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Monday, April 30, 2018

Hearing Room 1568

10:00 AM

CONT... Maria Julia Villafana Licon

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Julia Villafana Licon

Represented By
Francis Guilardi

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, April 30, 2018

Hearing Room 1568

10:00 AM

2:18-11170 Min Young Kim

Chapter 7

#101.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Mercedes-Benz GL Class, VIN 4JGDF7CE0DA176199 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

4/26/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Min Young Kim

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Min Young Kim

Represented By
Kelly K Chang

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Monday, April 30, 2018

Hearing Room 1568

10:00 AM

2:18-12737 Maria Jesus Rodriguez

Chapter 7

#102.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11655 Starlight Avenue, Whittier, CA 90604 . (Schloss, Edward)

Docket 10

Tentative Ruling:

4/26/2018

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See e.g. Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.)*, 22 B.R. 65, 66 (9th Cir. BAP 1982); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (9th Cir. BAP 1981).

The subject property has a value of \$474,535.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$750,758.30. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

Further, the Court finds that there are facts presented in the Motion sufficient for the court to find bad faith pursuant to § 362(d)(4). Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved: (a) the

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Monday, April 30, 2018

Hearing Room 1568

10:00 AM

CONT... Maria Jesus Rodriguez

Chapter 7

transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval; and (b) multiple bankruptcy cases affecting the Property.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Jesus Rodriguez

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, April 30, 2018

Hearing Room 1568

10:00 AM

2:18-13885 Farrid Garcia

Chapter 7

#103.00 HearingRE: [9] Amended Motion (related document(s): 7 Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 14905 South Denker Avenue Gardena, CA 90247 . filed by Creditor GWA Properties, LLC) (O'Connor, Barry)

Docket 9

Tentative Ruling:

4/26/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this Judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on January 12, 2018. The Movant filed an unlawful detainer action on February 13, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States

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10:00 AM

CONT... **Farrid Garcia**
Code.

Chapter 7

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

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Farrid Garcia

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 01, 2018

Hearing Room 1568

9:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

fr: 3-26-18; 4-30-18

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 01, 2018

Hearing Room 1568

9:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#2.00 Hearing
RE: [36] Motion in Limine No. 1; Memorandum of Points and Authorities in Support Thereof

Docket 36

Tentative Ruling:

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion *in Limine* No. 1 [Doc. No. 36] (the "Motion")
- 2) Defendant's Opposition to Plaintiff's Motion *in Limine* No. 1 [Doc. No. 44] (the "Opposition")

I. Facts and Summary of Pleadings

A. Background

The Complaint alleges that Wendy Tejada (the "Defendant") was the landlord of Sorayda Velasquez (the "Plaintiff") between September 2012 and February 2016. Complaint at ¶8. The gravamen of the Complaint is that Defendant purposefully disconnected Defendant's water service in order to induce the Defendant to vacate the property. Plaintiff alleges that Defendant's indebtedness is non-dischargeable pursuant to §523(a)(6).

As set forth in the Pretrial Order [Doc. No. 35], the following facts are admitted and require no proof:

- a) Defendant filed a petition for relief under Chapter 7 on January 5, 2017 (the "Petition Date").
- b) Plaintiff filed an adversary complaint on June 9, 2017.
- c) Prior to the petition date, between December 2008 and December 2016, Defendant owned and/or managed the property located at 1136 – 1138 E. 81st St., Los Angeles, CA, including 1138 ½ E. 81st St., Los Angeles, CA (the "Property"). Defendant owned the Property intermittently between April 2007 through October 27, 2008 and December 4, 2014 through

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February 2016. From October 27, 2008 through December 4, 2014, the Property was owned by THE LIVING TRUST OF RODOLFO TEJEDA & WENDY TEJEDA DATED OCTOBER 27, 2008 wherein Rodolfo Tejada and Wendy Tejada were Trustees (the "Living Trust").

- d) As the owner and operator of rental property in California, the Defendant impliedly warranted that any property she rented to tenants was habitable.
- e) Between April 2007 and January 2013, Defendant maintained an account with Golden State Water Company ("GSWC"), to furnish water to the Property.
- f) Between December 18, 2014 through February 2016, the Property was owned by Defendant.
- g) On or about January 8, 2015, Menbere Mekbeb, EHS III ("Mekbeb"), from the Public Health Office called and spoke with Defendant, informing her of an office hearing scheduled for the following day (January 9, 2015) due to the three complaints for lack of running water at the Property.
- h) On January 9, 2015, Plaintiff and Defendant attended an Office Hearing at the Los Angeles County Department of Public Health, conducted by Chief Environmental Health Specialist, Fahrudin Dean Zulcic. During the Office Hearing, Mr. Zulcic ordered Defendant to immediately restore water utility service to the Property.
- i) On January 9, 2015, during the Office Hearing, Mr. Zulcic called Golden State Water Company ("GSWC" and/or "Golden State") and verified that someone other than Defendant had a utility account under their names for all units at the subject property (due to the property having a master-meter).
- j) On or about March 25, 2015, Debtor/Defendant's mortgage lender executed a Notice of Default ("NOD") which was recorded at the Los Angeles County Recorder's Office on April 2, 2015, instrument number 20150362193.
- k) On or about October 22, 2015, due to the continued mortgage default, a Notice of Trustee's Sale ("NOTS") was executed and recorded at the Los Angeles County Recorder's Office on October 26, 2015, instrument number 20151307619.
- l) Since the purchase of the Property by Defendant through the date of short sale (February 2016), the water utility service at the Property was measured by one master-meter for all units. Defendant has no knowledge

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- of the water utility meter set up after the short sale of the subject property.
- m) Between September 2016 through the present, Defendant was employed as a realtor for Century 21.

Pretrial Order at ¶1.

The facts remaining to be litigated are as follows:

- a) Whether Defendant terminated her utility account with GSWC because she lacked the financial ability to continue making payments on the utility account.
- b) Whether Defendant's financial inability to make payments on the GSWC account resulted from Defendant's inability to collect rent from tenants residing at the Property.
- c) Whether Plaintiff and Defendant entered into an agreement pursuant to which Defendant leased the Property to Plaintiff on or about September 1, 2012.
- d) Whether Plaintiff's Exhibit 1 (the "Lease") is a valid contract, or whether the Lease agreement was forged.
- e) Whether Plaintiff agreed to make monthly rental payments to Defendant.
- f) Whether Defendant agreed to furnish the Property with water utility service.
- g) Whether Plaintiff paid rent to Defendant and/or to Defendant's husband, Rodolfo Tejada.
- h) Whether Defendant advised tenants of the Property of her intent to close her account with GSWC prior to terminating her utility account with GSWC.
- i) Whether Defendant had any plan for how tenants of the Property would receive water utility services after Defendant closed her account with GSWC.
- j) Whether, at the time she closed her account with GSWC, Defendant knew if a tenant would or could open an account with GSWC so that the Property could continue to receive water utility service.
- k) Whether, between January 3, 2013 and February 2016, water utility service for the Property was under the names of various parties other than the Defendant.
- l) Whether Defendant closed her account with GSWC for the purpose of causing tenants to vacate the property, or whether Defendant closed the account because she lacked the financial ability to continue paying for

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- water utility service.
- m) Whether Defendant's motive in notifying the Los Angeles County Department of Children and Family Services ("DCFS") that the property lacked water service was to harass Plaintiff so that she would abandon the Property, or whether instead Defendant notified DCFS because she was instructed to do so in order to avoid liability.
 - n) Whether Defendant attempted to open a new GSWC account on or about January 2015, but was unable to do so because she could not afford to pay the outstanding balance of the existing account, which was under someone else's name at the time.
 - o) Whether Defendant offered to reduce Plaintiff's rent after discontinuing her account with GSWC.
 - p) Whether Plaintiff was required to purchase, on a daily basis, five 5-gallon containers of water as a result of the lack of water service at the property.
 - q) Whether Plaintiff was required to purchase more expensive and less nutritious food as a result of the lack of water service at the property.
 - r) The amount of damages suffered by Plaintiff in the event the Court finds that the Defendant is liable.

Pretrial Order at ¶2.

B. Summary of Plaintiff's First Motion *in Limine* and the Defendant's Opposition Thereto

Plaintiff moves for an order barring Defendant from asserting that Defendant did not mutually assent to the terms of the Lease (Plaintiff's Ex. 1) because a prior owner and/or manager—Defendant's ex-husband—Rodolfo Tejada—had assented to the Lease. Plaintiff asserts that as a matter of law, Defendant, as a successor landlord, remains bound by all the terms and conditions of a lease agreement entered into by a prior landlord. Plaintiff asserts that she has the same rights and remedies to enforce the original landlord's covenants against Defendant, the successor landlord.

Defendant contends that the Motion mischaracterizes Defendant's position with respect to the Lease. Defendant asserts that the Lease proffered by Plaintiff is not the same lease that Plaintiff executed in 2012. According to Defendant, the Lease presented by Plaintiff contains materially different terms from the lease agreed upon by the parties. Defendant's position is that the actual lease provided for monthly rent of approximately \$1,100.00, whereas the Lease proffered by Plaintiff provides for monthly rent of \$673.00.

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II. Findings and Conclusions

The Court will preclude Defendant from asserting that Defendant is not bound by the terms of the Lease solely because the Lease was assented to by Defendant's ex-husband, Rodolfo Tejada. Under California law, "a sale by a lessor of real property during an unexpired term does not of itself abrogate the lease. Its effect is to grant all the rights of the original lessor to the grantee of the reversion. The grantee then becomes the landlord by operation of law and the tenant becomes a tenant of the grantee of the reversion." *Kirk Corp. v. First Am. Title Co.*, 220 Cal. App. 3d 785, 809, 270 Cal. Rptr. 24, 38 (Ct. App. 1990) (internal citations omitted). However, the Court notes that Defendant has not taken the position that Defendant is not bound by the Lease because it was executed by Defendant's ex-husband. Instead, Defendant's position is that "the lease presented by Plaintiff is a forgery to the extent Plaintiff claims that it was the lease presented to her by Defendant and her ex-husband in 2012." Opposition at 3.

Based upon the foregoing, the Motion is GRANTED. The Court will enter an appropriate order.

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates
Donald E Iwuchuku

Defendant(s):

Wendy Tejada

Represented By
Donald E Iwuchuku

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:17-10155 Wendy Tejada

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Adv#: 2:17-01308 Velasquez v. Tejada

#3.00 HearingRE: [37] Motion In Limine No. 2; Memorandum of Points and Authorities in Support Thereof

Docket 37

Tentative Ruling:

The Motion is DENIED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Motion *in Limine* No. 2 [Doc. No. 37] (the "Motion")
- 2) Defendant's Opposition to Plaintiff's Motion *in Limine* No. 2 [Doc. No. 45] (the "Opposition")

I. Facts and Summary of Pleadings

A. Background

The Complaint alleges that Wendy Tejada (the "Defendant") was the landlord of Sorayda Velasquez (the "Plaintiff") between September 2012 and February 2016. Complaint at ¶8. The gravamen of the Complaint is that Defendant purposefully disconnected Defendant's water service in order to induce the Defendant to vacate the property. Plaintiff alleges that Defendant's indebtedness is non-dischargeable pursuant to §523(a)(6).

As set forth in the Pretrial Order [Doc. No. 35], the following facts are admitted and require no proof:

- a) Defendant filed a petition for relief under Chapter 7 on January 5, 2017 (the "Petition Date").
- b) Plaintiff filed an adversary complaint on June 9, 2017.
- c) Prior to the petition date, between December 2008 and December 2016, Defendant owned and/or managed the property located at 1136 – 1138 E. 81st St., Los Angeles, CA, including 1138 ½ E. 81st St., Los Angeles, CA (the "Property"). Defendant owned the Property intermittently between April 2007 through October 27, 2008 and December 4, 2014 through February 2016. From October 27, 2008 through December 4, 2014, the

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Property was owned by THE LIVING TRUST OF RODOLFO TEJEDA & WENDY TEJEDA DATED OCTOBER 27, 2008 wherein Rodolfo Tejada and Wendy Tejada were Trustees (the "Living Trust").

- d) As the owner and operator of rental property in California, the Defendant impliedly warranted that any property she rented to tenants was habitable.
- e) Between April 2007 and January 2013, Defendant maintained an account with Golden State Water Company ("GSWC"), to furnish water to the Property.
- f) Between December 18, 2014 through February 2016, the Property was owned by Defendant.
- g) On or about January 8, 2015, Menbere Mekbeb, EHS III ("Mekbeb"), from the Public Health Office called and spoke with Defendant, informing her of an office hearing scheduled for the following day (January 9, 2015) due to the three complaints for lack of running water at the Property.
- h) On January 9, 2015, Plaintiff and Defendant attended an Office Hearing at the Los Angeles County Department of Public Health, conducted by Chief Environmental Health Specialist, Fahrudin Dean Zulcic. During the Office Hearing, Mr. Zulcic ordered Defendant to immediately restore water utility service to the Property.
- i) On January 9, 2015, during the Office Hearing, Mr. Zulcic called Golden State Water Company ("GSWC" and/or "Golden State") and verified that someone other than Defendant had a utility account under their names for all units at the subject property (due to the property having a master-meter).
- j) On or about March 25, 2015, Debtor/Defendant's mortgage lender executed a Notice of Default ("NOD") which was recorded at the Los Angeles County Recorder's Office on April 2, 2015, instrument number 20150362193.
- k) On or about October 22, 2015, due to the continued mortgage default, a Notice of Trustee's Sale ("NOTS") was executed and recorded at the Los Angeles County Recorder's Office on October 26, 2015, instrument number 20151307619.
- l) Since the purchase of the Property by Defendant through the date of short sale (February 2016), the water utility service at the Property was measured by one master-meter for all units. Defendant has no knowledge of the water utility meter set up after the short sale of the subject property.

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m) Between September 2016 through the present, Defendant was employed as a realtor for Century 21.

Pretrial Order at ¶1.

The facts remaining to be litigated are as follows:

- a) Whether Defendant terminated her utility account with GSWC because she lacked the financial ability to continue making payments on the utility account.
- b) Whether Defendant's financial inability to make payments on the GSWC account resulted from Defendant's inability to collect rent from tenants residing at the Property.
- c) Whether Plaintiff and Defendant entered into an agreement pursuant to which Defendant leased the Property to Plaintiff on or about September 1, 2012.
- d) Whether Plaintiff's Exhibit 1 (the "Lease") is a valid contract, or whether the Lease agreement was forged.
- e) Whether Plaintiff agreed to make monthly rental payments to Defendant.
- f) Whether Defendant agreed to furnish the Property with water utility service.
- g) Whether Plaintiff paid rent to Defendant and/or to Defendant's husband, Rodolfo Tejada.
- h) Whether Defendant advised tenants of the Property of her intent to close her account with GSWC prior to terminating her utility account with GSWC.
- i) Whether Defendant had any plan for how tenants of the Property would receive water utility services after Defendant closed her account with GSWC.
- j) Whether, at the time she closed her account with GSWC, Defendant knew if a tenant would or could open an account with GSWC so that the Property could continue to receive water utility service.
- k) Whether, between January 3, 2013 and February 2016, water utility service for the Property was under the names of various parties other than the Defendant.
- l) Whether Defendant closed her account with GSWC for the purpose of causing tenants to vacate the property, or whether Defendant closed the account because she lacked the financial ability to continue paying for water utility service.

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- m) Whether Defendant's motive in notifying the Los Angeles County Department of Children and Family Services ("DCFS") that the property lacked water service was to harass Plaintiff so that she would abandon the Property, or whether instead Defendant notified DCFS because she was instructed to do so in order to avoid liability.
- n) Whether Defendant attempted to open a new GSWC account on or about January 2015, but was unable to do so because she could not afford to pay the outstanding balance of the existing account, which was under someone else's name at the time.
- o) Whether Defendant offered to reduce Plaintiff's rent after discontinuing her account with GSWC.
- p) Whether Plaintiff was required to purchase, on a daily basis, five 5-gallon containers of water as a result of the lack of water service at the property.
- q) Whether Plaintiff was required to purchase more expensive and less nutritious food as a result of the lack of water service at the property.
- r) The amount of damages suffered by Plaintiff in the event the Court finds that the Defendant is liable.

Pretrial Order at ¶2.

Defendant argues that she is not liable under §523(a)(6) because she attempted to restore water service to the Property subsequent to the January 9, 2015 hearing conducted by the Los Angeles County Department of Public Health. According to Defendant, after she closed her GSWC account, other tenants at the Property opened accounts with GSWC. Defendant states that she was advised by GWSC that payments of approximately \$6,000 remained outstanding in connection with an account opened by one of the tenants. Defendant states that GSWC refused to re-establish an account in her name until this bill was brought current, and that she could not afford to bring the bill current.

B. Summary of Plaintiff's Second Motion in Limine

Plaintiff moves for an order barring Defendant from asserting that Defendant did not have control over the GWSC water utility account used to furnish the Property's five rental units with water. Plaintiff makes the following arguments in support of the Motion:

The water utility service for the Property was measured by a single master-meter. That the GSWC utility account listed the customer of record as various parties other

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than Defendant is irrelevant because as owner of the Property, Defendant had sole control over accounts furnishing master-metered utilities.

Defendant cannot escape the obligation to perform duties owed to her tenants by delegating those duties to other tenants. Defendant remained responsible to furnish water to the units regardless of whether another tenant allegedly retained control of the GSWC account. Under the doctrine of non-delegable duty, "a landlord cannot escape liability for failure to maintain property in a safe condition by delegating the duty to an independent contractor." *Srithong v. Total Inv. Co.*, 23 Cal. App. 4th 721, 726, 28 Cal. Rptr. 2d 672, 674 (1994).

Cal. Civ. Code §1941 provides:

The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable

Cal. Civ. Code §1941.1(a)(3) provides that a dwelling shall be deemed untenable if it lacks a "water supply ... capable of producing hot and cold running water" Cal. Health & Saf. Code §17920.3(a)(5) provides that a building lacking "hot and cold running water to plumbing fixtures in a dwelling unit" shall "be deemed and hereby is declared to be a substandard building"

By failing to provide water service to the Property, Defendant failed to maintain the Property in a safe condition. Because Defendant's obligation to maintain safety is non-delegable, the fact that the GSWC account allegedly was under the control of other tenants is irrelevant.

C. Summary of Defendant's Opposition to the Motion

Defendant opposes the Motion, and makes the following arguments in support of her Opposition:

The legal issue to be determined is whether Defendant acted willfully and maliciously with respect to the events concerning the absence of water at the Property. Defendant intends to introduce evidence showing that after other tenants assumed control over the GSWC account, she lacked any control over the account. Defendant further intends to introduce evidence that the tenant with the GSWC account was responsible for disconnecting the water service.

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II. Findings and Conclusions

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

As the Ninth Circuit Bankruptcy Appellate Panel has explained:

Under § 523(a)(6), the willful injury requirement speaks to the state of mind necessary for nondischargeability. An exacting requirement, it is satisfied when a debtor harbors "either a subjective intent to harm, or a subjective belief that harm is substantially certain." *Carrillo v. Su (In re Su)*, 290 F.3d at 1144 (9th Cir. 2002); *see also Petralia v. Jercich (In re Jercich)*, 238 F.3d at 1208 (9th Cir. 2001). The injury must be deliberate or intentional, "not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61, 118 S.Ct. 974, 140 L.Ed.2d 90 (1998) (emphasis in original). Thus, "debts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64, 118 S.Ct. 974....

[R]ecklessly inflicted injuries do not satisfy the § 523(a)(6) willfulness requirement. *See* 523 U.S. at 61–62, 118 S.Ct. 974. This necessarily includes all degrees of reckless conduct, whether arising from recklessness simple, heightened, or gross; conduct that is reckless merely requires an intent to act, rather than an intent to cause injury as required under *Geiger*.

Id. at 463–64.

An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted).

This dischargeability action involves two distinct issues: "first, the establishment of the debt itself ...; and second, a determination of the nature of that debt"—that is, a determination of whether the debt is non-dischargeable within the meaning of §523 (a)(6). *Thomas M. Banks v. Gill Distribution Centers, Inc., Ronald Richardson, Transworld Distribution Servs., Inc. dba Richardson Warehouse Co. (In re Gill Distribution Centers, Inc., Ronald Richardson, Transworld Distribution Servs., Inc. dba Richardson Warehouse Co.)*, 263 F.3d 862, 868 (9th Cir. 2001). As the creditor seeking to have a debt declared non-dischargeable, Plaintiff has the burden of proof under the preponderance of the evidence standard. *Grogan v. Garner*, 498 U.S. 279,

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287, 111 S.Ct. 654 (1991).

Here, Plaintiff cannot establish the debt unless Plaintiff first shows that Defendant and Plaintiff entered into a lease agreement with respect to the Property. Absent a lease agreement giving rise to a landlord/tenant relationship, Defendant would have no obligation to furnish water service to the Property. Plaintiff must show the existence of a lease agreement by a preponderance of the evidence.

Plaintiff's Motion presupposes that Defendant owed duties to Plaintiff in her capacity as Plaintiff's landlord. However, as set forth in the Pretrial Order, an issue of fact remaining to be litigated is whether the Lease proffered by Plaintiff is authentic. Because the existence of a landlord/tenant relationship between Plaintiff and Defendant remains at issue, the Motion must be denied.

Even if Plaintiff can establish the existence of a landlord/tenant relationship, Plaintiff must then establish that the indebtedness arising from Defendant's failure to provide water service is non-dischargeable within the meaning of §523(a)(6). That will require Plaintiff to show that Defendant's failure to provide water was both "willful" and "malicious." As noted, the willfulness requirement is "exacting," *Plyam*, 530 B.R. 463; "debts arising from recklessly or negligently inflicted injuries" do not satisfy the requirement. *Kawaauhau v. Geiger*, 523 U.S. 57, 64, 118 S. Ct. 974, 978, 140 L. Ed. 2d 90 (1998).

Plaintiff is correct that, under California law, a landlord has an obligation to supply hot and cold running water to the Property. *See* Cal. Civ. Code §1941 (providing that the "lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable") and Civ. Code §1941.1(a)(3) (stating that a dwelling shall be deemed untenable if it lacks a "water supply ... capable of producing hot and cold running water").

Plaintiff is also right that California law further imposes upon landlords a duty to maintain the Property that they lease in a safe condition, and that this duty is non-delegable. *See Srithong v. Total Inv. Co.*, 23 Cal. App. 4th 721, 726, 28 Cal. Rptr. 2d 672, 674 (1994) ("[A] landlord cannot escape liability for failure to maintain property in a safe condition by delegating the duty to an independent contractor"). Therefore, assuming Plaintiff can establish a landlord/tenant relationship, Plaintiff owed Defendant a non-delegable duty to provide the Property with running water. *See Knell v. Morris*, 39 Cal.2d 450, 456 (Cal. 1952) (holding that landlord had a non-delegable duty to maintain water heaters in good working order).

However, the fact that Defendant may have owed Plaintiff a non-delegable duty to

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provide water does not make it irrelevant that other tenants may have controlled the GSWC water account. If Plaintiff succeeds in establishing the indebtedness, Plaintiff must then show that Defendant's failure to provide water was "willful" and "malicious" within the meaning of §523(a)(6). In determining whether this high standard has been met, the circumstances regarding control of the GSWC account have a great deal of relevance. For example, if at the time she closed the GSWC account, Defendant had a good-faith belief that a reliable tenant had assumed responsibility for the account, it would be difficult for Plaintiff to show that injuries stemming from the absence of water were either willful or malicious. At most, these circumstances would support a finding that Plaintiff negligently failed to fulfill her obligation to provide water. Negligence is not enough to render a debt non-dischargeable under §523(a)(6). Even a showing that Defendant acted with extreme carelessness regarding the arrangements for the provision of water would not necessarily meet the high bar imposed by §523(a)(6).

Of particular relevance are the circumstances surrounding Defendant's termination of the GSWC account in January 2013. Did Defendant advise tenants at the Property that she would be closing the account? Did she attempt to make arrangements for another tenant to take over the account? Did she conduct any investigation into whether another tenant would or could open an account?

In conclusion, the Motion is DENIED for the reasons set forth above. The Court will enter an appropriate order.

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates
Donald E Iwuchuku

Defendant(s):

Wendy Tejada

Represented By
Donald E Iwuchuku

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

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Central District of California
Los Angeles
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Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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9:00 AM

2:17-10155 Wendy Tejada

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Adv#: 2:17-01308 Velasquez v. Tejada

#4.00 Hearing
RE: [40] Motion Defendant's Motion in Limine 1

Docket 40

Tentative Ruling:

The Motion is GRANTED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Defendant's Motion *in Limine* 1 to Exclude all Evidence and Issues Not Disclosed or Raised in the Pre-Trial Order [Doc. No. 40] (the "Motion")
- 2) No Opposition is on file

I. Facts and Summary of Pleadings

The Complaint alleges that Wendy Tejada (the "Defendant") was the landlord of Sorayda Velasquez (the "Plaintiff") between September 2012 and February 2016. Complaint at ¶8. The gravamen of the Complaint is that Defendant purposefully disconnected Defendant's water service in order to induce the Defendant to vacate the property. Plaintiff alleges that Defendant's indebtedness is non-dischargeable pursuant to §523(a)(6).

On April 24, 2018, the Court entered a Pretrial Order setting forth the facts that are admitted, the facts that remain to be litigated, and the issues of law that remain to be litigated.

Defendant moves for an order excluding the presentation of any issues or evidence not set forth in the Pretrial Order. No opposition to the Motion is on file.

II. Findings and Conclusions

The Motion is GRANTED. The Court entered the Pretrial Order to narrow the issues and evidence to be presented at trial. The Pretrial Order provides that it "supersedes the pleadings and governs the course of trial of this cause, unless modified to prevent manifest injustice." Therefore, the parties will not be allowed to present any issues or evidence not set forth in the Pretrial Order.

The Court will enter an appropriate order.

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Los Angeles
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CONT... Wendy Tejada

Chapter 7

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates
Donald E Iwuchuku

Defendant(s):

Wendy Tejada

Represented By
Donald E Iwuchuku

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 02, 2018

Hearing Room 1568

9:00 AM

2:17-10155 Wendy Tejada

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Adv#: 2:17-01308 Velasquez v. Tejada

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01308. Complaint by Sorayda Velasquez against Wendy Tejada. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Estuar, Paul)

fr: 3-26-18; 4-30-18

Docket 1

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates

Defendant(s):

Wendy Tejada

Pro Se

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

2:17-23517 Ray C Patterson

Chapter 7

#1.00 Hearing
RE: [51] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7520 Shore Cliff Dr., Los Angeles, CA 90045 . (O, Christina)

fr: 4-9-18

Docket 51

***** VACATED *** REASON: PER ORDER ENTERED 5-2-18**

Tentative Ruling:

Party Information

Debtor(s):

Ray C Patterson

Represented By
Matthew D Resnik

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

2:18-11075 Ruben Raul Ruano

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1102 North Langham Street, Covina, CA 91724 .

Docket 9

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (8th Cir. BAP 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$503,370.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$712,923.46. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

CONT... Ruben Raul Ruano

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ruben Raul Ruano

Represented By
Neil R Hedtke

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

2:18-11903 Oscar Nahun Franco

Chapter 7

#3.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA CIVIC, VIN: 19XF C1F3 5HE2 02344 .

Docket 21

Tentative Ruling:

5/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

The Court notes the "Reaffirmation Agreement" between the Debtor and the Movant filed on April 17, 2018 [Doc. No. 23], which is pending Court approval. However, the pending Reaffirmation Agreement is not cause for denying the Motion.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

CONT... Oscar Nahun Franco

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Oscar Nahun Franco

Represented By
Raymond Perez

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

2:18-12654 Kandis Joy Schumer

Chapter 7

#4.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Edge, VIN 2FMDK3GC6EBB13482 . (Wang, Jennifer)

Docket 17

Tentative Ruling:

5/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established that the fair market value of the subject vehicle is declining and that Debtor is making insufficient payments to protect Movant against this decline. Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

CONT... Kandis Joy Schumer

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Kandis Joy Schumer

Represented By
David P Farrell

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

2:18-13326 Joshua Elias Palacios Herrera and Karolan Melina Palacios

Chapter 7

#5.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 14919 Halldale Ave, Gardena CA 90247 . (Flanagan, James)

Docket 8

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this Judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on January 19, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See *In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 07, 2018

Hearing Room 1568

10:00 AM

CONT... Joshua Elias Palacios Herrera and Karolan Melina Palacios

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Joshua Elias Palacios Herrera	Pro Se
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Joint Debtor(s):

Karolan Melina Palacios	Pro Se
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Trustee(s):

John J Menchaca (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#1.00 APPLICANT: Attorney for Trustee (Other Firm) - LAW OFFICES OF ROBERT ARONSON

Hearing re [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/7/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$97,613.33 (to be paid \$38,069.20 pursuant to Trustee's Final Report)

Expenses: \$2,073.79

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#2.00 Bond Payments - INTERNATIONAL SURETIES

Hearing re [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/7/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#3.00 Charges, U.S. Bankruptcy Court

Hearing re [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/7/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#4.00 APPLICANT: Trustee - Wesley Avery

Hearing re [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/7/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$6,288.51

Total Expenses: \$250.54

Charges, U.S. Bankruptcy Court: \$350.00

Bond Payments, International Sureties: Amounts previously paid are approved on a final basis.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#5.00 APPLICANT: Accountant for Trustee (Other Firm) - Jeffrey L. Sumpter

Hearing re [118] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/7/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$18,455.00 (to be paid \$7,197.45 pursuant to Trustee's Final Report)

Expenses: \$30.90

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-21396 Jeffrey Dennis Hall and Hilary Mcgee Warren

Chapter 7

#6.00 APPLICANT: LEA ACCOUNTANCY, LLP, Accountant

Hearing re [52] & [53] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/7/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,368.00

Expenses: \$222.57

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Jeffrey Dennis Hall

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Hilary Mcgee Warren

Represented By
Rabin J Pournazarian

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Jeffrey Dennis Hall and Hilary Mcgee Warren
James A Dumas Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-21396 Jeffrey Dennis Hall and Hilary Mcgee Warren

Chapter 7

#7.00 APPLICANT: DUMAS & KIM, APC, Attorney

Hearing re [52] & [53] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/7/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$13,370.00

Expenses: \$160.79

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Jeffrey Dennis Hall

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Hilary Mcgee Warren

Represented By
Rabin J Pournazarian

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Jeffrey Dennis Hall and Hilary Mcgee Warren
James A Dumas Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-21396 Jeffrey Dennis Hall and Hilary Mcgee Warren

Chapter 7

#8.00 APPLICANT: SAM S LESLIE, Trustee

Hearing re [52] & [53] Chapter 7 Trustee's Final Report, Application for
Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,600.00

Total Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Jeffrey Dennis Hall

Represented By
Rabin J Pournazarian

Joint Debtor(s):

Hilary Mcgee Warren

Represented By
Rabin J Pournazarian

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Jeffrey Dennis Hall and Hilary Mcgee Warren
James A Dumas Jr

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#9.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#10.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#11.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 24] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#12.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Represented By Kelly F Ryan
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Henry A. Hakopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#13.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Plaintiff and Defendant have agreed on the substantive terms of a settlement. The deadline for Plaintiff to file a motion for approval of the settlement (the "Rule 9019 Motion") is **June 8, 2018**. Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. To provide time for the Rule 9019 Motion to be heard, the litigation deadlines previously ordered shall be continued as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed—is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Friendly Adult Day Healthcare Center, Inc.

Chapter 7

expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Vineland Sunshine Properties, LLC,

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#14.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Plaintiff and Defendant have agreed on the substantive terms of a settlement. The deadline for Plaintiff to file a motion for approval of the settlement (the "Rule 9019 Motion") is **June 8, 2018**. Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. To provide time for the Rule 9019 Motion to be heard, the litigation deadlines previously ordered shall be continued as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed—is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Friendly Adult Day Healthcare Center, Inc.

Chapter 7

expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Represented By
Sevan Gorginian

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01426 TIMOTHY J. YOO, Chapter 7 Trustee v. ACE FUNDING SOURCE, LLC

#15.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01426. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ACE FUNDING SOURCE, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ACE FUNDING SOURCE, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01430 TIMOTHY J. YOO, Chapter 7 Trustee v. EIN CAPITAL

#16.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01430. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against EIN CAPITAL. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

EIN CAPITAL

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#17.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, the Court will continue the litigation deadlines previously ordered by sixty days, as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed—is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Blue Global, LLC

Chapter 7

cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... **Blue Global, LLC**

Chapter 7

John Du Wors

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01441 TIMOTHY J. YOO, Chapter 7 Trustee v. FLEX MARKETING GROUP

#18.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01441. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against FLEX MARKETING GROUP. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

FLEX MARKETING GROUP

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA et al

#19.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Plaintiff and Defendant have agreed on the substantive terms of a settlement. The deadline for Plaintiff to file a motion for approval of the settlement (the "Rule 9019 Motion") is **June 8, 2018**. To provide time for the Rule 9019 Motion to be heard, the litigation deadlines previously ordered shall be continued by sixty days, as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed— is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT...

Blue Global, LLC

Chapter 7

- closest previous date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
 - 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
 - 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Defendant(s):

GLOBAL AGORA

Represented By
Sarah de Diego

UNION SQUARE MEDIA GROUP,

Represented By
Sarah de Diego

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01445 TIMOTHY J. YOO, Chapter 7 Trustee v. GREEN CAPITAL FUNDING

#20.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01445. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GREEN CAPITAL FUNDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other))
(Kwong, Jeffrey)

fr. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GREEN CAPITAL FUNDING

Represented By
Johnny White

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01446 TIMOTHY J. YOO, Chapter 7 Trustee v. INBOX MEDIA LLC

#21.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01446. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INBOX MEDIA LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INBOX MEDIA LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01450 TIMOTHY J. YOO, Chapter 7 Trustee v. POWERUP LENDING

#22.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01450. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against POWERUP LENDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

3/6/2018

The Court has set litigation deadlines and has entered an order assigning this matter to mediation. The parties have requested that the Court set a continued status conference so that the parties may (1) update the Court on the status of the mediation and (2) request a continuance of litigation deadlines, if necessary. Accordingly, a continued Status Conference shall be held on **May 8, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines set by the Court on December 11, 2017, *see* Doc. No. 20, shall remain in effect.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

POWERUP LENDING

Represented By
Scott A Schiff
Roland Gary Jones

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#23.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17; 3-7-18

Docket 1

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, the Court will continue the litigation deadlines previously ordered by sixty days, as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed— is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT...

Blue Global, LLC

Chapter 7

- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) As set forth in the in the scheduling order entered on December 11, 2017 [Doc. No. 21], Defendant is entitled to a jury trial. All proceedings through and including the Pretrial Conference will take place before the Bankruptcy Court. After the Pretrial Conference has been completed, this action will be transferred to the District Court, which will conduct the jury trial. *See generally Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 787–88 (9th Cir. 2007) (providing that where a right to a jury trial exists, the Bankruptcy Court retains jurisdiction to hear and determine all pretrial matters, and the action should be transferred to the District Court only once it has reached the trial stage).

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

CONT... Blue Global, LLC

Chapter 7

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:17-24836 Scott Douglas MacLachlan and Elaine Anne MacLachlan

Chapter 7

#24.00

Hearing re [19]

- a. Whether the debtors' discharge may be temporarily set aside for the limited purpose of allowing the Court to approve the contemplated reaffirmation agreement; and
- b. Whether the secured creditor, Partners Federal Credit Union ("Creditor"), is willing to enter into the contemplated reaffirmation agreement and to return the subject vehicle to the Debtors in the event that the Court approves the reaffirmation agreement.

Docket 0

***** VACATED *** REASON: STIPULATION ENTERED 4-18-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Douglas MacLachlan

Represented By
David H Chung

Joint Debtor(s):

Elaine Anne MacLachlan

Represented By
David H Chung

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

10:00 AM

2:14-31703 Ravinder Kumar Bhatia and Johanna Arias Bhatia

Chapter 11

#25.00 Status Hearing re [130] post confirmation status conference

fr. 12-6-16; 6-6-17; 12-5-17

Docket 0

***** VACATED *** REASON: FINAL DECREE ENTERED 5-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 08, 2018

Hearing Room 1568

11:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#100.00 HearingRE: [50] Motion For Sale of Property of the Estate under Section 363(b) - No Fee CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) AUTHORIZING SALE OF 592 EAST 6TH STREET, AZUSA CALIFORNIA 91702, FREE AND CLEAR OF LIENS, CLAIMS AND INTEREST; (2) APPROVING PROPOSED OVERBID PROCEDURES; (3) DETERMINING THAT BUYERS ARE GOOD FAITH PURCHASERS; (4) AUTHORIZING PAYMENT OF COST OF SALE FROM ESCROW; (5) WAIVING THE FOURTEEN DAY STAY PRESCRIBED BY RULE 6004(h) OF THE FEDERAL RULE OF BANKRUPTCY PROCEDURE; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DAVID M. GOODRICH, MICHAEL S. SPAGNOLA AND JAN NEIMAN with proof of service (Goodrich (TR), David)

Docket 50

Tentative Ruling:

5/7/2018

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchasers: Michael P. Spagnola and Dianna L. Spagnola
- 2) Property for Sale: 592 East 6th Street, Azusa, CA 91702
- 3) Purchase price: \$600,000.00
- 4) Overbids: The initial overbid shall be \$10,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Trustee of their intent to overbid and the amount of such interested bidder's initial overbid no later than two business days prior to the hearing on the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$18,000.00, as well as evidence of the Overbidder's financial ability to pay the full amount of the Overbid.

Pleadings Filed and Reviewed:

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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Hearing Room 1568

11:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 7

- 1) Chapter 7 Trustee's Motion for Order: Authorizing Sale of 592 East 6th Street, Azusa, CA 91702, Free and Clear of Liens, Claims, and Interests; (2) Approving Proposed Overbid Procedures; (3) Determining that Buyers are Good Faith Purchasers; (4) Authorizing Payment of Costs of Sale from Escrow; (5) Waiving the Fourteen Day Stay Prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Sale Motion") [Doc. No. 50]
 - a) Declaration of David M. Goodrich
 - b) Declaration of Michael S. Spagnola
 - c) Declaration of Jan Neiman
- 2) Notice of Sale of Estate Property [Doc. No. 52]
- 3) Response to the Sale Motion (the "Response") [Doc. No. 62]

I. Facts and Summary of Pleadings

Crestalliance LLC (the "Debtor") filed a voluntary Chapter 11 petition on November 22, 2017 (the "Petition") [Doc. No. 1]. On January 17, 2018, the Court entered the "Order Converting Case to Chapter 7" [Doc. No. 22]. David M. Goodrich accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case. On March 6, 2018, the Trustee filed the "Application to Employ Neiman Realty, Inc. as Real Estate Broker to Market and Sell Real Properties" [Doc. No. 33]. The Court entered the "Order Granting the Application to Employ Neiman Realty" on March 28, 2018 [Doc. No. 46].

The Motion

On April 4, 2018, the Trustee filed the "Motion for Order: Authorizing Sale of 592 East 6th Street, Azusa, CA 91702, Free and Clear of Liens, Claims, and Interests; (2) Approving Proposed Overbid Procedures; (3) Determining that Buyers are Good Faith Purchasers; (4) Authorizing Payment of Costs of Sale from Escrow; (5) Waiving the Fourteen Day Stay Prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure" (the "Sale Motion") [Doc. No. 50]. The Debtor holds an interest in the real property located at 592 East 6th Street, Azusa, CA 91702 (the "Property"). *See* "Schedule A/B" [Doc. No. 10]. On February 22, 2018, Michael P. Spagnola and Dianna L. Spagnola (the "Buyers") submitted the "Purchase Agreement", *see* "Declaration of David M. Goodrich" ("Goodrich Decl.") [Doc. No. 50], Exhibit 1, to

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CONT... CRESTALLIANCE, LLC

Chapter 7

the Trustee whereby the Buyers have agreed to purchase the Property for the sum of \$600,000.00, *id.* at ¶ 6. The Buyers' offer was the highest offer the Trustee has received. *Id.* The Trustee believes that the proposed sale of the Property will generate approximately \$126,058.00 of net proceeds for the Estate. *Id.* at ¶ 8. Therefore, the Trustee seeks an order: (a) authorizing the sale of the Property to the Buyers free and clear of all liens, claims, and interests; (b) Approving Proposed Overbid Procedures; (c) Determining that Buyers are Good Faith Purchasers; (d) Authorizing Payment of Costs of Sale from Escrow; (e) Waiving the Fourteen Day Stay Prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure. The key sale terms are as follows:

- 1) Proposed purchaser: Michael P. Spagnola and Dianna L. Spagnola;
- 2) Property for Sale: 592 East 6th Street, Azusa, CA 91702;
- 3) Purchase price: \$600,000.00;
- 4) Overbids: The initial overbid shall be \$10,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Trustee of their intent to overbid and the amount of such interested bidder's initial overbid no later than two business days prior to the hearing on the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$18,000.00, as well as evidence of the Overbidder's financial ability to pay the full amount of the Overbid.

The Response

On April 24, 2018, Deutsche Bank National Trust Company (the "Creditor"), which is beneficiary of the first deed of trust encumbering the Property, filed the Response to the Sale Motion (the "Response") [Doc. No. 62]. The Response states that the estimated payoff amount of the Creditor's lien as of April 24, 2018 is \$447,966.41, which amount may not include interest and additional advances that may come due prior to the date of the proposed sale. The Creditor does not oppose the Sale Motion on the condition that the following provisions are included in the Order: (1) Creditor's Deed of Trust shall attach to the sale proceeds; (2) Creditor's Deed of Trust shall be paid in full from the sale proceeds through escrow; (3) in the event that the sale of the Property does not take place, Creditor shall retain its lien for the full amount due under the Note and Deed of Trust; (4) Creditor reserves the right to require an updated payoff demand prior to any close of escrow to ensure its claim is paid in full; and (5) Creditor's claim shall not be surcharged in any way with the costs

**United States Bankruptcy Court
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CONT... CRESTALLIANCE, LLC

Chapter 7

of the sale or any other administrative claims, costs or expenses in connection with the sale of the Property.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Property is in the best interest of the Estate because the sale will generate significant cash proceeds for the Estate. Additionally, the Trustee believes that the sale price is reasonable considering that, prior to the listing of the Property by the Trustee, the Debtor accepted an offer after marketing the Property in the amount of \$595,000.00. Furthermore, the Trustee has made extensive efforts to market the Property. Additionally, the sale is subject to overbids, which allows any party wishing to purchase the Property at a higher price to do so. The purchase offer of \$600,000.00 was obtained by the Trustee through arm's length negotiations.

Lastly, the Trustee has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a

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CONT... CRESTALLIANCE, LLC

Chapter 7

money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3). The price at which the Property will be sold (\$600,000.00) is greater than the aggregate value of all liens on the Property (\$426,357.00). Furthermore, the Sale Motion provides that the Creditor's lien will be paid in full from the sale proceeds. Lastly, the proposed Sale Order shall incorporate the conditional language set forth in the Creditor's Response regarding the Creditor's lien.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$10,000.00. Subsequent overbids will be increments of \$1,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Trustee shall submit an appropriate order within seven days of the hearing. The Order shall incorporate the conditional language set forth by the Creditor in the Response to the Sale Motion.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to**

**United States Bankruptcy Court
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11:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 7

do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#1.00 OTHER: DONALD T FIFE

Hearing re [74] & [75] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/8/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$9,444.00

Expenses: \$739.40

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#2.00 CHARGES: FRANCHISE TAX BOARD

Hearing re [74] & [75] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/8/2018

See Cal. No. 5 below, incorporated by reference.

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#3.00 CHARGES: U.S. BANKRUPTCY COURT

Hearing re [74] & [75] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/8/2018

See Cal. No. 5 below, incorporated by reference.

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#4.00 APPLICANT: JUNG & YUEN, LLP, Attorney for Trustee

Hearing re [74] & [75] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/8/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,047,059.00 (to be paid \$997,059.00 pursuant to Trustee's Final Report)

Expenses: \$41,606.31

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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Hearing Room 1568

10:00 AM

2:11-52396 Nextar Inc.

Chapter 7

#5.00 APPLICANT: EDWARD M WOLKOWITZ, Trustee

Hearing re [74] & [75] Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

5/8/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$63,277.60

Total Expenses: \$497.93

Charges, U.S. Bankruptcy Court: \$293.00

Franchise Tax Board: \$8,249.10

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Nextar Inc.

Represented By
David A Tilem
Sylvia Lew

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

CONT... Nextar Inc.

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Clifford P Jung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 09, 2018

Hearing Room 1568

10:00 AM

2:10-12927 FirstFed Financial Corp.

Chapter 11

#6.00 Hearing: [284] and [375] Post-confirmation Status Conference re chapter 11 plan

fr. 4-26-12; 5-23-12; 6-6-12; 7-3-12; 7-3-12; 10-2-12; 3-20-13; 10-9-13; 4-16-14;
4-7-15; 12-16-15; 1-20-16; 1-17-17; 9-12-17; 3-14-18

Docket 284

Tentative Ruling:

5/8/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to September 12, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

FirstFed Financial Corp.

Represented By
Jon L Dalberg
Rodger M Landau
Joel S. Miliband
Cathrine M Castaldi
Rodger M Landau

Movant(s):

Holdco Advisors, L.P.

Represented By
Jeff D Kahane
Jeff D Kahane

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 10, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#1.00 Hearing

RE: [465] Notice Of Motion And Motion For An Order Approving A Structured Dismissal Of Chapter 11 Case

Docket 0

Tentative Ruling:

5/9/2018

For the reasons set forth below, Crystal's motion for a structured dismissal is GRANTED. The final fee application of Crystal's general bankruptcy counsel, Landsberg Law, is GRANTED. The final fee application of Grobstein Teeple, Crystal's financial advisors, is GRANTED.

Pleadings Filed and Reviewed:

- 1) Crystal's Motion for a Structured Dismissal:
 - a) Notice of Motion and Motion for an Order Approving a Structured Dismissal of Chapter 11 Case [Doc. No. 465] (the "Motion")
 - b) Limited Opposition of the United States Trustee to Motion for an Order Approving a Structured Dismissal of Chapter 11 Case [Doc. No. 467] (the "UST Opposition")
 - c) B3 Capital Venture, LLC's Statement of Non-Opposition to "Motion for an Order Approving a Structured Dismissal of Chapter 11 Case" [Doc. No. 468]
 - d) Conditional Response to the Debtor's Motion for Order Approving a Structured Dismissal of Chapter 11 Case [filed by the Official Committee of Unsecured Creditors for Liberty Asset Management Corporation] [Doc. No. 469] (the "Liberty Committee Response")
- 2) Professional Fee Applications:
 - a) Third and Final Fee Application of Landsberg Law, APC for Approval of Fees and Reimbursement of Expenses [Doc. No. 460]
 - b) First and Final Application for Compensation and Reimbursement of

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 10, 2018

Hearing Room 1568

10:00 AM

CONT... **Crystal Waterfalls LLC** **Chapter 11**
Expenses of Grobstein Teeple, LLP as Accountants for Debtor and Debtor-in-Possession [Doc. No. 466]

I. Facts and Summary of Pleadings

A. Background

1. Sale of the Hotel

Crystal Waterfalls, LLC ("Crystal") filed a voluntary Chapter 11 petition on November 19, 2015. Crystal's primary asset was a hotel property located at 1211 E. Garvey Street, Covina, CA (the "Hotel"). On December 2, 2016, the Court approved the sale of the Hotel for \$22.6 million. Doc. No. 284. After payment of undisputed liens, taxes, and costs of sale, net proceeds to the estate were approximately \$9.3 million.

2. HCL Complaint

On December 10, 2015, Crystal commenced an adversary proceeding against HCL 2011, LLC ("HCL") by filing a complaint alleging claims for relief for cancellation of written instrument, quiet title, and declaratory relief (the "HCL Complaint"). On January 22, 2018, the Court approved a settlement agreement resolving the HCL Complaint (the "HCL Settlement Agreement"). Pursuant to the terms of the HCL Settlement Agreement, Crystal has paid HCL \$3.5 million on account of its allowed secured claim. On February 9, 2018, Crystal voluntarily dismissed the HCL Complaint.

3. Huesing Complaint

On July 29, 2016, Crystal commenced an adversary proceeding against Huesing Holdings, LLC ("Huesing") by filing a complaint alleging claims for relief for cancellation of written instrument, quiet title, avoidance of fraudulent transfer, and recovery of the avoided transfer (the "Huesing Complaint"). On December 22, 2017, the Court approved a settlement of the Huesing Complaint entered into among Liberty Asset Management Corporation ("Liberty"), the Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Liberty Committee"), and Crystal (the "Huesing Settlement"). Doc. Nos. 449–450. Pursuant to the Huesing Settlement, Crystal has paid Huesing \$2.65 million on account of Huesing's allowed secured claim. On January 30, 2018, Crystal and Huesing stipulated to the dismissal of the Huesing Complaint.

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4. Liberty Complaint

On March 22, 2016, Liberty filed a complaint against Crystal (the "Liberty Complaint"). The Liberty Complaint alleges, among other things, that Liberty is the sole equity holder in Crystal, and that Lucy Gao and Golden Bay Investments, LLC, hold no equity interests in Crystal. On August 10, 2016, the Liberty Committee was granted derivative standing to prosecute the Liberty Complaint on behalf of Liberty's estate. Doc. No. 177, Case No. 2:16-bk-13575-ER. On February 27, 2017, Crystal and the Liberty Committee filed a stipulation requesting a continuance of the litigation deadlines governing the Liberty Complaint (the "Stipulation"). In support of the Stipulation, the parties represented that Crystal intended to propose a plan of reorganization providing that all of Crystal's equity belonged to Liberty, and that such a plan would likely resolve the Liberty Complaint. On February 28, 2017, the Court entered an order approving the Stipulation and continuing the Pretrial Conference to September 12, 2017. Doc. No. 24, Adv. No. 2:16-ap-01145-ER. The Court subsequently entered additional orders providing for further continuances of the Pretrial Conference, pending resolution of Crystal's Chapter 11 case. Doc. Nos. 24, 26, and 28, Adv. No. 2:16-ap-01145-ER. The Pretrial Conference is currently scheduled for July 17, 2018, at 11:00 a.m.

5. B3 Proof of Claim

On October 31, 2016, B3 Capital Venture, LLC ("B3") filed a Proof of Claim (the "B3 Proof of Claim"). On February 16, 2017, the Court entered a Memorandum of Decision and accompanying Order, finding that B3 held an allowed secured claim in the amount of \$8,622,769.67. Doc. Nos. 352-53. On March 27, 2017, the Court entered a Memorandum of Decision and accompanying Order denying B3's motion for reconsideration of the order setting the allowed amount of B3's claim at \$8,622,769.67. Doc. Nos. 365-66 (the orders determining the allowed amount of B3's claim and denying B3's motion for reconsideration, the "B3 Claim Orders"). B3 appealed the B3 Claim Orders to the District Court. On October 20, 2017, the District Court affirmed the B3 Claim Orders. B3's appeal of the District Court's affirmance is currently pending before the Ninth Circuit. Briefing on the appeal is scheduled to be completed in June 2018. Crystal has paid B3 the entire balance of its allowed claim, in the amount of \$8,622,769.67.

6. Crystal's Motion to Pay Creditors of Sequoia

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On May 19, 2017, the Court denied Crystal's motion to use a portion of the net sales proceeds of the Hotel to pay creditors of Sequoia Hospitality F&B, Inc. ("Sequoia"). Lucy Gao, Crystal's principal, is also the principal of Sequoia. Crystal argued that Sequoia was entitled to a \$170,000 early termination fee (the "Termination Fee") based upon Crystal's early termination of a lease executed between Crystal and Sequoia. Crystal sought authorization to pay Sequoia's creditors \$106,181.08, based upon Sequoia's alleged entitlement to the Termination Fee. The Liberty Committee and HCL opposed the motion, arguing that the lease giving rise to the Termination Fee was invalid and that the Termination Fee was an improper attempt by Ms. Gao to use estate funds to pay the creditors of Sequoia, another entity which she controlled.

The Court denied the motion, concluding that the Termination Fee was not negotiated at arms-length and amounted to an improper attempt by Ms. Gao to divert funds from Crystal's creditors to creditors of Sequoia. The Court explained:

The purported Restaurant Lease, the breach of which furnishes the justification for the Termination Fee, was not negotiated at arms-length either; Sequoia never paid the [Crystal] any rent on account of the lease. Even if Sequoia was damaged by the [Crystal's] rejection of the lease (a finding the Court does not make), Sequoia would not be entitled to the Termination Fee, because its damages would be offset by the fact that it was never required to pay rent under the purported Restaurant Lease.

The Court will not permit the [Crystal] to use estate property in a manner that does not benefit the estate and creditors. The Termination Fee provides no benefit to the estate. Sequoia has failed to timely file a claim for damages in connection with rejection of the lease. Accordingly, any claim by Sequoia for § 365(g) rejection damages is barred. Since the estate has no liability to Sequoia on account of the lease's rejection, the estate would derive no benefit from paying the Termination Fee. Only Sequoia and Ms. Gao, who collusively negotiated the Termination Fee, would benefit from its payment.

Ruling Denying Motion to Disburse \$106,181.08 to Sequoia Creditors [Doc. No. 399] at 5-6.

B. Crystal's Motion for a Structured Dismissal and Final Applications to Pay Professional Fees

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Crystal moves for a structured dismissal of its Chapter 11 case. Approximately \$5.5 million remains in the estate. Crystal proposes to pay in full creditors who have filed proofs of claim, whose claims have not already been paid or settled. Claims in the total amount of \$1,509,104.35 will be paid, comprised of \$274,248.35 in payments to unsecured creditors and \$1,234,856 in payments on account of postpetition taxes. The foregoing figures do not include professional fees. Crystal proposes to establish a reserve in the amount of \$3 million, to be held in the trust account of Crystal's counsel, for the purposes of (1) satisfying any additional sums that may be owed to B3 in the event that B3 prevails upon its appeal and (2) satisfying any additional legal fees incurred by Crystal in connection with B3's appeal. Crystal also seeks authorization to pay creditors of Sequoia \$65,618.63.

Crystal asserts that the proposed structured dismissal is consistent with the priority scheme of the Bankruptcy Code, given that creditors are being paid in full. Crystal further asserts that a structured dismissal will be more cost effective than a Plan of Liquidation.

Crystal's general bankruptcy counsel, Landsberg Law, and its accounting firm, Grobstein Teeple, seek approval of professional fees on a final basis. By way of its *Third and Final Fee Application*, Landsberg Law seeks fees and expenses of \$278,669.93. Landsberg Law also seeks final approval of fees previously awarded on an interim basis. On June 29, 2016, the Court approved Landsberg Law's *First Interim Fee Application* and awarded fees and expenses in the amount of \$122,510.84. Doc. No. 152. On January 12, 2017, the Court approved Landsberg Law's *Second Interim Fee Application* and awarded fees and expenses in the amount of \$189,681.01. Doc. No. 319.

By way of its *First and Final Application for Compensation*, Grobstein Teeple seeks fees in the amount of \$30,971.00. Grobstein Teeple does not seek expenses.

C. Responses and Limited Oppositions to the Motion for a Structured Dismissal

The Liberty Committee does not oppose the proposed structured dismissal, provided that certain provisions are included in the order approving the motion (the "Approval Order"). The Liberty Committee states that it has been negotiating with Crystal on the terms of the Approval Order and anticipates resolving any disputed issues prior to the hearing. The Liberty Committee asserts that the Approval Order must contain the provisions stating the following:

- 1) **Membership Interests.** Liberty is the beneficial owner of the membership interests in Crystal, and Gao and Golden Bay relinquish any and all right, title,

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and/or interests they may have in Crystal. One hundred percent of the membership interests in Crystal are beneficially vested in Liberty.

- 2) **Reserve Fund.** The Reserve Fund shall be funded in the amount of \$3 million and shall be maintained in the client trust account of Landsberg Law. All distributions from the Reserve Fund shall be authorized and overseen by the Disbursing Agent. Howard Grobstein of Grobstein Teeple LLP shall be appointed as the Disbursing Agent. The Reserve Fund shall be used to pay the following:
 - a) Amounts owing to B3, if any.
 - b) Professional fees and expenses relating to B3's appeal of the B3 Claim Orders.
 - c) Professional fees and expenses related to the closing of the bankruptcy case and the winding up of Crystal's affairs.
 - d) Sums owing on account of Crystal's final tax returns.
 - e) Fees and expenses of the Disbursing Agent.
 - f) Fees owed to the United States Trustee.
 - g) Professional fees owed to Grobstein Teeple as Crystal's financial advisors.
- 3) **Payment of Claims.** The Disbursing Agent shall pay creditors within thirty days of entry of the Approval Order. The Disbursing Agent shall also pay the claims of Sequoia's creditors, in the total amount of \$65,618.63, within thirty days of entry of the Approval Order.
- 4) **Residual Proceeds.** All residual proceeds shall be distributed to Liberty.
- 5) **Insiders.** Neither Crystal nor the Disbursing Agent shall make any payments to or for the benefit of Lucy Gao, Benjamin Kirk, Shelby Ho, Golden Bay, or any person or entity affiliated with them.
- 6) **Conditions to Dismissal.** Crystal's case shall not be dismissed unless all of the following conditions have been satisfied:
 - a) The Approval Order has been entered in a form acceptable to the Liberty Committee.
 - b) The Disbursing Agent has paid all claims and has provided proof of payment to the Court and to the Liberty Committee.
 - c) Crystal has funded the Reserve Fund with \$3 million and has provided proof of funding to the Court and the Liberty Committee.
 - d) Crystal has paid all fees owed to the United State Trustee.
 - e) Crystal has made an initial distribution to Liberty or the Liberty Committee.

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The United States Trustee (the "UST") filed a Limited Opposition to Crystal's motion for a structured dismissal. The UST does not oppose the proposed structured dismissal, but requests that the dismissal order be condition upon the full payment of all outstanding quarterly fees.

B3 filed a statement indicating that it does not oppose the proposed structured dismissal, provided that the Court retains jurisdiction with respect to issues arising from B3's appeal of the B3 Claim Orders.

II. Findings and Conclusions

A. Motion for a Structured Dismissal

Pursuant to §349, a dismissal of a Chapter 11 case typically "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." In other words, a dismissal aims to re-establish the prepetition financial status quo. However, §349(b) permits the Court to alter the effect of a dismissal "cause." As the Supreme Court has explained:

A dismissal that does so (or which has other special conditions attached) is often referred to as a "structured dismissal," defined by the American Bankruptcy Institute as a

"hybrid dismissal and confirmation order ... that ... typically dismisses the case while, among other things, approving certain distributions to creditors, granting certain third-party releases, enjoining certain conduct by creditors, and not necessarily vacating orders or unwinding transactions undertaken during the case."

Although the Code does not expressly mention structured dismissals, they "appear to be increasingly common."

Czyzewski v. Jevic Holding Corp., 137 S. Ct. 973, 979, 197 L. Ed. 2d 398 (2017).

A bankruptcy court cannot approve a structured dismissal "that provides for distributions that do not follow ordinary priority rules without the affected creditors' consent." *Id.* at 983.

Here, the proposed structured dismissal does not violate the Bankruptcy Code's

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priority scheme, because creditors who have filed proofs of claim are being paid in full. In addition, no creditors have objected to the terms of the contemplated structured dismissal. Consequently, approval of the structured dismissal does not run afoul of *Jevic*. In view of the absence of objections and the support of the Liberty Committee, the Court will approve the proposed structured dismissal.

The Court previously denied Crystal's motion to pay creditors of Sequoia. At that time, both the Liberty Committee and HCL 2011 opposed payment of Sequoia's creditors. The Liberty Committee and HCL 2011 have both withdrawn their opposition to such payment. Liberty—whom the Liberty Committee represents—holds all equity interests in Crystal. Since Liberty, in its capacity as the holder of Crystal's equity, is the entity entitled to receive the proceeds that will be paid to Sequoia's creditors, Liberty may consent to payment of such proceeds to Sequoia's creditors. The Court will approve the payment of \$65,618.63 to Sequoia's creditors.

The Court notes that Crystal does not propose to pay anything to Sandy Murchison. In its *Amended Schedule F* filed on March 18, 2016 [Doc. No. 85], Crystal scheduled Ms. Murchison as an unsecured creditor holding a claim on account of a lawsuit in the amount of \$18,750. Crystal did not schedule Ms. Murchison's claim as contingent, unliquidated, or disputed. Consequently, Ms. Murchison was not required to file a Proof of Claim in order for her claim to be deemed allowed. *See* Bankruptcy Rule 3003(b) ("The schedule of liabilities filed pursuant to §521(l) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated."). Therefore, notwithstanding the fact that Ms. Murchison did not file a Proof of Claim, she holds an allowed unsecured claim against the estate in the amount of \$18,750. The Court holds that Crystal must pay Ms. Murchison this amount at the same time it distributes funds to unsecured creditors who filed proofs of claim.

The provisions which the Liberty Committee asserts should be included in the Approval Order are appropriate. The following procedures shall apply to entry of the Approval Order:

- 1) Crystal and the Liberty Committee shall continue to negotiate in good faith to settle the final terms of the Approval Order. Upon settlement of the form of the order, counsel for the Liberty Committee shall endorse the proposed Approval Order as to form pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C). The Court anticipates that it will be possible for the parties to agree upon the final terms of the Approval Order. In the event that such agreement cannot be reached, objections to the Approval

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Order may be filed consistent with the procedures set forth in LBR 9021-1(b)(3)(B).

- 2) Promptly upon Crystal's payment of outstanding quarterly fees, the UST shall file a declaration indicating that quarterly fees are current. The Court will not enter the Approval Order absent such a declaration.
- 3) The case will not be dismissed until all the conditions precedent to dismissal that are set forth in the Liberty Committee's Limited Opposition at ¶8 have been satisfied. Once these conditions have been satisfied, the Liberty Committee shall file a declaration to that effect, accompanied by a proposed order dismissing the case.

B. Professional Fees

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

Having reviewed the *Third and Final Fee Application* filed by Landsberg Law, APC, the Court awards the following fees and expenses:

Fees: \$277,700.00

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Expenses: \$969.93

In addition, the Court confirms as final the interim fees and expenses previously awarded.

Grobstein Teeple did not provide proper notice of its *First and Final Application for Compensation*. First, Grobstein Teeple did not provide 21 days' notice of its fee application, as required by Bankruptcy Rule 2002(a)(6). Grobstein Teeple did not file its fee application until April 25, 2018; to have been timely, the fee application should have been filed by no later than April 19, 2018. Second, Grobstein Teeple failed to provide notice of its fee application to all parties entitled to notice thereof. Pursuant to Bankruptcy Rule 2002(a)(6), "all creditors" must receive notice of a request for compensation in excess of \$1,000. Here, Grobstein provided notice only to those creditors who receive electronic notice of matters filed in this case.

Notwithstanding these notice deficiencies, the Court will consider Grobstein's fee application at this hearing. Crystal's motion for a structured dismissal was served upon all creditors. That motion advised creditors that Grobstein Teeple would be seeking allowance of its fees. Thus, creditors were aware of Grobstein's fee application. Although Grobstein filed its fee application six days late, the fee application was filed fifteen days prior to this hearing. Creditors have had sufficient time to file an objection and have not done so.

Having reviewed Grobstein's fee application, the Court awards the following fees on a final basis (Grobstein does not seek expenses):

Fees: \$30,971.00

III. Conclusion

Based upon the foregoing, Crystal's motion for a structured dismissal is GRANTED. The fee applications of Crystal's professionals—Landsberg Law, APC and Grobstein Teeple—are GRANTED. The order on the motion for a structured dismissal shall be submitted in accordance with the procedures set forth above. The orders on the fee applications shall be submitted by the respective fee applicants within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

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2:15-27769 Crystal Waterfalls LLC

Chapter 11

#2.00 HearingRE: [460] Application for Compensation THIRD AND FINAL FEE APPLICATION OF LANDSBERG LAW, APC FOR APPROVAL OF FEES AND REIMBURSEMENT OF EXPENSES; DECLARATIONS OF IAN S. LANDSBERG AND LUCY GAO IN SUPPORT THEREOF for Ian Landsberg, Debtor's Attorney, Period: 12/1/2016 to 4/19/2018, Fee: \$277,700.00, Expenses: \$969.93.

Docket 460

Tentative Ruling:

5/9/2018

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

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Monday, May 14, 2018

Hearing Room 1568

10:00 AM

2:18-13485 Antonio Hernandez Valverde

Chapter 7

#1.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: 1HGC R2F1 2HA1 43070 .

Docket 7

Tentative Ruling:

5/10/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Antonio Hernandez Valverde

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Antonio Hernandez Valverde

Represented By
D Justin Harelik

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:18-13492 Christina Marie Perez

Chapter 7

#2.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Nissan Altima, V.I.N. 1N4AL3AP7EC320470 with proof of service.

Docket 8

Tentative Ruling:

5/10/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Christina Marie Perez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Christina Marie Perez

Represented By
Lauren Ross

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:18-13526 Melanie Kay Smart Loureiro

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Grand Design Trailer .

Docket 8

Tentative Ruling:

5/10/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

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

All other relief is denied.

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CONT... Melanie Kay Smart Loureiro

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Melanie Kay Smart Loureiro

Represented By
Jeffrey J Hagen

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-14048 Liliana Laguna

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Nissan Rogue, VIN: JN8AT2MT6HW398372 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

5/10/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 14, 2018

Hearing Room 1568

10:00 AM

CONT... Liliana Laguna

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Liliana Laguna

Represented By
D Justin Harelik

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#1.00 Status Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18; 2-21-18

Docket 234

***** VACATED *** REASON: CONTINUED 8-14-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By
Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#2.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 3-13-18

Docket 1

Tentative Ruling:

5/14/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 17, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 16] entered on March 16, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... Christopher Kim Kay

Chapter 7

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#3.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

fr. 3-13-18

Docket 1

Tentative Ruling:

5/14/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 17, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 16] entered on March 16, 2018, shall remain unchanged.

No further extensions will be considered or granted.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... Christopher Kim Kay

Chapter 7

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

fr. 1-16-18; 1-17-18; 3-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... Green Jane Inc

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-12783 Terry W. Rindal

Chapter 7

Adv#: 2:17-01305 Richards v. Rindal

#5.00

Status Conference

RE: [1] Adversary case 2:17-ap-01305. Complaint by Dean Richards , Assignee of Creditor 4.1, , Identified as Andy Savas against Terry W Rindal . false pretenses, false representation, actual fraud)) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(65 (Dischargeability - other)) (Serrano, Vera)

fr. 3-13-18

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 4-24-18**

Tentative Ruling:

3/12/2018

This action has settled. The trial date is VACATED. The deadline for the parties to file papers memorializing the Settlement Agreement is **April 17, 2018**. A continued Status Conference to monitor implementation of the settlement will be held on **May 15, 2018, at 10:00 a.m.** The continued Status Conference will go off calendar if the settlement has been finalized.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Terry W. Rindal

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... Terry W. Rindal

Chapter 7

Allan S Williams

Defendant(s):

Terry W Rindal

Pro Se

Plaintiff(s):

Dean Richards

Represented By
Dean Richards

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18

Docket 1

Tentative Ruling:

5/14/2018

This hearing is vacated and no appearances are required. On November 16, 2017, the Court entered an order staying this adversary proceeding pending the completion of Defendant's appeal of the State Court Judgment giving rise to the indebtedness alleged to be non-dischargeable. On April 16, 2018, the California Court of Appeal reversed and remanded the portion of the State Court Judgment awarding attorneys' fees to the trial court. A further hearing in the trial court regarding the appropriate amount of attorneys' fees is set for June 1, 2018.

A continued Status Conference shall take place on **August 14, 2018, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the proceedings before the State Court, must be submitted by no later than fourteen days prior to the hearing. The Court will enter an order setting the continued Status Conference.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... John Martin Kennedy

Chapter 7

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC.

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

Navient Solutions, LLC.

Pro Se

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

2:10-12765 Abram Tavera

Chapter 11

Adv#: 2:16-01555 Mastan v. Tavera et al

#8.00 Status Hearing

RE: [1] Adversary case 2:16-ap-01555. Complaint by Peter J Mastan against Abram Tavera, Ruth Tavera. (Charge To Estate). Complaint for Breach of Contract and Declaratory Judgment Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)) (Ekvall, Lei Lei)

fr. 2-21-2018

Docket 1

Tentative Ruling:

5/14/2018

Plaintiff commenced this action on December 15, 2016. On January 3, 2018, this action was reassigned from the Hon. Deborah J. Saltzman to the undersigned Judge. The Court set a Status Conference for February 21, 2018, at 10:00 a.m. On February 7, 2018, the Court approved the parties' stipulation to continue the Status Conference to May 15, 2018. The parties represented that they were engaged in settlement negotiations and stated that they needed additional time to see if they could reach a settlement agreement.

On May 2, 2018, the Court issued an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Status Conference* [Doc. No. 28] (the "Order to Comply"), based upon the parties' failure to timely file a Joint Status Report as ordered by the Court. In response to the Order to Comply, the parties filed a Joint Status Report, as well as a stipulation seeking a further continuance of the Status Conference. *See* Doc. No. 30 (the "Stipulation"). In the Stipulation, the parties again represented that they were continuing to discuss settlement and need additional time to see if they can reach an agreement.

On May 7, 2018, the Court entered an *Order Disapproving Stipulation for Further Continuance of Status Conference* [Doc. No. 32]. The Court explained:

The parties have failed to establish that they are making significant progress toward settlement. Absent such a showing, a further continuance of the Status Conference will result only in additional delay. The Court is obligated to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT...

Abram Tavera

Chapter 11

ensure the speedy determination of every action.

In the Court's experience, settlements are most likely to be achieved against the backdrop of litigation deadlines. Therefore, having reviewed the Joint Status Report filed by the parties, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this action:
 - a) The last day to amend pleadings and/or join other parties is **6/14/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **11/26/2018**. The trial day commences at 9:00

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT...

Abram Tavera

Chapter 11

a.m. The exact date of the trial will be set at the Pretrial Conference.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning this matter to mediation within fifteen days of the hearing, as set forth in ¶2, above.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Abram Tavera

Represented By
Robert M Yaspan
David J Richardson

Defendant(s):

Abram Tavera

Represented By
Robert M Yaspan

Ruth Tavera

Represented By
Robert M Yaspan

Joint Debtor(s):

Ruth Tavera

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

10:00 AM

CONT... Abram Tavera

Robert M Yaspan

Chapter 11

Plaintiff(s):

Peter J Mastan

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#100.00 Pre-Trial Conference: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 7-18-13; 10-17-13; 3-6-14; 5-8-14; 7-10-14; 10-16-14; 1-22-15; 5-12-15; 9-15-15; 1-12-16; 4-12-16; 3-14-17; 7-11-17; 9-12-17; 11-14-17; 2-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

UNION BANK, N.A., a national Pro Se

Plaintiff(s):

JASON M. RUND Represented By
Ronald P Abrams

Trustee(s):

Jason M Rund (TR) Pro Se

Jason M Rund (TR) Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#101.00 Pre-Trial Conference RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-11-17, 9-12-17; 10-17-17; 3-13-18

Docket 0

***** VACATED *** REASON: CONTINUED 7-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

fr. 3-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of
Navient Corporation

Pro Se
Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

Docket 1

***** VACATED *** REASON: Per Hearing Held on 11-14-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Pro Se

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:17-15374 Sarmen Ghazaryan

Chapter 7

Adv#: 2:17-01385 Financial Services Vehicle Trust, by and through i v. Ghazaryan

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01385. Complaint by Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC, a Delaware limited liability company against Sarmen Ghazaryan. false pretenses, false representation, actual fraud)) (Caley, Rebecca)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 1-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarmen Ghazaryan

Represented By
Vilen Khachatryan

Defendant(s):

Sarmen Ghazaryan

Pro Se

Plaintiff(s):

Financial Services Vehicle Trust, by

Represented By
Rebecca A Caley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:17-15643 Alfredo Aquino Arrizon

Chapter 7

Adv#: 2:17-01401 City Center Credit Union v. Arrizon et al

#105.00 Pre-Trial Conference
RE: [1] Complaint by City Center Credit Union against Alfredo Aquino Arrizon, Gloria Arrizon. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Smyth, Stephen) Additional attachment(s) added on 8/11/2017 (Ly, Lynn). Warning: Item subsequently amended by docket entry no 3. When the complaint was filed, it was not linked to the main bankruptcy case. The complaint is now linked to the main bankruptcy case. Modified on 8/11/2017 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: 2/6/2018 - Stipulation approving settlement signed**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Aquino Arrizon

Represented By
Luis G Torres

Defendant(s):

Gloria Arrizon

Pro Se

Alfredo Aquino Arrizon

Pro Se

Joint Debtor(s):

Gloria Arrizon

Represented By
Luis G Torres

Plaintiff(s):

City Center Credit Union

Represented By
Stephen S Smyth

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

CONT... Alfredo Aquino Arrizon

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

#106.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01407. Complaint by Moysey Chernyavsky against Michael Dekhtyar. willful and malicious injury)) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 7-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Dekhtyar Pro Se

Defendant(s):

Michael Dekhtyar Pro Se

Plaintiff(s):

Moysey Chernyavsky Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:18-10109 Rafik Madadian

Chapter 7

#107.00 HearingRE: [34] Motion for extension of time to file a complaint objecting to discharge Under 11 U.S.C. 727 and motion to extend deadline for filing motion under 11 U.S.C. 707(b)(3) by the United States Trustee only; Memorandum of Points and Authorities and Declaration of Alvin Mar in Support Thereof (Mar, Alvin)

Docket 34

Tentative Ruling:

5/14/2018

The UST's motion—which seeks a 90-day extension of the UST's deadline to object to the Debtor's discharge and/or to file a motion to dismiss the case—is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of the United States Trustee for Extension of Deadline Date for Filing a Motion to Dismiss Under 11 U.S.C. §707(b)(3) and a Complaint Objecting to the Debtor's Discharge Under 11 U.S.C. §727 by the United States Trustee Only [Doc. No. 34] (the "Motion")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Rafik Madadian (the "Debtor") commenced a voluntary Chapter 7 case on January 4, 2018. The United States Trustee (the "UST") requests a 90-day extension of the deadline for filing a motion to dismiss under §707(b)(3) and/or a complaint objecting to the Debtor's discharge under §727. The UST states that it needs additional time to obtain documents pertaining to the Debtor's financial affairs and to conduct a Bankruptcy Rule 2004 examination of the Debtor. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 4004(a) requires that a complaint objecting to a debtor's discharge be filed within 60 days after the first date set for the §341(a) meeting of creditors. Bankruptcy Rule 4004(b) provides that the deadline may be extended "for

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CONT... Rafik Madadian

Chapter 7

cause," provided that the motion for an extension is filed before the deadline has expired.

Here, the UST has shown cause for a 90-day extension of the deadline. The UST requires additional time to investigate the Debtor's financial affairs and to conduct a Bankruptcy Rule 2004 examination of the Debtor.

The Motion is GRANTED in its entirety. As to the UST only, the deadline to object to the Debtor's discharge and/or to file a motion to dismiss the case under §707 (b)(3) is extended to and including July 16, 2018.

The UST shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafik Madadian

Represented By
Matthew Abbasi

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#108.00 Pretrial
RE: [193] **SECOND AMENDED COUNTERCLAIM** by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, ROES 21 through 40 -

fr. 8-15-17

Docket 193

*** VACATED *** REASON: DISMISSED 3-20-18

Tentative Ruling:

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liability v. DOES 1 through 10,

#109.00 Pretrial

RE: [142] **SECOND AMENDED COMPLAINT** by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against HCL 2011, LLC a California limited liability company. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrument 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)

fr. 5-23-17; 8-15-17

Docket 142

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

8/14/2017

As set forth in the concurrently-issued Memorandum of Decision, the Court declines to exercise supplemental jurisdiction over the first through tenth claims for relief asserted in the Counterclaim. Those claims are dismissed without prejudice.

The following dates shall apply to the Complaint, the Counterclaim, and the Crossclaim, which will be tried concurrently in the interests of judicial efficiency:

- 1) The last day to amend pleadings and/or join other parties is **12/14/2017**.
- 2) The last day to disclose expert witnesses and expert witness reports is **2/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/30/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

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CONT... Crystal Waterfalls LLC

Chapter 11

calendar.)

- 5) The last day for dispositive motions to be heard is **4/24/2018**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
- 7) A Pretrial Conference is set for **5/15/2018** at 11:00 a.m. By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **5/29/2018**. The trial day commences at 9:00 a.m. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By

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11:00 AM

CONT... Crystal Waterfalls LLC

Chapter 11

Ian Landsberg

Defendant(s):

HCL 2011, LLC a California limited Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California
Represented By
Ian Landsberg

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11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#110.00 Pre-Trial Conference
RE: [143] Amended Cross-claim by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk, ROES 21 through 40. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian)

FR. 10-17-17

Docket 143

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

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

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#111.00 Pretrial

RE: [176] **SECOND AMENDED CROSS CLAIM** CRYSTAL WATERFALLS
LLCS **SECOND AMENDED CROSSCLAIM** AGAINST BENJAMIN KIRK AKA
BENNY KIRK AND TSAI-LUAN HO AKA SHELBY HO by Crystal Waterfalls,
LLC a California limited liability company against Shelby Ho, Benjamin Kirk
(Landsberg, Ian)

FR. 8-15-17

Docket 176

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

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11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:18-12147 Avelina Conde Castillo

Chapter 11

#113.00 HearingRE: [13] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 13

Tentative Ruling:

5/14/2018

The Court GRANTS the United States Trustee's Motion in its entirety. Dismissal of the case serves the best interest of creditors and the estate. The case is dismissed with a 180-day re-filing bar, judgment is entered in favor of the Trustee for unpaid quarterly fees, and the Debtor is ordered to pay the unpaid quarterly fees to the Trustee.

Pleadings Filed and Reviewed:

- 1) Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon ("Motion") [Doc. No. 13]
 - a) Declaration of Maria A. Ramos in Support of the Motion [Doc. No. 13]
- 2) No opposition filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Avelina Conde Castillo (the "Debtor") filed a voluntary Chapter 11 petition on February 27, 2018 (the "Petition") [Doc. No. 1]. The Petition was deficient of a number of required documents and disclosures.

The Motion

The United States Trustee ("UST") filed the "Motion Under 11 U.S.C. § 1112 (b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon" (the "Motion") [Doc. No. 13] on March 29, 2018. The Motion seeks to Convert, Dismiss or Appoint a Chapter 11

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CONT... Avelina Conde Castillo

Chapter 11

Trustee due to the Debtor's failure to file required documents and information. To date, according to the Motion, no Disclosure Statement or Plan of Reorganization has been filed or submitted by the Debtor. The Debtor has also failed to comply with the requirements of the United States Trustee Chapter 11 Notices and Guides, the Bankruptcy Code and/or Local Rules by failing to provide documents, financial reports or attend requested meetings as follows:

1. Application to Employ Attorney;
2. Declaration of Debtor Regarding Compliance with U.S. Trustee Chapter 11 Guidelines and Requirements for Chapter 11 Debtors in Possession ("Chapter 11 Compliance Declaration");
3. Real Property Questionnaire;
4. Sufficient evidence of closing all pre-petition bank accounts;
5. Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts;
6. Sufficient evidence of current insurance coverage;
7. Proof of required certificates and/or applicable licenses in the Chapter 11 Compliance Declaration;
8. A list of insiders in the Chapter 11 Compliance Declaration;
9. Financial Statement of Information in the Chapter 11 Compliance Declaration;
10. A projected cash flow statement for the first 90 days of operation under chapter 11;
11. A conformed copy of the recording of the Debtor's bankruptcy petition in each county in which real property is owned;
12. A Statement of Major Issues and Timetable Report;

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11:00 AM

CONT...

Avelina Conde Castillo

Chapter 11

13. Provide copies of the preceding two years of state and federal income tax returns and the most recent payroll and sales tax returns at the Initial Debtor Interview;
14. An Employee Benefit Plan Questionnaire;
15. Monthly Operating Report(s):
 - a. Since filing
 - b. For the following periods: MOR for February, March and April 2018 will be due by the hearing date on the Motion;
16. Pay quarterly fees:
 - a. Since filing
 - b. For the following quarters: 1st Quarter 2018 fees continue to accrue. At the time of the hearing 2nd Quarter 2018 fees will be accruing.

Based on a review of the Debtor's Schedules, the UST believes that dismissal is in the best interest of creditors because it appears that there are no unencumbered assets that a trustee can readily administer in a Chapter 7 case. Additionally, this is the eighth bankruptcy filing between the Debtor and her spouse. *See* Declaration of Maria A. Ramos ("Ramos Decl.") [Doc. No. 13] at 6. Based on this, the UST believes it is in the best interest of creditors to dismiss the case with a 180-day re-filing bar. The UST requests that if the case is dismissed, the Court order the Debtor to pay any quarterly fees due to the UST and enter judgement in favor of the UST for any such fees. Alternatively, the UST requests that the Court set deadlines for the Debtor to file a disclosure statement and plan, to obtain court approval of the adequacy of information in the disclosure statement, and to obtain court confirmation of a plan of reorganization at that the Court order that the Debtor remain in full and timely compliance with the UST requirements.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under

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11:00 AM

CONT... Avelina Conde Castillo

Chapter 11

chapter 7 upon a showing of "cause." Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including: "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);" "(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;" "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;" and "(K) failure to pay any fees or charges required under chapter 123 of title 28." 11 U.S.C. § 1112(b)(4). Here, the Court finds sufficient "cause" for dismissal or conversion of the Debtor's case pursuant to 11 U.S.C. § 1112(b). The Debtor has, among other things, failed to provide multiple required documents and disclosures and has failed to pay quarterly fees to the UST as described above.

Having determined that cause exists, the Court must next determine whether dismissal or conversion serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)). Here, dismissal of the case serves the best interest of creditors and the estate. The Debtor is a repeat filer and has, in the past, failed to follow through with the bankruptcy case. Additionally, the Debtor's schedules do not list any meaningful assets which could be readily administered by the trustee in a Chapter 7 case.

III. Conclusion

In conclusion, the Court GRANTS the United States Trustee's Motion in its entirety. Dismissal of the case serves the best interest of creditors and the estate. The case is dismissed with a 180-day filing bar, judgment is entered in favor of the Trustee for unpaid quarterly fees, and the Debtor is ordered to pay the unpaid quarterly fees to the Trustee.

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CONT... Avelina Conde Castillo

Chapter 11

The United States Trustee shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Avelina Conde Castillo

Represented By
Krystina T Tran

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Tuesday, May 15, 2018

Hearing Room 1568

11:00 AM

2:18-11461 Edith Marie Jones

Chapter 7

#114.00 HearingRE: [20] Motion to Dismiss Case for Abuse and Notice of Motion (BNC) Under 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's Discharge; Memorandum of Points and Authorities and Declaration of Wendy Carole Sadovnick in Support Thereof (Attachments: # 1 Exhibit 1 to 4 # 2 Exhibit 4 (cont.) to 5) (Mar, Alvin)

Docket 20

Tentative Ruling:

5/14/2018

For the reasons set forth below, the UST's Motion is GRANTED under 11 U.S.C. § 707(b)(1) and, having considered the Debtor's Motion to Convert the Case from Chapter 7 to Chapter 13, pursuant to § 707(b)(1) the Debtor's case shall be converted from Chapter 7 to Chapter 13. Further, for those reasons set forth below, the order entered in pursuant to this motion will prohibit the Debtor from subsequently reconverting this case to chapter 7 or 11, or from filing a new case in any chapter for 180-days if she fails to confirm a chapter 13 plan in this case.

Pleadings Filed and Reviewed:

- 1) United States Trustee's Notice of Motion and Motion to Dismiss Chapter 7 Case Pursuant to 11 U.S.C. § 707(b)(1), (b)(2), and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint under 11 U.S.C. § 727 Objecting to Debtor's Discharge (the "Motion") [Doc. No. 20]
- 2) Request for Judicial Notice in Support of the Motion [Doc. No. 21]
- 3) Debtor's Motion to Convert Case from Chapter 7 to 13 (the "Motion to Convert") [Doc. No. 25]
- 4) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Edith Marie Jones (the "Debtor") filed a voluntary Chapter 7 petition on February

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11:00 AM

CONT... Edith Marie Jones

Chapter 7

9, 2018 (the "Petition") [Doc. No. 1]. The Debtor's Schedules D, E, and F indicate that the Debtor's debts are primarily consumer debts. The Debtor's nonpriority unsecured debt totals \$24,950.00. In the period six months preceding the Petition, the Debtor previously filed a Chapter 13 petition on September 26, 2017, Case No. 2:17-bk-21770-VZ (the "Chapter 13 Case"). The Debtor's Chapter 13 Case was dismissed on February 6, 2018 based on, among other things, the Debtor's failure to comply with the Chapter 13 filing requirements. *See* Chapter 13 Case, Doc. Nos. 24 and 26.

The Motion

On April 17, 2018, the United States Trustee ("UST") filed the "United States Trustee's Notice of Motion and Motion to Dismiss Chapter 7 Case Pursuant to 11 U.S.C. § 707(b)(1), (b)(2), and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint under 11 U.S.C. § 727 Objecting to Debtor's Discharge" (the "Motion") [Doc. No. 20]. The Motion seeks dismissal of the Debtor's case under § 707(b)(2). The UST contends that the presumption of abuse under § 707(b)(2) arises in this case because the UST's investigation of the Debtor's case revealed that the Debtor understated her household income for the purposes of the Means Test. The Debtor's "Amended Statement of Current Monthly Income and Means Test Calculation" ("Form 22A") filed on February 28, 2018, *see* Doc. No. 10, states that the Debtor's annualized Current Monthly Income ("CMI") is \$61,332.00. Form 22A [Doc. No. 10]; *see also* "Request for Judicial Notice in Support of the Motion" ("RJN") [Doc. No. 21], Ex. 1 & Ex. 2. Based on its investigation, however, the UST contends the correct amount of \$113,951.52 represents the Debtor's annualized Current Income during the six month "look back" period. The UST further contends that the Debtor's annualized CMI exceeds the applicable state median family income for the Debtor's family size. The UST argues that dismissal is warranted based on the presumption of abuse under § 707(b)(2) because, according to the UST's calculations, the Debtor has \$1,660.51 in monthly disposable income after allowed deductions, equaling \$99,630.60 of disposable income over a five year period, which is sufficient to repay in full the Debtor's scheduled unsecured debt in the amount of \$24,950.00. The UST further argues that even if the Court does not find that the §707(b) presumption of abuse arises in this case, the Debtor's case should be dismissed pursuant to §707(b)(3)(B), because the totality of the circumstances of the Debtor's financial situation demonstrates abuse. Such abuse is demonstrated, the UST asserts, based on the Debtor's ability to repay a substantial amount of their unsecured debt.

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CONT... Edith Marie Jones

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No Opposition to the Motion

As of the date of this tentative ruling, no opposition to the Motion has been filed.

The Debtor's Motion to Convert to Chapter 13

Subsequent to the filing of the Motion by the UST, on May 9, 2018, the Debtor filed the "Motion to Convert Case from Chapter 7 to 13" (the "Motion to Convert") [Doc. No. 25]. The Debtor alleges that the case has not been previously converted, and that the Debtor is eligible for relief under Chapter 13.

II. Findings of Fact and Conclusions of Law

This Court has explained the function and purpose of the Means Test as follows:

Among the significant changes effected by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") was the introduction of the § 707(b)(2) Means Test. Designed to ferret out abusive bankruptcy petitions, the Means Test creates a "presumption of abuse" if the debtor's Current Monthly Income (CMI)—as determined by a detailed statutory formula—is above a certain amount. Debtors unable to rebut the presumption of abuse may have their cases dismissed or be required to fund a Chapter 13 plan. However, even debtors who survive the Means Test may see their cases dismissed pursuant to § 707(b)(3)(B), which permits the Court to dismiss a case if "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse."

In re Jensen, 407 B.R. 378, 380–81 (Bankr. C.D. Cal. 2009).

CMI for purposes of the Means Test calculation is defined as the "average monthly income from all sources that the debtor receives . . . during the 6-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case . . ." § 101(10A).

The Debtor's CMI and Monthly Expenses

According to the Debtor's Form 22A [Doc. No. 10], the Debtor states that her CMI is \$61,332.00. The UST contends that the Debtor understated her CMI on Form

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22A, and that the correct amount is \$113,951.52. Having considered the Motion and the evidence submitted by the UST in support of the Motion, and having received no opposition to the Motion, the Court finds that the Debtor's CMI is \$113,951.52. The UST's calculation accurately reflects the Debtor's CMI. The UST's calculation of the Debtor's CMI is based on copies of the Debtor's payroll records provided by the Debtor to the UST for the "look-back" period under the Means Test. *See* "Declaration of Wendy Carole Sadovnick" ("Sadovnick Decl.") [Doc. No. 20] at ¶¶ 2-4; *see also id.* at Ex. 4.

The Court further finds that the UST's calculations of the Debtor's monthly expenses, to which the Debtor has not filed an objection, are accurate and are supported by the evidence in the record.

The Means Test Calculation

Based on the findings set forth above, the presumption of abuse arises. The Debtor's CMI is \$113,951.52. The Debtor's total allowable monthly expenses are \$7,835.45. That leaves the Debtor with monthly disposable income of \$1,660.51, or disposable income over a 60-month period of \$99,630.60. The Debtor's disposable income far exceeds the \$12,850 threshold triggering the presumption of abuse under § 707(b)(2)(A)(i)(II).

The Debtor has Failed to Rebut the Presumption of Abuse

Section 707(b)(2)(B)(i) provides that the presumption of abuse may be rebutted by "demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances . . . justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." To establish special circumstances, the Debtor must itemize each additional expense and provide "a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." § 707(b)(2)(B)(ii).

The Debtor did not file an opposition to the Motion; therefore, the Debtor has failed to rebut the presumption of abuse.

Because the Court finds that the presumption of abuse arises under § 707(b) and

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has not been rebutted, the Court does not consider the UST's argument in the alternative that the case should be dismissed pursuant to § 707(b)(3)(B).

The Debtor Has Consented to Conversion to Chapter 13

Where the §707(b) presumption of abuse arises and has not been rebutted, the Court must dismiss the case, unless the Debtor consents to conversion to Chapter 13. § 707(b)(1). The UST states that the Motion seeks only dismissal, not conversion. However, § 707(b)(1) expressly provides the Debtor the option to convert to Chapter 13 if the Court finds that relief under Chapter 7 would be abusive. Therefore, based on the Debtor's Motion to Convert, which the Court construes as the Debtor's election to convert the case to Chapter 13, the case will be converted to Chapter 13. However, because the Debtor filed a previous chapter 13 which was dismissed, her right to convert this case should not be unfettered.

Debtor can convert this case to chapter 13, however the order entered in pursuant to this motion will prohibit the Debtor from subsequently reconverting this case to chapter 7 or 11, or from filing a new case in any chapter for 180-days if she fails to confirm a chapter 13 plan in this case.

III. Conclusion

For the reasons set forth above, the UST's Motion is GRANTED under 11 U.S.C. § 707(b)(1) and, having considered the Debtor's Motion to Convert, pursuant to § 707(b)(1) the Debtors case shall be converted from Chapter 7 to Chapter 13. If the Debtor fails to confirm a Chapter 13 plan, the Debtor's case will be dismissed with a 180-day bar to refile pursuant to the order on this Motion.

The UST shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Edith Marie Jones

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:02-23533 Matthew H Ross

Chapter 7

Adv#: 2:02-01919 Ranhofer et al v. Ross

#1.00 Continued Hearing re [61] Opposition to Debtor's Claim of Exemption [Wage Garnishment]
Form WG-009

(Case reassigned from Judge Donovan to Judge Robles)

fr. 1-23-14

Docket 61

***** VACATED *** REASON: PER ORDER ENTERED 5-14-18**

Tentative Ruling:

NO APPEARANCE IS NECESSARY.

CREDITOR'S OBJECTION TO
DEFENDANT'S CLAIM OF
EXEMPTION IS OVERRULED FOR
THE REASONS SET FORTH IN
DEFENDANT'S RESPONSE:

(1) THE OBJECTION IS
PROCEDURALLY DEFECTIVE. THE
OBJECTION FAILS TO COMPLY
WITH CAL. C.C.P. §§ 760.105(e) AND
706.050(a).

(2) THE OBJECTION LACKS ANY
PROOF DEMONSTRATING THAT
DEFENDANT'S CLAIMS
REGARDING EXPENSES ARE
UNREASONABLE.

DEFENDANT MUST LODGE A PROPOSED
ORDER WITHIN 7 DAYS.

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CONT... Matthew H Ross

Chapter 7

IF ANY PARTY PLANS TO APPEAR,
PLEASE PROMPTLY NOTIFY THE
COURT AND ALL OTHER PARTIES.

Party Information

Debtor(s):

Matthew H Ross

Represented By
Christopher C Gautschi

Defendant(s):

Matthew H Ross

Represented By
Christopher C Gautschi
Kathleen P March

Movant(s):

Stacy Ranhofer

Represented By
Ronald P Slates
James Bulger

John Ranhofer

Represented By
Ronald P Slates
James Bulger

Plaintiff(s):

Stacy Ranhofer

Represented By
Ronald P Slates
James Bulger

John Ranhofer

Represented By
Ronald P Slates
James Bulger

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:10-12711 Diana Avanesova

Chapter 7

Adv#: 2:10-01846 CITIBANK, N.A. v. Avanesova

#2.00 Hearing re [32] Appearance and Examination of Judgment Debtor Diana Avanesova aka Diana Avanesian

Docket 0

Tentative Ruling:

5/15/2018

Appearances for this judgment debtor examination are required.

The Judgment Creditor has not served the *Order to Appear for Examination* (the "ORAP") upon Diana Avanesova aka Diana Avanesian (the "Judgment Debtor") in accordance with the requirements of Cal. Civ. Proc. §708.110(d). The Proof of Service states that the ORAP was served via Federal Express. Cal. Civ. Proc. § 708.110(d) requires that an ORAP be personally served upon the judgment debtor.

In addition, the Proof of Service states that the ORAP was served upon the Law Office of Vahe Hovanessian. The Judgment Creditor has not presented any evidence establishing that Mr. Hovanessian is representing the Judgment Debtor. Even if Mr. Hovanessian were representing the Judgment Debtor, the Judgment Creditor is still required to personally serve the ORAP upon the Judgment Debtor.

If the Judgment Debtor does not appear, a second ORAP must be lodged for signature and properly served.

Party Information

Debtor(s):

Diana Avanesova

Represented By

Nazareth V Jansezian - DISBARRED -

Defendant(s):

Diana Avanesova

Pro Se

Plaintiff(s):

CITIBANK, N.A.

Represented By

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Jennifer Witherell Crastz
Jennifer Witherell Crastz
Raffi Khatchadourian

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:15-11885 Sung Hyun Chung

Chapter 7

#3.00 APPLICANT: Trustee - Elissa D. Miller

Hearing re [149] and [150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/15/2018

For the reasons set forth below, the Debtor's objection to the Trustee's Final Report is **OVERRULED**. The Court **APPROVES** the fees and expenses, and payment, as requested by the Trustee, as follows :

Total Fees: \$6,500.00

Total Expenses: \$510.90

Charges, U.S. Bankruptcy Court: \$350.00

International Sureties: all amounts previously paid to this applicant are approved on a final basis.

The Debtor's Objection

On May 2, 2018, the Debtor filed the "Objection to Professional Fees" (the "Objection") [Doc. No. 153]. The Objection contends that disbursement proposed to the Debtor's creditors is unfair.

The Debtor's Objection is **OVERRULED**. First, the Court finds that the Debtor lacks standing to object to the Trustee's Final Report. Generally, a Chapter 7 debtor does not have standing to object to the Trustee's proposed distributions unless there is a sufficient possibility of a surplus to give the Chapter 7 debtor a pecuniary interest in the distribution of assets of the estate. *See Heath v. Am. Express Travel Related Servs. Co. (In re Heath)*, 331 B.R. 424, 429 (9th Cir. BAP 2005); *In re Lona*, 393 B.R. 1, 4 (Bankr. N.D. Cal. 2008); *Willard v. O'Neil (In re Willard)*, 240 B.R. 664, 668 (Bankr.D.Conn.1999). Here, the Court finds that there is no possibility of a

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CONT... Sung Hyun Chung

Chapter 7

surplus; therefore, the Debtor does not have standing to object.

Additionally, the Court notes that the professional fees to which the Debtor objects were incurred primarily as a result of the Debtor's actions; specifically, the Debtor's failure to disclose valuable assets and failure to cooperate in discovery.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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Chapter 7

#4.00 APPLICANT: Other Expenses: International Sureties, LTD

Hearing re [149] and [150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/15/2018

See Cal. No. 3 above, incorporated by reference.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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2:15-11885 Sung Hyun Chung

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#5.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing re [149] and [150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/15/2018

See Cal. No. 3 above, incorporated by reference.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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2:15-11885 Sung Hyun Chung

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#6.00 APPLICANT: Accountant for Trustee - Sam S. Leslie, CPA

Hearing re [149] and [150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/15/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,456.00

Expenses: \$134.67

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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2:15-11885 Sung Hyun Chung

Chapter 7

#7.00 APPLICANT: Attorney for Trustee - Lesnick Prince & Pappas LLP

Hearing re [149] and [150] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/15/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$44,237.50

Expenses: \$1,980.67

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Sung Hyun Chung

Represented By
Steven J Barkin

Trustee(s):

Elissa Miller (TR)

Represented By
Matthew A Lesnick

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10:00 AM

2:16-19944 Marlina E. Jackson-Conard

Chapter 7

#8.00 APPLICANT: Other Expenses: International Sureties, LTD

Hearing

RE: [43] and [44] Applications for chapter 7 fees and administrative expenses

Docket 41

Tentative Ruling:

5/15/2018

See Cal. No. 10 below, incorporated by reference.

Party Information

Debtor(s):

Marlina E. Jackson-Conard

Represented By
Sundee M Teeple
Michelle A Marchisotto

Trustee(s):

Elissa Miller (TR)

Pro Se

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10:00 AM

2:16-19944 Marlina E. Jackson-Conard

Chapter 7

#9.00 APPLICANT: Accountant for Trustee - LEA Accountancy, LLP

Hearing

RE: [43] and [44] Applications for chapter 7 fees and administrative expenses

Docket 41

Tentative Ruling:

5/15/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,393.50

Expenses: \$162.70

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Marlina E. Jackson-Conard

Represented By

Sundee M Teeple

Michelle A Marchisotto

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:16-19944 Marlina E. Jackson-Conard

Chapter 7

#10.00 APPLICANT: Trustee - Elissa D. Miller

Hearing

RE: [43] and [44] Applications for chapter 7 fees and administrative expenses

Docket 41

Tentative Ruling:

5/15/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows

Total Fees: \$18,835.93

Total Expenses: \$559.26

International Sureties, LTD: All interim payments previously paid to this applicant are deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Marlina E. Jackson-Conard

Represented By

Sundee M Teeple

Michelle A Marchisotto

Trustee(s):

Elissa Miller (TR)

Pro Se

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10:00 AM

2:17-24053 Katie May McKay

Chapter 7

#11.00 Show Cause Hearing re [19] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

Tentative Ruling:

5/15/2018

The case is dismissed based on the Debtor's failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$105.

Pleadings Filed and Reviewed:

- 1) Order on the Application to Have the Chapter 7 Filing Fee Waived (the "Fee Installment Order") [Doc. No. 7]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments [Doc. No. 10] (the "First OSC")
- 3) Order (1) Discharging Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments and (2) Vacating Hearing on Order to Show Cause [Doc. No. 16]
- 4) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments [Doc. No. 19] (the "Second OSC")
 - a) BNC Certificate of Notice [Doc. Nos. 22-23]

On November 15, 2017, the Court entered an order requiring Katie May McKay (the "Debtor") to pay the filing fee according to the following schedule:

- First installment payment: \$20 on or before 11/15/2017;
- Second installment payment: \$105 on or before 12/15/2017;
- Third installment payment: \$105 on or before 1/16/2018; and
- Final installment payment: \$105 on or before 2/15/2018.

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CONT... Katie May McKay

Chapter 7

See Fee Installment Order.

The Debtor made the first installment payment by the deadline set forth in the Fee Installment Order. On December 28, 2017, the Court issued an order requiring the Debtor to show cause why the case should not be dismissed, based on the Debtor's failure to timely make the second installment payment (the "First OSC"). *See Doc. No. 10.* On January 8, 2018, the Debtor paid the second and third installment payments. The Court subsequently discharged the First OSC. *See Doc. No. 16.*

Based on the Debtor's failure to timely make the final installment payment, the Court issued a second order requiring the Debtor to show cause why the case should not be dismissed (the "Second OSC"). *See Doc. No. 19.* The Second OSC ordered the Debtor to make the final installment payment by no later than one week prior to the hearing. The Debtor has not made the delinquent payment and has not responded to the Second OSC.

Bankruptcy Rule 1017(b)(1) provides: "If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case."

The Debtor's case is dismissed based on the Debtor's failure to comply with the Court's Fee Installment Order and the Second OSC. The Court will enter an order dismissing the case.

Party Information

Debtor(s):

Katie May McKay	Pro Se
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Trustee(s):

Edward M Wolkowitz (TR)	Pro Se
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Hearing Room 1568

10:00 AM

2:14-25758 Wesley Brian Ferris

Chapter 11

#12.00 Post-Confirmation Status Conference re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16; 4-11-17; 7-11-17; 12-19-17

Docket 109

Tentative Ruling:

5/15/2018

No appearance required. This is a post-confirmation status conference. Upon review of the Debtor's third Post-Confirmation Status Report, the Court continues the status conference to October 16, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

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Wednesday, May 16, 2018

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#13.00 Hearing RE: [4] interim use of cash collateral
fr. 3-1-17; 3-30-17; 6-21-17; 9-20-17; 1-24-18

Docket 4

***** VACATED *** REASON: PER ORDER ENTERED 5-15-18**

Tentative Ruling:

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth

**United States Bankruptcy Court
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Wednesday, May 16, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#14.00 Hearing re re [177] approval of Debtors amended disclosure statement in support of amended plan of reorganization

Docket 0

Tentative Ruling:

5/15/2018

For the reasons set forth above, the Court finds that the Disclosure Statement contains adequate information. A confirmation hearing shall take place on **July 11, 2018, at 10:00 a.m.** The Court will enter an appropriate order.

Pleadings Filed and Reviewed:

- 1) Individual Debtor's Amended Disclosure Statement in Support of Plan of Reorganization [Doc. No. 178] (the "Disclosure Statement")
 - a) Individual Debtor's Amended Chapter 11 Plan of Reorganization [Doc. No. 178] (the "Plan")
 - b) Notice of Hearing Re: Approval of Debtor's Amended Disclosure Statement in Support of Amended Plan of Reorganization [Doc. No. 179]
- 2) Opposition papers:
 - a) United States of America's Opposition to the Debtor's Amended Disclosure Statement [Doc. No. 182]
 - b) Objection to Confirmation of Debtor's Amended Chapter 11 Plan of Reorganization [filed by SLS] [Doc. No. 186]
- 3) Reply papers:
 - a) Debtor's Reply Memo to the Opposition of the Internal Revenue Service Objecting to the Debtor's Amended Plan and Disclosure Statement [Doc. No. 184]
 - b) Debtor's Reply Memo to the Opposition of Specialized Loan Servicing LLC Objecting to the Debtor's Amended Plan and Disclosure Statement [Doc. No. 188]
- 4) Other Relevant Pleadings and Orders:
 - a) Order Authorizing the Debtor to Pay from the Sale Proceeds of Property

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Hearing Room 1568

10:00 AM

CONT...

John Fuchs

Chapter 11

Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (1) His Homestead Exemption in the amount of \$175,000, (2) Actual Customary and Ordinary Closing Costs, and (3) Real Estate Brokerage Commissions in the Amount of \$169,750 [Doc. No. 82]*

- i) Final Ruling Authorizing the Debtor to Pay from the Sale Proceeds of Property Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (1) His Homestead Exemption in the amount of \$175,000, (2) Actual Customary and Ordinary Closing Costs, and (3) Real Estate Brokerage Commissions in the Amount of \$169,750 [Doc. No. 81]
- b) Orders Approving Compromises:
 - i) Order Approving Compromise Between the Debtor and Secured Creditor Dawn M. Miller O.D. Retirement Trust [Doc. No. 104]
(1) Final Ruling Approving Compromise Between the Debtor and Secured Creditor Dawn M. Miller O.D. Retirement Trust [Doc. No. 102]
 - ii) Order Approving Compromise Between the Debtor and Secured Creditor JSC Pacific LLC [Doc. No. 105]
(1) Final Ruling Approving Compromise Between the Debtor and Secured Creditor JSC Pacific LLC [Doc. No. 101]
 - iii) Order Approving Compromise Between the Debtor and Secured Creditor Logan Mortgage, Inc. [Doc. No. 106]
(1) Final Ruling Approving Compromise Between the Debtor and Secured Creditor Logan Mortgage, Inc. [Doc. No. 103]
 - iv) Order on Motion to Disburse Funds Out of the Court's Registry [Doc. No. 107]*
- c) Order on Objections to Claims [Doc. No. 149]
 - i) Final Ruling Finding that SLS Holds an Allowed Secured Claim in the Amount of \$1,648,975.29 [Doc. No. 141]
- d) Order Overruling the Debtor's Objection to IRS Claim [Doc. No. 174]
 - i) Final Ruling Finding that the IRS Holds an Allowed Secured Claim in the Amount of \$152,073.43 [Doc. No. 169]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No.

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44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). *See* Order Authorizing the Sale of the Estate's Right, Title, and Interest in Real Property Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Sale Order"). The Sale Order required the Debtor to deposit the net sales proceeds of the Residence into the Court's registry. Sale Order at ¶5.

On November 16, 2017, the Court authorized the Debtor to pay from the sales proceeds of the Residence (1) his homestead exemption in the amount of \$175,000; (2) the actual and customary ordinary closing costs; and (3) real estate brokerage commissions in the amount of \$169,750. *See* Doc. No. 82. On December 5, 2017, the Debtor deposited \$3,014,642.94 into the Court's registry from the sale of the Residence. *See* Doc. No. 92. **[Note 1]**

On December 20, 2017, the Court approved settlement agreements between the Debtor and secured creditors Logan Mortgage, Inc. ("Logan"), JSC Pacific LLC ("JSC Pacific"), and the Dawn Miller O.D. Retirement Trust (the "Miller Trust"). Pursuant to the settlement agreements, the Court authorized the Debtor to pay from the funds on deposit in the Court's registry (1) \$619,941.79 to Logan, (2) \$74,535.00 to JSC Pacific, and (3) \$619,941.79 to the Miller Trust. The settlement agreements resolved the secured claims of Logan, JSC Pacific, and the Miller Trust. On December 20, 2017, the Court entered an order authorizing the Clerk of the Court to disburse from the Court's registry funds in the aggregate amount of \$919,905.65, for the purpose of paying Logan, JSC Pacific, and the Miller Trust. *See* Doc. No. 107.

On February 23, 2018, the Court overruled the Debtor's objection to the Proof of Claim filed by Specializing Loan Servicing, in its capacity as servicer for the Bank of New York Mellon ("SLS"). The Court held that SLS holds an allowed secured claim in the amount of \$1,648,975.29. *See* Doc. Nos. 141 and 149. On March 23, 2018, the Court overruled the Debtor's objection to the Proof of Claim filed by the Internal Revenue Service (the "IRS"). The Court held that the IRS holds an allowed secured claim in the amount of \$152,073.43 on account of unpaid taxes. *See* Doc. Nos. 169 and 174. Trial of the Debtor's objections to the claims of Rainbow International of Van Nuys ("Rainbow") and Mikhaeil Rouel Corporation, Inc. d/b/a Service Master Professional Restoration ("Service Masters") is currently set for the week of August 27, 2018. *See* Doc. Nos. 147–48. Rainbow asserts an unsecured claim in the amount of \$16,149.96; Service Masters asserts an unsecured claim in the amount of \$30,703.56.

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On March 23, 2018, the Court issued an order finding that the Disclosure Statement filed in connection with the Debtor's Chapter 11 Plan did not contain adequate information. *See* Doc. No. 173. On April 9, 2018, the Debtor filed an Amended Chapter 11 Plan (the "Plan") and an Amended Disclosure Statement (the "Disclosure Statement"). *See* Doc. Nos. 177–78.

The Debtor's Motion for Approval of the Disclosure Statement, the Oppositions of the IRS and SLS, and the Debtor's Replies in Support of the Motion

The Debtor seeks approval of the Disclosure Statement. The IRS filed an opposition asserting that the Disclosure Statement fails to contain adequate information. Although the Debtor has not yet filed a motion seeking confirmation of the Plan, SLS filed an objection to plan confirmation.

The Plan provides two options for payment of the largest remaining claims—the secured claim of SLS in the amount of \$1,648,975.29, and the priority secured claim of the IRS in the amount of \$152,073.43. Option One is that the Debtor will make monthly payments over five years on account of both claims. Option Two is that the Debtor will pay the claims in full from funds on deposit in the Court's registry upon confirmation of the Plan.

Both the IRS and SLS object to Option One (the payment of their claims over a period of five years). IRS and SLS assert that their claims must be paid in full upon confirmation of the Plan, pursuant to Option Two. In reply to these objections, the Debtor states that he will defer to the discretion of the Court and will likely accept an order of the Court requiring payment of the claims of the IRS and SLS upon confirmation, provided that the balance remaining in the registry after payment to all creditors is distributed to the Debtor.

In addition, the IRS asserts that the Disclosure Statement does not contain adequate information because it does not discuss the tax consequences of the sale of the Residence, and does not discuss how the Debtor intends to pay the IRS' administrative tax claim. In reply, the Debtor contends that the tax issues pertaining to the sale of the Residence "are irrelevant to the issue of whether the ... Plan should be confirmed," and that even if the issue is relevant, the tax consequences from the sale are likely to be minimal. *See* Doc. No. 184 at p. 5.

II. Findings and Conclusions

Section 1125 provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature

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and history of the debtor and the condition of the debtor's books and records, ... that would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." §1125.

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). As explained by one court:

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984).

However, "[d]isclosure of all factors is not necessary in every case." *Id.*

A. The Disclosure Statement Contains Adequate Information

Having considered the complexity of the case and the benefit of additional information to creditors, the Court finds that the Disclosure Statement contains adequate information. Although the Plan provides for the distribution of a large

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amount of money—approximately \$2 million—it is not particularly complex, and there are few creditors. Whatever benefit creditors might obtain from additional information would be outweighed by the additional costs of providing such information. To the extent that the IRS and SLS object that the Disclosure Statement fails to contain adequate information, those objections are overruled.

The objections of the IRS and SLS are more appropriately characterized as objections to the confirmability of the Plan. As noted, the Plan provides two options for payment of the (1) SLS Claim of \$1,648,975.29 and the (2) IRS Claim of \$152,073.43—a lump sum payment to be made at confirmation or payment with interest over five years. IRS and SLS object to payment over a five year period and assert that their claims must be paid in full upon confirmation. With respect to the treatment of the claims of IRS and SLS, the Debtor states that he will defer to the discretion of the Court and will likely accept an order of the Court requiring payment of the claims of the IRS and SLS upon confirmation, provided that the remaining balance remaining in the registry after payment of all creditors is distributed to the Debtor.

In the Court's view, payment of the claims of the IRS and SLS in full upon confirmation, from existing funds on deposit in the Court's registry, is a far more efficient means of facilitating reorganization than payment of those claims over a five-year period. With respect to the claim of SLS, payment over a five-year period would likely result in additional litigation to establish the appropriate rate of interest. (The rate of interest upon the claim of the IRS is set by statute pursuant to §511.)

The Court generally does not fashion the precise terms of a Plan on behalf of a Debtor. However, the Debtor has expressed a willingness to defer to the Court with respect to the treatment of the claims of the IRS and SLS. The Court will deem the Plan to be amended to provide that the claims of IRS and the SLS shall be paid in full, from the funds on deposit in the Court's registry, upon the Effective Date [**Note 2**] of the Plan. The option that the claims of the IRS and SLS be paid over five years shall be deemed to be stricken from the Plan.

So that this case may be resolved expeditiously, it shall not be necessary for the Debtor to file a Second Amended Plan; instead, the Plan shall be deemed to be modified as set forth herein. As set forth in greater detail below, a copy of this ruling must be served upon interested parties along with the other Plan solicitation materials. *See* Bankruptcy Rule 3017(d)(4) (providing that in connection with plan confirmation, the Court may direct the Debtor to transmit to interested parties "any other information as the court may direct, including any court opinion approving the

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disclosure statement").

The following dates will apply with respect to the solicitation of votes and plan confirmation:

- 1) A hearing on the confirmation of the Plan shall take place on **July 11, 2018, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan (the "Confirmation Hearing Notice"), and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **May 23, 2018**. This ruling shall be attached to the Confirmation Hearing Notice. The Confirmation Hearing Notice shall contain the following language: "Please take notice that the Plan, attached hereto as **Exhibit _____**, has been modified by the Bankruptcy Court. The modifications to the Plan are explained in the ruling of the Bankruptcy Court issued on May 16, 2018, attached hereto as **Exhibit _____**."
- 3) **June 13, 2018** is fixed as the last day for creditors and equity security holders to return to Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtor's counsel by 5:00 p.m. on such date.
- 4) **June 20, 2018** is fixed as the last day on which the Debtors must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtors have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **June 27, 2018** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **July 5, 2018** is fixed as the last day on which the Debtor may file and serve their reply to any opposition to the Confirmation Motion (the "Reply").

B. The Amount of the IRS' Administrative Tax Claim on Account of the Sale of

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the Residence Must be Determined At Plan Confirmation

The IRS asserts that the Disclosure Statement does not contain adequate information because it does not discuss the tax consequences of the sale of the Residence, and does not discuss how the Debtor intends to pay the IRS' administrative tax claim. The Debtor asserts that the taxes owed on account of the sale of the Residence are irrelevant to the confirmation of the Plan. The Debtor is incorrect as a matter of law. Section 503(b)(1)(B)(i) provides in relevant part: "After notice and a hearing, there shall be allowed administrative expenses, ... including any tax incurred by the estate, whether secured or unsecured" The Residence was property of the estate at the time it was sold, and therefore the IRS holds an allowable administrative expense claim on account of any taxes arising from that sale. Because such a claim is entitled to priority pursuant to §507(a)(2), it must be paid in full on the effective date of the Plan, unless the IRS agrees to alternative treatment. §1129(a)(9)(A). Thus, the amount of the IRS' administrative expense claim is highly relevant to confirmation of the Plan.

Section 503(b)(1)(D), which was added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), states that a "governmental unit shall not be required to file a request for the payment of [a §503(b)(1)(B)(i) administrative expense] as a condition of its being an allowed administrative expense." As noted by one court, the fact that governmental units may hold an allowed administrative expense even without filing a request for payment of such an expense creates a "peculiar situation":

Under current law, therefore, a governmental unit is not required to file any request for payment of an administrative expense—"timely," "tardily," or at all—in order to be allowed an administrative expense for a tax incurred by the estate under § 503(b)(1)(B)(i). Thus, the fact that no taxing authority has filed such a request in this case does not necessarily mean that no such administrative expense can be allowed.

This creates procedural questions for the Chapter 13 Trustee, and for the Court. The real estate taxing authority here, which appears to be either Orchard Lake Village, Michigan or the Oakland County Treasurer, has an allowed administrative claim if there are any real estate taxes that were incurred by the Chapter 13 bankruptcy estate that remain unpaid, and the Trustee, in turn, must pay any such allowed administrative claim from the funds on hand, under § 1326(a)(2), along with other allowed administrative expenses. But how is the Chapter 13 Trustee to know whether such taxing

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authority actually has such an administrative claim, and if so, what is the amount of such claim, when the Trustee has heard nothing from the taxing authority? In this case, no governmental unit has filed any claim for unpaid real estate taxes. And Debtor's schedules and plan make no mention of any real estate taxes. What is a Chapter 13 Trustee in this situation to do?

In re Halabu, 501 B.R. 685, 693–94 (Bankr. E.D. Mich. 2012), supplemented, No. 11-59449, 2013 WL 780757 (Bankr. E.D. Mich. Mar. 1, 2013).

The *Halabu* court addressed this procedural conundrum by requiring the party who had alerted the Court to the possible existence of an administrative expense claim to provide notice to the governmental units holding the claim. *Id.* at 702. The court then held hearings to establish the amount of the claim. *Id.*

The Ninth Circuit took a similar approach in *Dreyfus v. Cory (In re Cloobek)*, 788 F.3d 1243 (9th Cir. 2015). The Ninth Circuit held that if “the governmental unit does not file a request for payment but the tax obligation is discovered by the trustee, it will be the trustee’s [or debtor-in-possession’s] responsibility, rather than the government unit’s responsibility, to provide the notice and obtain the hearing.” *Id.* at 1246.

The Court will adopt procedures similar to those espoused in *In re Cloobek* to establish the amount of the IRS’ administrative tax claim, if any. The amount of the IRS’ administrative tax claim will be determined at the hearing on the confirmation of the Plan. To assist in this determination, the Debtor and the IRS must submit briefing on this issue; such briefing must be submitted separately from any other papers filed in connection with the confirmation hearing. By no later than **June 5, 2018**, the Debtor must file a declaration, accompanied by appropriate evidence and legal analysis, setting forth the Debtor’s contentions with respect to the amount of the IRS’ administrative tax claim. The IRS must file papers and evidence in opposition to the Debtor’s declaration by no later than **June 19, 2018**. The Debtor must file a reply by no later than **June 26, 2018**. The amount of the IRS’ administrative tax claim will be determined at the **July 11, 2018** confirmation hearing. Consistent with the requirements of §1129(a)(9)(A), the Plan shall be deemed to be modified to provide for payment of the IRS’ administrative tax claim in full upon the Effective Date of the Plan.

III. Conclusion

For the reasons set forth above, the Court finds that the Disclosure Statement contains adequate information. A confirmation hearing shall take place on **July 11,**

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2018, at 10:00 a.m. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

In the Motion, the Debtor states that he deposited \$3,127,432.99 into the Court's registry. *See* Doc. No. 178 at p. 8. The Debtor's figure is incorrect. Registry deposits generate an electronic receipt reflecting the total amount deposited. Here, the electronic receipts appear on the docket immediately following docket entry 92, and bear receipt numbers 20223757, 20223760, 20223761, and 2022376. (As a result of technical limitations, receipts cannot be generated for deposits in excess of \$1 million. Consequently, four electronic receipts were generated in connection with the single deposit that the Debtor made, so that no one receipt would exceed the \$1 million cap.) The electronic receipts show that the Debtor deposited \$3,014,642.94 into the Court's registry, not \$3,127,432.99.

Note 2

Capitalized terms not defined herein have the meaning set forth in the Plan.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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2:17-12677 Green Jane Inc

Chapter 7

#16.00 HearingRE: [177] Motion to Extend Time Chapter 7 Trustee's Fourth Motio for OrderExtending Time Pursuant to 11 U.S.C. § 365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases; Declaration of Rosendo Gonzalez in Support Thereof (Melissinos, C)

Docket 177

Tentative Ruling:

5/15/2018

For the reasons set forth below, the Trustee's deadline to assume or reject the Debtor's executory contracts and unexpired leases is extended to and including July 23, 2018.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Fourth Motion for Order Extending Time Pursuant to 11 U.S.C. §365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases (the "Motion") [Doc. No. 177]
 - a) Notice of Chapter 7 Trustee's Motion for Order Extending Time Pursuant to 11 U.S.C. §365(d)(1) in Which to Assume or Reject Executory Contracts and Unexpired Leases [Doc. No. 178]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Green Jane, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on March 6, 2017. On May 26, 2017, the Court converted the case to Chapter 7. Doc. Nos. 58 and 61. Pursuant to §365(d)(1), the initial deadline for the Chapter 7 Trustee (the "Trustee") to assume or reject the Debtor's executory contracts or unexpired leases of residential real property was July 25, 2017 (such deadline, the "Assumption/Rejection Deadline"). The Court has extended the Assumption/Rejection Deadline three times, without prejudice to the Trustee's ability to seek further extensions; the Assumption/Rejection deadline is currently April 23, 2018. The Trustee seeks a fourth extension of the deadline to July 23, 2018. The Trustee states that his ability to investigate the executory contracts and unexpired

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leases has been inhibited, because the Trustee has been required to spend extensive time negotiating a compromise of disputes with BevTech and persons and entities affiliated with BevTech. (On April 24, 2018, the Court approved a compromise between the Trustee and the BevTech Parties.)

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(d)(1) provides:

In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected.

The Trustee has not cited, and the Court has been unable to locate, any Ninth Circuit authority setting forth what constitutes "cause" for an extension of the 60-day period specified in §365(d)(1). However, the Ninth Circuit BAP has stated that cause exists to extend §365(d)(4)'s deadline to assume an unexpired lease of nonresidential real property where the case involves numerous and complicated leases. *Willamette Water Front, Ltd. v. Victoria Station Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989). Applying *Victoria Station's* reasoning to the analogous situation presented by this case, the Court finds that cause exists to extend the Assumption/Rejection Deadline in view of the numerous complicated executory contracts and unexpired leases to which the Debtor is a party. The Trustee's counsel has not had an adequate opportunity to review these unexpired leases and executory contracts. Creditors and the estate would be prejudiced if the Assumption/Rejection Deadline were not extended, since some of the executory contracts and unexpired leases could prove to be valuable to the estate.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Trustee's deadline to assume or reject the Debtor's executory contracts and unexpired leases is extended to and including July 23, 2018, without prejudice to the Trustee's ability to seek a further extension. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear,**

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please first contact opposing counsel to inform them of your intention to do so.

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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2:16-25814 Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

#17.00 Hearing
RE: [60] Motion for Turnover of Property ; Declarations in Support (Pagay, Carmela)

Docket 60

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 5-1-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andres Jeronimo

Represented By
Levi Reuben Uku

Joint Debtor(s):

Maria Clementina Jeronimo

Represented By
Levi Reuben Uku

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

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2:18-13960 Henderson Mechanical Systems, Inc.

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#18.00 HearingRE: [16] Motion to Use Cash Collateral Notice of Motion and Motion for Approval of Cash Collateral Stipulation

Docket 16

Tentative Ruling:

5/15/2018

For the reasons set forth below, the Debtor's motion, seeking approval of a Stipulation with the IRS providing for the use of cash collateral, is GRANTED in its entirety. However, the Court is concerned that the Stipulation provides for the use of cash collateral only through May 21, 2018. The Debtor's authorization under the Stipulation to use cash collateral will shortly expire, and it is unclear whether the Debtor and the IRS are prepared to renew the Stipulation to provide for the use of cash collateral beyond May 21, 2018. The parties must appear to address this issue.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Approval of Cash Collateral Stipulation [Doc. No. 16] (the "Motion")
 - a) Stipulation for Interim Use of Cash Collateral Between the United States and Debtor [Doc. No. 15] (the "Stipulation")
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Henderson Mechanical Systems, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on April 9, 2018. The Debtor operates in the mechanical contractors business within the special trade contractors sector. On April 13, 2018, the Court authorized the Debtor to pay the aggregate amount of \$9,689.81 in prepetition wages to its ten employees. *See* Doc. No. 10. On May 1, 2018, Kevin Tang of Tang & Associates filed an application seeking employment as the Debtor's general bankruptcy counsel. *See* Doc. No. 18.

The Debtor seeks approval of a stipulation entered into between the Debtor and the United States, on behalf of its agency the Internal Revenue Service (the "IRS"), providing for the interim use of cash collateral (the "Stipulation"). On April 16, 2018,

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the IRS filed a Proof of Claim for \$482,180.13, asserting (1) a secured claim of \$96,886.97 for unpaid payroll and corporate taxes and associated penalties, and (2) a priority tax claim of \$385,293.17 for unpaid estimated payroll taxes. On July 6, 2016—prior to the commencement of the case—the IRS recorded a Notice of Federal Tax Lien against the Debtor.

The Stipulation authorizes the Debtor to use the IRS' cash collateral for ordinary and necessary expenses until Monday, May 21, 2018. In exchange, the Debtor must do the following:

- 1) Provide corporate income tax returns to the Assistant U.S. Attorney for the tax period ending December 31, 2016 through the period ending December 31, 2017, by no later than May 21, 2018.
- 2) Make adequate protection payments of \$1,000 per month to the United States, retroactive to the petition date, with the first payment to be made by no later than April 27, 2018.
- 3) Grant the IRS a replacement lien upon all post-petition accounts receivable and after-acquired property.
- 4) Grant the IRS a super-priority claim, pursuant to §507(b), to the extent of any diminution in the value of the IRS' collateral.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. §363(c)(2)(B) and (e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S.

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CONT... Henderson Mechanical Systems, Inc.

Chapter 11

365 (1988).

The Court finds the terms of the Stipulation to be acceptable and will approve the Stipulation and authorize the use of cash collateral in accordance with its terms. However, the Court is concerned that the Stipulation provides for the use of cash collateral only through May 21, 2018. The Debtor's authorization under the Stipulation to use cash collateral will shortly expire, and it is unclear whether the Debtor and the IRS are prepared to renew the Stipulation to provide for the use of cash collateral beyond May 21, 2018. The parties must appear to address this issue.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#19.00 HearingRE: [221] Application for Compensation Application for Payment of Interim Fees and/or Expenses; With Proof of Service for Trojan and Company Accountancy, Accountant, Period: 11/1/2017 to 3/31/2018, Fee: \$40,584.00, Expenses: \$0.00. (Haberbush, David)

Docket 221

Tentative Ruling:

5/15/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$40,584.00 (to be paid \$31,355.00; see discussion of pre-petition retainer below)

Expenses: \$0.00

Pre-Petition Retainer: The total amount of allowed fees and expenses for the subject period is \$40,584.00. The actual amount due and owing is \$31,355.00 because the Applicant was paid a pre-petition retainer of \$50,000.00, of which \$9,279.00 is available in the trust account for payment of the fees requested for the subject period. After payment of fees and expenses for the subject period, the balance of the pre-petition retainer is \$0.00.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard

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CONT...

Pac Anchor Transportation Consisting of the Merger

David R Haberbush

Chapter 11

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Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#20.00 HearingRE: [220] Application for Compensation Application for Payment of Interim Fees and/or Expenses; With Proof of Service for COX WOOTON LERNER GRIFFIN & HANSEN LLP, Special Counsel, Period: 11/1/2017 to 3/31/2018, Fee: \$209,431.86, Expenses: \$13,980.06. (Haberbush, David)

Docket 220

Tentative Ruling:

5/15/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$209,491.50 (to be paid \$195,451.80 after voluntary 10% discount)

Expenses: \$13,980.06

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#21.00 HearingRE: [219] Application for Compensation Application for Payment of Interim Fees and/or Expenses; With Proof of Service for Haberbusch & Associates, LLP, Debtor's Attorney, Period: 11/1/2017 to 3/31/2018, Fee: \$44,290.26, Expenses: \$1,983.76. (Haberbusch, David)

Docket 219

Tentative Ruling:

5/15/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$42,306.50 (to be paid \$14,494.41; see discussion of pre-petition retainer below)

Expenses: \$1,983.76

Pre-Petition Retainer: The total amount of allowed fees and expenses for the subject period is \$44,290.26. The actual amount due and owing is \$16,478.17 because the Debtor paid the Applicant a pre-petition retainer of \$85,483.00, which had a remaining balance of \$27,812.09. After payment of fees and expenses for the subject period, the balance of the pre-petition retainer is \$0.00.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbusch
Lane K Bogard

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Pac Anchor Transportation Consisting of the Merger

David R Haberbush

Chapter 11

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Wednesday, May 16, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#22.00 HearingRE: [216] Application for Compensation First Interim Application for Compensation and Reimbursement of Expenses by Armory Consulting Company as Financial Advisor to the Official Committee Of Unsecured Creditors; Declarations of James Wong and Cheryl A. Kenner in Support Thereof (with Exhibits A, B, C, D and E) (with proof of service) for Daniel H Reiss, Creditor Comm. Atty, Period: 11/2/2017 to 3/31/2018, Fee: \$59,769.00, Expenses: \$218.95.

Docket 216

Tentative Ruling:

5/15/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$59,769.00

Expenses: \$218.95

The Court notes the "Debtor and Debtor-in-Possession's Reservation of Rights With Respect to Armory Consulting Company's First Interim Application for Compensation and Reimbursement of Expenses" (the "Reservation of Rights") [Doc. no. 235] filed on May 2, 2018. However, the Reservation of Rights notwithstanding, the Court approves the fees and expenses requested by this applicant for the subject period on an interim basis, given that all interim fee awards are subject to approval on a final basis.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

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Pac Anchor Transportation Consisting of the Merger

Chapter 11

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#23.00 HearingRE: [214] Application for Compensation Second Interim Application of Levene, Neale, Bender, Yoo & Brill L.L.P., Counsel for Official Committee of Unsecured Creditors, for Approval of Fees and Reimbursement of Expenses; Declaration of Daniel H. Reiss In Support (with Exhibits A, B, C, D and E) (with proof of service) for Daniel H Reiss, Creditor Comm. Atty, Period: 11/1/2017 to 3/31/2018, Fee: \$55210.17, Expenses: \$110.55.

Docket 214

Tentative Ruling:

5/15/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$55,210.17

Expenses: \$110.55

The Court notes the "Debtor and Debtor-in-Possession's Reservation of Rights With Respect to Levene, Neale, Bender, Yoo & Brill, LLP's Second Interim Application for Compensation and Reimbursement of Expenses" (the "Reservation of Rights") [Doc. no. 234] filed on May 2, 2018. However, the Reservation of Rights notwithstanding, the Court approves the fees and expenses requested by this applicant for the subject period on an interim basis, given that all interim fee awards are subject to approval on a final basis.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

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Pac Anchor Transportation Consisting of the Merger

Chapter 11

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#100.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14

fr. 7-10-14; 7-9-14; 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#101.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14; 7-9-14; 10-8-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

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11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#102.00 Motion for default judgment

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#103.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

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11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#104.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Skyville, Inc., a California

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#105.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 5-12-15

FR. 12-8-15; 2-14-18

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

10/2/2013

Continued to March 6, 2014 at 11:00 a.m.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Skyville, Inc., a California

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
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CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#106.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-10

FR. 10-8-14; 5-12-15; 10-18-16; 4-11-17

FR. 12-8-15

fr. 6-14-16; 6-7-16; 8-15-17; 12-12-17; 2-14-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
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11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Financial, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#107.00 Motion for Default Judgment RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14;fr. 7-10-14; 7-9-14; 10-8-14; 5-12-15; 12-8-15; 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18;

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Financial, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams

**United States Bankruptcy Court
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Los Angeles
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CONT... EPD Investment Co., LLC

Chapter 7

Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#108.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#109.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#110.00 Status Conference

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Fallbrook Investments, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By

Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#111.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Fallbrook Investments, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By

Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#112.00 Status Hearing: [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#113.00 Motion for Default Judgment re : [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#114.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr. 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17;2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#115.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)), (14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr: 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr: 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#116.00 Status Hearing: [1] Adversary case 2:12-ap-02608. Complaint by Jason M Rund against Tina Fraccola, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13; 4-4-13; 8-1-13; 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#117.00 Hearing re Motion for Default Judgment

FR. 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 0

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#118.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Bruce Johnston, an individual Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee Represented By
 Daniel H Gill
 Ronald P Abrams
 Corey R Weber
 Michael W Davis

Trustee(s):

Jason M Rund (TR) Represented By
 Corey R Weber
 Robert A Hessling
 Richard K Diamond
 Daniel H Gill
 Michael W Davis
 Steven T Gubner
 Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#119.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Bruce Johnston, an individual Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee Represented By
 Daniel H Gill
 Ronald P Abrams
 Corey R Weber
 Michael W Davis

Trustee(s):

Jason M Rund (TR) Represented By
 Corey R Weber
 Robert A Hessling
 Richard K Diamond
 Daniel H Gill
 Michael W Davis
 Steven T Gubner
 Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#120.00 Status Hearing
RE: [1] Adversary Complaint

fr. 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15; 2-14-18

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

PREHA INVESTMENTS, a general

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

KEITH PRESSMAN, an individual Pro Se

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#121.00 Motion for Default Judgment re [1] Adversary Complaint

fr: 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15

fr. 6-14-16; 6-7-16; 2-14-18

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

PREHA INVESTMENTS, a general

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC
KEITH PRESSMAN, an individual

Pro Se

Chapter 7

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#122.00 Motion for default judgment: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;fr. 10-8-14; 1-8-15; 6-9-15; fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
-------------------------	--------

Defendant(s):

Barbara J. Mintz	Pro Se
Virginia R. Coombes	Pro Se
Edward Mintz	Pro Se
Mintz Management, Inc.	Pro Se
Mildred V. Zalis	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC
1 through 5, Inclusive DOES

Pro Se

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#123.00 Status Hearing: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;
fr. 10-8-14; 1-8-15; 6-9-15;fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
-------------------------	--------

Defendant(s):

Barbara J. Mintz	Pro Se
Virginia R. Coombes	Pro Se
Edward Mintz	Pro Se
Mintz Management, Inc.	Pro Se
Mildred V. Zalis	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC
1 through 5, Inclusive DOES

Pro Se

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#124.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Entertainment Marketing,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#125.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Entertainment Marketing,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#126.00 Motion for Default Judgment

RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15; 2-14-2018

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#127.00 Status Hearing

RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#128.00 Motion for default judgment: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Katharine J Werner, an individual,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#129.00 Status Hearing: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: Continued September 19, 2018 at 11:00 a.m.**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Katharine J Werner, an individual,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, May 16, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Michael W Davis

Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:15-22245 Ayala Enterprises Inc.

Chapter 7

#1.00 Trustee - Wesley Avery

Hearing re [29] and [30] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/16/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$0.00

Total Expenses: \$0.00

Charges, U.S. Bankruptcy Court: \$350.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Ayala Enterprises Inc.

Represented By
Leon D Bayer

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:15-22245 Ayala Enterprises Inc.

Chapter 7

#2.00 Charges, U.S. Bankruptcy Court

Hearing re [29] and [30] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

5/16/2018

See Cal. No. 1 above, incorporated by reference.

Party Information

Debtor(s):

Ayala Enterprises Inc.

Represented By
Leon D Bayer

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:16-19404 Gail K Minogue

Chapter 7

#3.00 Accountant for Trustee - HAHN FIFE & COMPANY

Hearing re [68] and [69] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/16/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,000.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Gail K Minogue

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:16-19404 Gail K Minogue

Chapter 7

#4.00 Attorney for Trustee (Other Firm) - MARSHACK HAYS, LLP

Hearing re [68] and [69] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/16/2018

Having reviewed the **first** and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,879.00 (to be paid \$10,000.00 pursuant to agreement with the Trustee and Trustee's Final Report)

Expenses: \$270.34

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Gail K Minogue

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:16-19404 Gail K Minogue

Chapter 7

#5.00 Bond Payments - INTERNATIONAL SURETIES

Hearing re [68] and [69] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

5/16/2018

See Cal. No. 6 below, incorporated by reference.

Party Information

Debtor(s):

Gail K Minogue

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:16-19404 Gail K Minogue

Chapter 7

#6.00 APPLICANT: Truste: Wesley H. Avery

Hearing re [68] and [69] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,650.00

Total Expenses: \$268.60

Bond Payments: All bond payments are approved as final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Gail K Minogue

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Chad V Haes
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#7.00 Hearing
RE: [610] Motion for order confirming chapter 11 plan Motion For Order
Approving Debtor-In-Possessions Second Amended Disclosure Statement To
Its Second Amended Plan Of Reorganization

Docket 610

***** VACATED *** REASON: MOTION WITHDRAWN ON 4-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
David M Reeder

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

11:00 AM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#100.00 Hearing re [162] Appearance and Examination re Enforcement of Judgment-Debtor Ramin Emami and to Produce Documents.

Docket 0

***** VACATED *** REASON: CONTINUED 8-9-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Pro Se

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

11:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#101.00 Hearing re [159] Debtor's Second Amended Disclosure Statement In Support Of Plan Of Reorganization

Docket 0

Tentative Ruling:

5/16/2018

For the reasons set forth below, the Court: (1) APPROVES the Disclosure Statement as containing "adequate information" within the meaning of 11 U.S.C. § 1125; and (2) CONFIRMS the Debtor's Plan.

Pleadings Filed and Reviewed:

- 1) Second Amended Disclosure Statement in Support of Plan of Reorganization ("Disclosure Statement" or "DS") [Doc. No. 159]
- 2) Second Amended Chapter 11 Plan of Reorganization (the "Plan") [Doc. No. 160]
 - a) Plan Ballot Summary [Doc. No. 165]
- 3) Notice of Combined Hearing on Debtor's Second Amended Disclosure Statement and Chapter 11 Plan of Reorganization [Doc. No. 161]
- 4) No opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

32 Cold, LLC, the Debtor and debtor in possession (the "Debtor"), seeks approval of the "Second Amended Disclosure Statement in Support of Plan of Reorganization" ("Disclosure Statement" or "DS") [Doc. No. 159], and confirmation of the "Second Amended Chapter 11 Plan of Reorganization (the "Plan") [Doc. No. 160].

Background

The Debtor filed a voluntary Chapter 11 petition on November 9, 2016 (the "Petition") [Doc. No. 1]. The Debtor is a small business debtor, as that term is defined in 11 U.S.C. § 101(51D). The Debtor operates as a full-service public

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

11:00 AM

CONT... 32 Cold, LLC

Chapter 11

refrigerated warehouse facility that offers cold storage and related services. The Debtor has five principals and no affiliates. Each of the Debtor's five principals is a 20% shareholder, and officer of the Debtor. The Debtor's Petition was precipitated by a series of rental and customer transactions entered into by the Debtor in an effort to expand the Debtor's business. One of these transactions was with Red Chamber Co. ("Red Chamber"), one of the Debtor's largest customers. Around October 2015, the Debtor and Red Chamber agreed to a ten-year contract for a \$60,000.00 monthly storage minimum. In order to accommodate Red Chamber's storage requirements, the Debtor entered into a lease of a certain cold-storage facility with T.C. Collins/Guardian ("Guardian") (the "T.C. Collins Property"). In January 2016, Red Chamber breached its contract with the Debtor, and the Debtor was left with vacant space, three active lease agreements, and insufficient customer inventory to fill the vacant storage space. The Debtor was also forced to defend against a lawsuit filed by Red Chamber against the Debtor in the Los Angeles Superior Court, which cause more financial stress on the Debtor. In an effort to offset these expenses, the Debtor entered into an agreement with Camino Foods ("Camino") to store its products in the Debtor's vacant space (the "Camino Agreement"). The Camino Agreement proved to be detrimental to the Debtor's business and, upon the filing of the Petition, Camino filed a Proof of Claim in the amount of \$1,000,000.00 (the "Camino Claim"). On December 30, 2017, the Debtor and Camino entered into a compromise regarding the Camino Claim, which compromise was approved by the Court on February 6, 2018. *See* "Order Granting Motion to Approve Compromise under Rule 9019 between Debtor and Camino" [Doc. No. 153].

At the time of filing, the Debtor was operating from three leased locations. Rexford Leases ("Rexford") is the landlord for two of the Debtor's leases: (1) the property located at 6700 Alameda Street, Huntington Park, CA 90255 (the "Alameda Property"); and (2) the property located at 6020 Sheila Street, Commerce, CA 90040 (the "Sheila Property"). Post-petition, the Debtor entered into stipulations with Rexford regarding the terms of the Debtor's leases of the Alameda Property and the Sheila Property. *See* Disclosure Statement, Ex's. I-1-2. On January 10, 2017, the Court entered the "Order Approving Debtors Motion to Approve Compromise Under Rule 9019 Between Debtor and Rexford, and to Authorize Debtor to Assume the Alameda Lease and Sheila Lease" [Doc. No. 70]. The Debtor's third lease with Guardian was rejected pursuant to a post-petition stipulation between the Debtor and Guardian, *see* Doc. No. 83, which was approved by the Court on March 23, 2017, *see* "Order Approving Stipulation for Order Deeming Debtor's Unexpired Lease Rejected;

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, May 17, 2018

Hearing Room 1568

11:00 AM

CONT... 32 Cold, LLC

Chapter 11

and Ordering Debtor to Surrender the Property on or Before April 1, 2017" [Doc. No. 85].

The Debtor is involved in the following prepetition litigation:

- (1) *Red Chamber Co. v 32 Cold, LLC*, Case No. BC614485—currently pending in the Superior Court of California, Los Angeles County, *see* Disclosure Statement at 12;
- (2) *3185 E. Washington Blvd, LLC v 32 Cold, LLC*, Case No. BC604731—currently pending in the Superior Court of California, Los Angeles County, *see id.*;
- (3) *LA Distributing Company v. 32 Cold, LLC*, Case No. BC605730—currently pending in the Superior Court of California, Los Angeles County, *see id.*

Summary of the Disclosure Statement and Plan

On April 5, 2018 the Debtor filed the: (1) "Second Amended Disclosure Statement in Support of Plan of Reorganization" ("Disclosure Statement" or "DS") [Doc. No. 159]; (2) "Second Amended Chapter 11 Plan of Reorganization" (the "Plan") [Doc. No. 160]; and (3) "Notice of Combined Hearing on Debtor's Second Amended Disclosure Statement and Chapter 11 Plan of Reorganization" [Doc. No. 161]. The Plan will become effective (the "Effective Date") on the first day of the calendar month following the date of entry of the Confirmation Order. The anticipated Effective Date is June 1, 2018.

The Plan includes "Unclassified Claims" as follows:

Administrative Claims

The Disclosure Statement outlines the following administrative claims, which include certain professional fees and expenses that will only be paid after Court approval:

- (1) the Debtor's general bankruptcy counsel, Sheila Esmaili, in the estimated amount of \$75,000.00, to be paid in full on or before the Effective Date;
- (2) the Guardian Life Insurance Company of America, in the amount of \$75,000.00, paid in full based on the payment plan approved pursuant to the Stipulation for Plan Treatment entered into between the Debtor and Guardian [Doc. No. 98], which was approved by the Court's "Order Approving

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Stipulation for Order Approving Plan Treatment and Awarding Payment of Administrative Expenses of Creditor the Guardian Life Insurance Company of America" [Doc. No. 100];

- (3) the Office of the United States Trustee fees in the estimated amount of \$0.00, paid in full on the Effective Date; and
- (4) Clerk's Office Fees in the estimated amount of 0.00, paid in full on the Effective Date.

Priority Tax Claims

Second, the Disclosure Statement lists the following priority tax claims:

- (1) the Employment Development Department in the amount of \$1,009.42, which will be paid in monthly payments in the amount of \$21.03 over a period of 48 months, with payments commencing on the Effective Date; and
- (2) the Franchise Tax Board ("FTB") in the claimed amount of \$813.76, paid in monthly payments in the amount of \$16.95 for a period of 48 months commencing on the Effective Date.

Classified Claims & Interests

The Debtor lists the following unimpaired secured claims in Classes 1 through 5, respectively:

- (1) **Class 1:** U.S. Bank, N.A., in the amount \$15,054.68; the Debtor will cure any pre- or post-petition defaults, reinstate the maturity of the claim as such maturity existed before the default, maintain current payments, and not otherwise alter the legal, equitable, or contractual rights to which the claim entitles the holder of the claim;
- (2) **Class 2:** Wells Fargo Equipment Finance, a division of Wells Fargo Bank, N.A.; the Debtor will cure any pre- or post-petition defaults, reinstate the maturity of the claim as such maturity existed before the default, maintain current payments, and not otherwise alter the legal, equitable, or contractual rights to which the claim entitles the holder of the claim; and
- (3) **Class 3:** Raymond Leasing Corp. in the amount \$2,806.83; the Debtor will cure any pre- or post-petition defaults, reinstate the maturity of the claim as such maturity existed before the default, maintain current payments, and not otherwise alter the legal, equitable, or contractual rights to which the claim

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entitles the holder of the claim;

- (4) **Class 4:** Ford Credit (Collateral: 2014 Ford Fusion) in the amount of \$19,957.98; the Debtor will cure any pre- or post-petition defaults, reinstate the maturity of the claim as such maturity existed before the default, maintain current payments, and not otherwise alter the legal, equitable, or contractual rights to which the claim entitles the holder of the claim; and
- (5) **Class 5:** Ford Credit (Collateral: 2014 Ford Fusion) in the amount of \$19,338.57; the Debtor will cure any pre- or post-petition defaults, reinstate the maturity of the claim as such maturity existed before the default, maintain current payments, and not otherwise alter the legal, equitable, or contractual rights to which the claim entitles the holder of the claim.

Impaired Secured Claim

The Debtor outlines the following impaired secured claim in Class 6:

- (1) **Class 6:** On Deck Capital, Inc., as assignee of Celtic Bank as an impaired class in the amount of \$77,538.40, paid \$646.15 per month, with interest calculated at 0.00%, beginning on the Effective Date for a period of 120 months.

Priority Unsecured Claims

The Debtor does not have any priority unsecured claims referred to in §§ 507(a) (3), (4), (5), (6) or (7).

General Unsecured Claims

- (1) **Class 7:** this class includes unsecured claims that are not entitled to priority under § 507(a). Each member of Class 7 shall be paid 1.80% of its claim over five years in equal monthly installments, due on the first day of each calendar month, without interest, commencing on the Effective Date.

Classes of Interest Holders and Insider Claims

The Debtor anticipates it will resolve disputed claims of the estate, and will not receive any objections to the Plan that will result in a cram-down of the unsecured class. Thus, each of the Debtor's five principals will retain their equity interest, although no new value will be offered under the Plan.

Assumption of Unexpired Leases

The Debtor intends to assume the certain "Unexpired Leases" and "Executory

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Contracts” which are set forth in detail in Exhibit “G” to the Disclosure Statement. *See also* Disclosure Statement at 27 (table of Unexpired Leases and Executory Contracts to be assumed or rejected). On the Effective Date, the Debtor will assume each of the Unexpired Leases and Executory Contracts as obligations of the Reorganized Debtor.

Effectuating the Plan

The Debtor estimates that it will have cash on hand on the Effective Date after making Plan payments. *See* Disclosure Statement, Ex. C (“Cash Projections”). Based on the Cash Projections, the Debtor predicts a total yearly income (for year one of the Plan) at \$4,932,900.00 and yearly expenses, including Plan payments, of \$4,921,847.76, leaving about \$11,052.24.00 in positive net cash flow for year one of the Plan. Disclosure Statement, Ex. C.

Debtor’s COO Joseph Smith will continue to manage the Debtor. Attached to the Disclosure Statement is a liquidation analysis (“Liquidation Analysis”). Disclosure Statement, Ex. A. The Liquidation Analysis concludes that the General Unsecured Creditors would receive nothing under Chapter 7 because the Debtor’s assets would sell for approximately \$132,217.62.

The Debtor contends that the Plan is feasible because the Debtor will have enough cash on hand to make Effective Date Payments which total \$79,754.13. Additionally, the Debtor anticipates based on the Debtor’s Monthly Operating reports that it will have sufficient post-petition net income to make the monthly Plan payments which total approximately: \$28,049.56 for year one; \$15,049.56 for years two through four; and \$14,593.80 for year five.

Finally, the Debtor states that the primary risk factor under the Plan is the Debtor’s ability to generate sufficient and consistent income on a monthly basis to meet all Plan payment obligations.

II. Findings of Fact and Conclusions of Law

The Debtor seeks approval of the Disclosure Statement, and Confirmation of the Plan.

Adequacy of Disclosure Statement

Section 1125 requires a disclosure statement to contain "information of a kind,

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and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

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In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement satisfies many of the relevant *Metrocraft* factors, including: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (10) the future management of the debtor; (11) the Chapter 11 Plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; (15) information relevant to the risks posed to creditors under the Plan; and (18) tax attributes of the debtor.

Based on the foregoing, the Court finds that the Disclosure Statement contains adequate information and, therefore, the Court APPROVES the Disclosure Statement.

Confirmation of the Plan

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129.

Section 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the Collier, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" Collier on Bankruptcy ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims

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or interests of such class."

Each of the secured claims is classified separately, as is appropriate because each secured claimant has unique rights with respect to specific collateral. The claims of unsecured creditors in Class 7 are substantially similar to each other. The Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

There are no unsecured claims which would require separate classification under § 1122(b). Therefore, the Plan satisfies § 1122(b).

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary Chapter 11 case. The Plan separately classifies § 507(a)(2) administrative expense claims and § 507(a)(8) priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the plan "specify any class of claims or interests that is not impaired under the plan."

The Plan specifies that Classes 1–5 are not impaired and that the holders of claims in those classes are not entitled to vote on the Plan. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the plan "specify the treatment of any class of claims or interests that is impaired under the plan."

The Plan details the treatment of the impaired class. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

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Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the plan "provide adequate means for the plan's implementation."

The Plan describes the means for implementation of the Plan's provisions. The Plan provides for funding from: the Debtor's cash on hand on the Effective Date; and the Debtor's cash received from ongoing operations which, as set forth in the Cash Projections, are adequate for plan implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Plan includes only one equity class; therefore, the Plan satisfies §1123(a)(6).

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan provides that, on the Effective Date, the Reorganized Debtor will be managed by the current COO of the Debtor, Joseph Smith. Mr. Smith has the requisite experience to operate the Reorganized Debtor. The Plan satisfies § 1123(a)(7).

10. Section 1123(b)

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Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization.

The Plan contains certain of § 1123(b)'s optional provisions including subparagraphs (1), (2), (3). The Plan is consistent with § 1123(b).

Section 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title."

The Court finds that the Debtor as Plan proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (as is set forth above in the section on the "Adequacy of the Disclosure Statement"); and
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Application to Employ Sheila Esmail" [Doc. No. 64]).

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

Section 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan presented here seeks results consistent with the purposes and objectives of the code. The Debtor negotiated the Plan provisions with its secured creditors and at least one member of each of the unsecured creditor classes. No objections to Plan Confirmation have been filed. The terms and conditions of the Plan allow the Debtor's business to reorganize while paying creditors at least as much as such creditors would receive in a Chapter 7 liquidation. The Plan satisfies §1129(a)(3).

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Section 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides for payment of attorney and other professional fees only upon application to, and approval by, the Court. The Plan satisfies § 1129(a)(4).

Section 1129(a)(5)

Section 1129(a)(5) requires that the plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan describes the current and future role of each of the Debtor's five Principals and Directors. The Plan satisfies § 1129(a)(5).

Section 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the Plan, does not apply.

Section 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such

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Based upon its review of the Liquidation Analysis included with the Disclosure Statement, under Chapter 7 liquidation unsecured creditors would likely be paid 0% on their claims. Furthermore, liquidation would cause appointment of a trustee who would be entitled to compensation as an administrative expense. The Plan satisfies § 1129(a)(7).

Section 1129(a)(8)

Section 1129(a)(8) generally requires each class to accept the plan, unless the class is not impaired.

Classes 6 and 7 are impaired. Class 7 voted to confirm the Plan. Class 6 neither voted on the Plan nor filed an objection to the confirmation of the Plan. However, "[a]lthough actual acceptance of a plan by at least one class of impaired claims is necessary for a bankruptcy court's confirmation of a plan under § 1129(a)(10), *Hanson v. First Bank of South Dakota, N.A.*, 828 F.2d 1310, 1313 (8th Cir.1987), not every creditor is obligated to vote on a plan." *In re Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1267 (10th Cir. 1988). In circumstances where the holder of a claim in an impaired class neither votes on the plan nor raises any objection to confirmation, the court may deem the creditor's failure to vote or object to confirmation as acceptance of the plan so as to enable the court to confirm the plan without determining whether the plan discriminates unfairly or is fair and equitable under § 1129(b). *Id.*; *cf. In re M. Long Arabians*, 103 B.R. 211, 215–16 (B.A.P. 9th Cir. 1989) (distinguishing *In re Ruti-Sweetwater, Inc.* on the grounds that the crucial factor in *In re Ruti-Sweetwater, Inc.* was that "the creditor failed to object to the plan, thereby 'waiving, its right to challenge the plan," whereas the creditor in *In re M. Long Arabians* "attempted to reject the Plan and, in fact, objected to the Plan"). In *In re Ruti-Sweetwater, Inc.*, the Tenth Circuit Court of Appeals affirmed the district court's holding that a creditor's failure to vote and failure to object to the plan constituted acceptance of the plan. 836 F.2d at 1266. In so holding, the panel of the Tenth Circuit agreed with the district court's finding that creditors are obligated to take an active role in protecting their claims:

The Code contemplates that concerned creditors will take an active role in protecting their claims. Otherwise, Bankruptcy Rule 3017, which provides for fixing a deadline for filing rejections of a plan, and Bankruptcy Rule 3020(b), which provides for fixing a deadline for

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filing objections to confirmation, would have no substance. *See In re Record Club of America*, 38 B.R. 691, 696 (M.D.Penn.1983). Moreover, if non-voting, non-objecting creditors are not deemed to have accepted the plan, the debtor would be placed in the unique position of anticipating these creditors' objections to the plan and presenting evidence and arguments to refute those hypothetical objections in the confirmation hearing.

Id. at 1267.

Here, On Deck Capital, Inc. ("On Deck"), is the only member of Class 6. The Disclosure Statement states that "Failure to oppose the confirmation of the Plan may be deemed consent to the Plan's confirmation." Disclosure Statement at 24. The Court finds that On Deck's failure to vote on the Plan, coupled with its failure to object to the Plan, constitutes acceptance. Thus, the Court finds that the Plan complies with § 1129(a)(8).

Section 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for payment in full of taxing authority claims over a period not exceeding sixty months from the Effective Date. The Plan provides that the Debtor will pay other claims allowed under § 503(b) and entitled to priority under § 507(a) (2), including United States Trustee's fees, in full on the Effective Date except to the extent that a holder of these claims agreed to other terms. The Plan satisfies § 1129(a) (9).

Section 1129(a)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan.

Class 7 is an impaired class that has accepted the Plan. The Plan satisfies § 1129 (a)(10).

Section 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to

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find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

Based upon its review of the Cash Projections included with the Disclosure Statement, the Court finds that the Debtor's projected income and cash available on the Effective date are sufficient to make required plan payments. The Plan is feasible and satisfies § 1129(a)(11).

Section 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

The Plan and the projections in the Disclosure Statement include payment of all Administrative Claims. The Plan satisfies § 1129(a)(12).

Section 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

Section 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

Section 1129(a)(15)

Section 1129(a)(15)(B) applies only to an individual case. As the Debtor is not an individual, § 1129(a)(15)(B) does not apply.

Section 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Debtor is a Corporation that engages in a business for profit and, therefore, § 1129(a)(16) does not apply.

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Section 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes. The Plan was proposed in good faith, and the principal purpose of the Plan is to allow the Debtor to continue operating its business while paying creditors at least as much as they would receive in a Chapter 7 liquidation. The Plan satisfies § 1129(d).

Based on the foregoing, the Debtor's Amended Chapter 11 Plan of Reorganization is CONFIRMED.

III. Conclusion

For the reasons set forth above, the Court: (1) APPROVES the Disclosure Statement as containing adequate information; and (2) CONFIRMS the Debtor's Amended Plan.

The Debtor shall lodge a confirming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili

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10:00 AM

2:17-24716 Leslie P Martinez and Enrique H Martinez

Chapter 7

#1.00 Hearing
RE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Honda Civic Sedan 4D Lx i4 . (Allen, Bret)

Docket 21

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON
5-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Leslie P Martinez

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Enrique H Martinez

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:18-12898 Eunice Crespo

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2010 Land Rover Range Rover-V6, VIN SALSF2D48AA216263 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

5/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 21, 2018

Hearing Room 1568

10:00 AM

CONT... Eunice Crespo

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Eunice Crespo

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 21, 2018

Hearing Room 1568

10:00 AM

2:18-13916 Alejandro Hamada

Chapter 7

#3.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 14922 Osage Avenue, Lawndale, California 90260 with proof of service. (Yabes, Gilbert)

Docket 11

Tentative Ruling:

5/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on July 17, 2017. The Movant filed an unlawful detainer action on December 13, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 21, 2018

Hearing Room 1568

10:00 AM

CONT... Alejandro Hamada

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alejandro Hamada

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 21, 2018

Hearing Room 1568

10:00 AM

2:18-15182 Irma Garay and Javier Garay

Chapter 7

#4.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1336 N. Vosburg Drive, Azusa, CA 91702 .

Docket 13

Tentative Ruling:

5/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on shortened notice. However, the Proof of Service attached to the Motion indicates that the it was served on the Debtor via United States Mail only. This judge requires that Motions for Relief From Stay on Shortened Notice in "Residential Unlawful Detainer Actions" must be served no later than 7 days prior to the hearing by posting or personal service on debtor.

Therefore, based on the foregoing, the Motion is CONTINUED TO JUNE 4, 2018 at 10:00 a.m.. The Movant must serve its moving papers and the notice continuing the matter by posting or personal service by no later than May 28, 2018. If not served in accordance with this tentative ruling, the motion maybe be denied in full;

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, May 21, 2018

Hearing Room 1568

10:00 AM

CONT... Irma Garay and Javier Garay

Chapter 7

Debtor(s):

Irma Garay Pro Se

Joint Debtor(s):

Javier Garay Pro Se

Trustee(s):

Sam S Leslie (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#1.00 Hearing
RE: [24] Motion for Default Judgment Under LBR 7055-01
fr: 10-18-17

Docket 24

Tentative Ruling:

5/21/2018

To enable the Trustee to correct a service defect, the hearing on the Motion is CONTINUED to **June 20, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Motion for Default Judgment Under LBR 7055-1 [Doc. No. 31] (the "Motion")
 - a) Notice of Motion for Default Judgment [Doc. No. 32]

I. Facts and Summary of Pleadings

Shasa USA LLC (the "Debtor") commenced a voluntary Chapter 7 petition on February 4, 2015 (the "Petition Date"). Prior to the Petition Date, the Debtor was a retailer in the women's "fast fashion" clothing industry, and competed with other fashion retailers such as Forever 21, H&M, Wet Seal, and Deb Shops. The Debtor updated the clothing and fashion accessories for sale at its retail stores on a monthly basis. The clothing and accessories sold by the Debtor were intended to be used a few times and then thrown away because the clothing was no longer fashionable. Consumers would return to the Debtor's stores to buy the current monthly fashion. Clothing and accessories sold by the Debtor were priced in the typical range of \$5.00 to \$15.00.

In the 90-day period prior to the Petition Date, the Debtor did not have sufficient funds to pay all its debts, and fell behind on its payments to creditors. During this time period, many of the Debtor's creditors contacted the Debtor and demanded that their bills be paid.

On January 30, 2017, the Chapter 7 Trustee (the "Trustee") commenced this

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

preference action against McGinn USA, Inc., d/b/a Plastic Island (the “Defendant”), seeking to avoid transfers in the total amount of \$340,865.28 that the Debtor made to the Defendant during the ninety day period prior to the Petition Date. The Clerk of the Court entered Defendant’s default on March 21, 2017. The Trustee seeks entry of default judgment against the Defendant. A prior hearing on the Motion was conducted on October 18, 2017, but was continued because the Defendant commenced a voluntary Chapter 7 petition, Case No. 2:17-bk-21078-BR. The Defendant’s Chapter 7 petition was closed on December 19, 2017. No opposition to the Motion is on file.

II. Findings and Conclusions

Service of the Motion was Inadequate

The Trustee commenced this action against McGinn USA, Inc. Aioli International, Inc. is the successor entity to McGinn USA, Inc. *See* Voluntary Chapter 7 Petition of Aioli International, Inc. [Doc. No. 1, Case No. 2:17-bk-21078-BR] at ¶2 (stating that Aioli International, Inc. was formerly known as McGinn USA, Inc.). According to the records of the California Secretary of State, Aioli International, Inc. was dissolved on May 3, 2018. To determine whether the Motion was properly served, the Court relies upon the documents that Aioli International has filed with the California Secretary of State.

Pursuant to Bankruptcy Rule 7004(b)(4)—made applicable to the instant Motion by Bankruptcy Rule 9014(b)—service upon a domestic corporation is effectuated “by mailing [the Motion] to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Cal. Civ. Proc. Code §416.10 provides that service upon a corporation may be made by serving the person that the corporation has designated as its agent for service of process; there is no requirement that both the agent for service of process and some other agent of the corporation be served.

Where, as here, a corporation has been dissolved, service upon the corporation’s agent for process is sufficient to provide the corporation actual notice of the litigation. *See Pulte Homes Corp. v. Williams Mech., Inc.*, 2 Cal. App. 5th 267, 274, 206 Cal. Rptr. 3d 244, 250 (Cal. Ct. App. 2016) (“Here, however, Williams [the corporation] dissolved in 2012 and has been wound up; presumably it no longer has any directors, officers, agents or employees. At least under these circumstances, we believe that notice to the person designated by the corporation as its agent for service of process is actual notice. An agent for service of process has the necessary authority because the

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

corporation has expressly held that person out to the world as authorized to receive notice of actions. Indeed, in the case before us, if actual notice to Morris [the agent for service of process] was not sufficient to make a default judgment stick, who else was there?”).

Here, the Trustee served the Motion upon Yun Jun Choi, the agent for service of process of the Defendant’s successor entity. However, the Motion was served upon Mr. Choi at an outdated address taken from the *Statement of Information* that Defendant filed with the California Secretary of State in 2016. Mr. Choi’s current address, as reflected in the *Statement of Information* filed in 2017, is as follows:

Yun Jun Choi
736 E. 29th Street
Los Angeles, CA 90011

To enable the Trustee to correct this service defect, the hearing on the Motion is CONTINUED to **June 20, 2018, at 10:00 a.m.**

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#2.00 HearingRE: [31] Motion for Default Judgment Motion for Default Judgment Under LBR 7055-1 [with Proof of Service] Default Judgment Motion due by 05/18/2018. (Werth, Steven)

Docket 31

Tentative Ruling:

5/21/2018

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 22, 2018

Hearing Room 1568

10:00 AM

2:17-16360 Michael McNulty

Chapter 11

#3.00 HearingRE: [97] Motion for approval of chapter 11 disclosure statement

Docket 97

Tentative Ruling:

5/21/2018

5/21/2018

Continued to June 7, 2018 at 10:00 a.m. to be heard in conjunction with the motion to sell property.

Debtor to prepare the order.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 22, 2018

Hearing Room 1568

11:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#100.00 Hearing re [20] Motion for order authorizing refinancing of secured debt and related relief.

Docket 0

Tentative Ruling:

5/21/2018

Hearing and appearances required. There is some issue regarding the amount the IMC will receive pursuant to the subordination agreement. At the hearing, the parties shall advise the court as to whether there is a dispute regarding this amount. Upon clarification and resolution of the issue and for the reasons set forth below, the Debtor's Motion to obtain financing is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Authorizing Refinancing of Secured Debt and Related Relief [Doc. No. 20] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 22]
 - b) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 25]
 - c) Notice of Hearing [Doc. No. 27]
 - d) Declaration of David Israel Re Notice and Service [Doc. No. 34]
 - e) Declaration of Kateryna Bilenka Re Notice and Service [Doc. No. 35]
- 2) Conditional Opposition to Debtor's Motion for Order Authorizing Refinancing of Secured Debt and Related Relief [filed by Investment Management Company] [Doc. No. 36]
- 3) Limited Opposition to Motion for Order Authorizing Refinancing of Secured Debt and Related Relief [Doc. No. 39]
- 4) No reply is on file
- 5) Related upcoming motions filed by the State Bank of India:
 - a) Notice of Motion and Motion to Dismiss Chapter 11 Case [Doc. No. 42]
 - b) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 29]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 22, 2018

Hearing Room 1568

11:00 AM

CONT... Rabenu Enterprises, LLC

Chapter 11

I. Facts and Summary of Pleadings

Rabenu Enterprises, LLC (the "Debtor") commenced a voluntary Chapter 11 petition on May 20, 2018. The Debtor's primary asset is commercial real property located at 751-757 Towne Avenue, Los Angeles, CA 90021 (the "Property"). The encumbrances against the Property are as follows:

- 1) Delinquent property taxes for the fiscal year 2017-18, owed to the Los Angeles County Treasurer and Tax Collector, in the amount of \$48,020.61.
- 2) Delinquent property taxes for the fiscal year 2016, owed to the Los Angeles County Treasurer and Tax Collector, in the amount of \$114,722.36.
- 3) First priority deed of trust, in favor of the State Bank of India ("SBIC"), in the principal amount of \$2.8 million.
- 4) Second priority deed of trust, in favor of Hana Financial, in the principal amount of \$200,000.
- 5) Third priority deed of trust, in favor of Investment Management Company, LLC ("IMC"), in the principal amount of \$225,000.

The Debtor seeks authorization to borrow \$3.6 million from The Evergreen Advantage, LLC ("Evergreen") (the \$3.6 million loan, the "Evergreen Loan"). The Court set the hearing on the Motion on shortened notice, so that it could be heard prior to a motion for stay-relief and a motion to dismiss brought by SBIC, the holder of the first deed of trust. (SBIC's stay-relief motion is scheduled to be heard on June 4, 2018; its motion to dismiss is scheduled to be heard on June 20, 2018.)

The Evergreen Loan will be secured by a first priority deed of trust against the Property. The Debtor states that it was not able to obtain financing on more favorable terms. The Debtor intends to use the Evergreen Loan to pay off all indebtedness against the Property except for \$50,000 owed to IMC, holder of the third deed of trust.

The Evergreen Loan is interest-only, with a balloon payment coming due in approximately nine months, on February 1, 2019. The loan carries an option for a three-month extension. The interest rate is 11%; monthly payments are approximately \$33,000.

SBIC, the holder of the first deed of trust, filed a limited opposition to the Motion. SBIC does not oppose the Motion, provided that it is paid in full from the proceeds of the loan by no later than June 1, 2018. SBIC is concerned that the Motion is a delay tactic by the Debtor to prevent SBIC from exercising its remedies against the Property. In its upcoming motion for stay-relief and motion to dismiss, SBIC argues

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 22, 2018

Hearing Room 1568

11:00 AM

CONT... Rabenu Enterprises, LLC

Chapter 11

that the Debtor filed the petition in bad faith to hinder SBIC's foreclosure remedies, and that the Debtor has no ability to reorganize.

IMC, the holder of the third deed of trust, also filed a limited opposition to the Motion. According to IMC, the Motion does not accurately set forth the terms of a Subordination Agreement entered into between IMC and the Debtor. Per IMC, the Subordination Agreement provides that the Debtor shall pay IMC \$100,000 from the proceeds of the Evergreen Loan. After payment of the \$100,000, a balance of \$225,000 will remain owing to IMC. The \$225,000 balance will be subordinated to the Evergreen Loan. (The Motion states that the balance due to IMC that will be subordinated to the Evergreen Loan is only \$50,000.) IMC does not oppose the Motion, provided that the Subordination Agreement is deemed to be approved by the Court in its entirety, and provided that the Motion is deemed to be corrected to accurately reflect the terms of the Subordination Agreement.

II. Findings and Conclusions

Section 364 provides in relevant part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Having reviewed the declaration of the Debtor's co-manager, Benjamin Saeedian,

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 22, 2018

Hearing Room 1568

11:00 AM

CONT... Rabenu Enterprises, LLC

Chapter 11

the Court finds that the Debtor has been unable to obtain financing on terms more favorable to the terms of the Evergreen Loan. Secured creditors are adequately protected because the proceeds of the Evergreen Loan will be sufficient to pay all secured creditors, other than IMC, in full. Whether IMC is adequately protected depends on the Subordination Agreement with the Debtor. There is an issue regarding this since the Subordination Agreement provides that IMC will receive \$100,000 from the proceeds of the Evergreen Loan and will subordinate the \$225,000 that remains owing on its promissory note to the Evergreen Loan. But, the Motion states that the amount to be paid to IMC from the loan proceeds is \$50,000.

If the matter is resolved, the court is prepared to grant the Motion as follows: The Debtor is authorized to distribute the proceeds of the Evergreen Loan to secured creditors and to pay any reasonable fees and costs associated with closing the Evergreen Loan. To minimize litigation costs associated with SBIC's upcoming motion for stay-relief and motion to dismiss, the order approving the Motion shall take effect immediately upon entry, notwithstanding Bankruptcy Rule 6004(h).

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#1.00 Trial Date Set: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 8-26-13; 3-27-17; 7-31-17; 9-25-17, 11-27-17; 2-26-18

Docket 1

***** VACATED *** REASON: CONTINUED 7-30-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

UNION BANK, N.A., a national	Pro Se
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Plaintiff(s):

JASON M. RUND	Represented By Ronald P Abrams
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Represented By Corey R Weber Robert A Hessling Richard K Diamond Daniel H Gill
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Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#2.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18

Docket 0

*** VACATED *** REASON: CONTINUED 7-30-18 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

FR. 3-26-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-27-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of
Navient Corporation

Pro Se
Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-16-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Pro Se

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:17-15374 Sarmen Ghazaryan

Chapter 7

Adv#: 2:17-01385 Financial Services Vehicle Trust, by and through i v. Ghazaryan

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01385. Complaint by Financial Services Vehicle Trust, by and through its servicer, BMW Financial Services NA, LLC, a Delaware limited liability company against Sarmen Ghazaryan. false pretenses, false representation, actual fraud)) (Caley, Rebecca)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 1-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sarmen Ghazaryan

Represented By
Vilen Khachatryan

Defendant(s):

Sarmen Ghazaryan

Pro Se

Plaintiff(s):

Financial Services Vehicle Trust, by

Represented By
Rebecca A Caley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, May 29, 2018

Hearing Room 1568

9:00 AM

2:17-15643 Alfredo Aquino Arrizon

Chapter 7

Adv#: 2:17-01401 City Center Credit Union v. Arrizon et al

#6.00 Trial Date Set

RE: [1] Complaint by City Center Credit Union against Alfredo Aquino Arrizon, Gloria Arrizon. false pretenses, false representation, actual fraud),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Smyth, Stephen) Additional attachment(s) added on 8/11/2017 (Ly, Lynn). Warning: Item subsequently amended by docket entry no 3. When the complaint was filed, it was not linked to the main bankruptcy case. The complaint is now linked to the main bankruptcy case. Modified on 8/11/2017 (Ly, Lynn).

Docket 1

***** VACATED *** REASON: 2/6/2018 - Stipulation approving settlement signed**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alfredo Aquino Arrizon

Represented By
Luis G Torres

Defendant(s):

Alfredo Aquino Arrizon

Pro Se

Gloria Arrizon

Pro Se

Joint Debtor(s):

Gloria Arrizon

Represented By
Luis G Torres

Plaintiff(s):

City Center Credit Union

Represented By
Stephen S Smyth

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CONT... Alfredo Aquino Arrizon

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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9:00 AM

2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01407. Complaint by Moysey Chernyavsky against Michael Dekhtyar. willful and malicious injury)) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 7-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Dekhtyar Pro Se

Defendant(s):

Michael Dekhtyar Pro Se

Plaintiff(s):

Moysey Chernyavsky Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR) Pro Se

**United States Bankruptcy Court
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9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#8.00 Trial Date Set

RE: [143] Amended Cross-claim by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk, ROES 21 through 40. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrumen 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian)

FR. 10-30-17

Docket 143

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

**United States Bankruptcy Court
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9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#9.00 Trial

RE: [176] **SECOND AMENDED CROSS CLAIM** CRYSTAL WATERFALLS LLCs SECOND AMENDED CROSSCLAIM AGAINST BENJAMIN KIRK AKA BENNY KIRK AND TSAI-LUAN HO AKA SHELBY HO by Crystal Waterfalls, LLC a California limited liability company against Shelby Ho, Benjamin Kirk (Landsberg, Ian)

FR. 8-15-17

Docket 176

*** VACATED *** REASON: DISMISSED 3-20-18

Tentative Ruling:

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

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9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liabi v. DOES 1 through 10,

#10.00 TRIAL

RE: [193] **SECOND AMENDED COUNTERCLAIM** by HCL 2011, LLC a California limited liability company against Crystal Waterfalls, LLC a California limited liability company, Lucy Gao, Shelby Ho, Benjamin Kirk, ROES 21 through 40 -

fr. 8-15-17

Docket 193

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

See Cal. No. 13, above, incorporated in full by reference.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

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9:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:15-01671 Crystal Waterfalls, LLC a California limited liability v. DOES 1 through 10,

#11.00 TRIAL

RE: [142] **SECOND AMENDED COMPLAINT** by Ian Landsberg on behalf of Crystal Waterfalls, LLC a California limited liability company against HCL 2011, LLC a California limited liability company. (RE: related document(s)1 Adversary case 2:15-ap-01671. Complaint by Crystal Waterfalls LLC against HCL 2011, LLC, a California limited liability company, and DOES 1 through 10, inclusive. (Charge To Estate). Complaint for: 1. Cancellation of Written Instrument 2. Quiet Title 3. Declaratory Relief Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Landsberg, Ian)

fr. 5-23-17; 8-15-17

Docket 142

***** VACATED *** REASON: DISMISSED 3-20-18**

Tentative Ruling:

8/14/2017

As set forth in the concurrently-issued Memorandum of Decision, the Court declines to exercise supplemental jurisdiction over the first through tenth claims for relief asserted in the Counterclaim. Those claims are dismissed without prejudice.

The following dates shall apply to the Complaint, the Counterclaim, and the Crossclaim, which will be tried concurrently in the interests of judicial efficiency:

- 1) The last day to amend pleadings and/or join other parties is **12/14/2017**.
- 2) The last day to disclose expert witnesses and expert witness reports is **2/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **3/30/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **4/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on

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CONT... Crystal Waterfalls LLC

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expert discovery motions is the next closest date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **4/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **4/30/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **5/15/2018** at 11:00 a.m. By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **5/29/2018**. The trial day commences at 9:00 a.m. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Crystal Waterfalls LLC

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Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

HCL 2011, LLC a California limited

Pro Se

Plaintiff(s):

Crystal Waterfalls, LLC a California

Represented By
Ian Landsberg

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9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#12.00 TRIAL

RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17; 2-26-18

Docket 1

Tentative Ruling:

5/25/2018

For the reasons set forth below, under principles of issue preclusion the Court will not permit Ms. Ho to introduce any evidence or testimony contesting certain findings of fact regarding Liberty's business operations that were made by the Court in prior litigation.

Pleadings Filed and Reviewed:

- 1) Final Joint Pretrial Stipulation Between the Official Committee of Unsecured Creditors, Tsai Luan Ho, and Benjamin Kirk as Modified by the Court [Doc. No. 89] (the "Pretrial Stipulation")
 - a) Ruling Approving Pretrial Stipulation [Doc. No. 92]
 - b) Order After Pretrial Conference [Doc. No. 93]
- 2) Order Approving Stipulation of Dismissal Pursuant to Federal Rule of Bankruptcy Procedure 7041 [Doc. No. 91]
 - a) Stipulation of Dismissal Pursuant to Federal Rule of Bankruptcy Procedure 7041 [Doc. No. 90]
- 3) Trial Materials Submitted by Plaintiff:
 - a) The Official Committee of Unsecured Creditors' Trial Brief [Doc. No. 100]
 - b) The Official Committee of Unsecured Creditors' Witness List [Doc. No. 101]
 - c) Proposed Findings of Fact and Conclusions of Law [Doc. No. 102]
 - d) Plaintiff's Trial Exhibits [not docketed]
 - e) Notice of Subpoena to Appear and Testify [served upon Benjamin Kirk] [Doc.

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**CONT... Liberty Asset Management Corporation
No. 109]**

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- 4) Trial Materials Submitted by Defendant:
- a) Defendant Shelby Ho's Trial Brief [Doc. No. 110]
 - b) Defendant Shelby Ho's List of Trial Witnesses [Doc. No. 106]
 - c) Defendant Shelby Ho's List of Trial Exhibits [Doc. No. 107]
 - d) Defendant's Trial Exhibits [not docketed]
 - e) Notice of Intent to Have Chinese Interpreter Available at Trial [Doc. No. 94]

The Plaintiff in this matter is the Official Committee of Unsecured Creditors for Chapter 11 Debtor Liberty Asset Management Corporation. **[Note 1]** On August 10, 2016, the Court approved a stipulation between Liberty Asset Management Corporation ("Liberty") and Plaintiff which granted Plaintiff derivative standing to pursue this action on behalf of Liberty's estate. Bankr. Doc. No. 177. **[Note 2]**

On April 17, 2018, the Court entered an order dismissing Defendant Benjamin Kirk from this action. Adv. Doc. No. 91. As a result, the only remaining defendant is Tsai Luan Ho aka Shelby Ho ("Ms. Ho").

Plaintiff seeks to avoid, as actually and constructively fraudulent, certain transfers from Liberty to Ms. Ho, pursuant to §544 (applying Cal. Civ. Code §3439.04(a)(1)–(2)) and §548(a)(1)(A). Ms. Ho asserts a good-faith defense under §548(c), based upon the contention that she received the transfers as a commission for recruiting investors for Liberty. Ms. Ho further contends that Plaintiff has failed to establish that Liberty had any actual intent to hinder, delay, or defraud creditors.

On December 29, 2017, the Court entered judgment in favor of Plaintiff in a separate action commenced by Plaintiff against Lucy Gao and Benjamin Kirk. *See* Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29 [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision") and Judgment in Favor of Plaintiff and Against Defendants, Jointly and Severally, in the Amount of \$74,140,695.29 [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Judgment").

In the Memorandum of Decision, the Court found that Ms. Gao and Mr. Kirk were liable to Liberty in the amount of approximately \$74 million, for breaching their fiduciary duties to Liberty and for failing to properly account for Liberty's assets. The Court made various findings regarding Liberty's business operations, including that:

- 1) Investors contributed funds to Liberty that were earmarked for investments in specific properties, pursuant to investment contracts entered into between Liberty and the investors. Liberty did not use the funds in accordance with the

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CONT...

Liberty Asset Management Corporation

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investment contracts to purchase the properties for which the funds had been earmarked. Rather than segregating the funds contributed by each investor to insure that such funds were used for their intended purpose, Liberty treated all investor funds as a single capital pool. Liberty used this capital pool to attempt to acquire whatever property it was pursuing at the time, regardless of whether that property was the one specified by the investor. Memorandum of Decision at 6.

- 2) Liberty received approximately \$36.26 million for the purchase of specified real properties from various investors, but failed to purchase any of the properties in question and failed to return any of the investors' funds. *Id.* at 7.
- 3) Liberty engaged in the business of acquiring and selling commercial properties. As of 2012, Liberty's business of acquiring and selling commercial properties was not profitable. *Id.* at 7.

At issue is whether Ms. Ho should be precluded from contesting any of the findings of fact made by the Court in the Memorandum of Decision. Ms. Ho argues that the Memorandum of Decision is irrelevant to this action, because she was not a party to the prior action and was not in privity with Mr. Kirk and Ms. Gao. Plaintiff asserts that the findings made by the Court in the Memorandum of Decision are relevant to this action.

For purposes of this action, the Court will treat as established the findings of fact regarding Liberty's business operations that are summarized in ¶¶1–3, above. Ms. Ho will be precluded from introducing any evidence or testimony contesting these findings of fact.

"Issue preclusion ... bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment,' even if the issue recurs in the context of a different claim." *Taylor v. Sturgell*, 553 U.S. 880, 892–93, 128 S. Ct. 2161, 2171–72, 171 L. Ed. 2d 155 (2008). As the Ninth Circuit has held:

[Issue preclusion] is not generally applicable unless there exists either identity or privity between the parties to the relevant litigation. The person being estopped from relitigating an issue must have been either a party to the prior lawsuit or have been so closely related to the interest of the party to be fairly considered to have had his day in court.... Privity exists when there is "substantial identity" between parties, that is, when there is sufficient commonality of interest.

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United States v. Gottheiner (In re Gottheiner), 703 F.2d 1136, 1139 (9th Cir. 1983).

Subsequent Ninth Circuit decisions have found that privity exists "when two parties are so closely aligned in interest that one is the virtual representative of the other." *Irwin v. Mascott*, 370 F.3d 924, 929 (9th Cir. 2004) (citing *Nordhorn v. Ladish Co., Inc.*, 9 F.3d 1402, 1405 (9th Cir. 1993)). As further explained by the Ninth Circuit:

A close relationship between the named party and the nonparty supports a finding of virtual representation.... An identity of relevant interests between the named party and the non-party is necessary to such a finding.... Finally, adequate representation by the named party is a pre-requisite to a finding of virtual representation.

Irwin, 370 F.3d at 929–30.

With respect to the Court's findings of fact regarding Liberty's business operations, Mr. Kirk qualifies as the virtual representative of Ms. Ho. First, in the Pretrial Stipulation, the parties have stipulated to facts establishing a close relationship between Mr. Kirk and Ms. Ho. Mr. Kirk was the president and CEO of Liberty, and Ms. Ho raised millions of dollars for Liberty by recruiting investors. Second, with respect to the issues of fact found by the Court regarding Liberty's business operations, Mr. Kirk and Ms. Ho's interests are aligned. The Court's findings that Liberty failed to use investor funds in accordance with the relevant Investment Contracts, lost approximately \$36 million in investor funds, and was not profitable subsequent to 2012 are adverse to both Mr. Kirk and Ms. Ho. As to Mr. Kirk, these findings aided in establishing Plaintiff's claim that Mr. Kirk breached his fiduciary duties to Liberty. As to Ms. Ho, these findings form one component of the Plaintiff's claim that transfers from Liberty to Ms. Ho are avoidable as actually and constructively fraudulent. For example, the findings that Liberty misappropriated investor funds and was not profitable subsequent to 2012 lends support to Plaintiff's contention that Liberty was a Ponzi scheme. A finding that Liberty was a Ponzi scheme in turn supports Plaintiff's contention that the transfers at issue were fraudulent. In the Ninth Circuit, a debtor's intent to engage in a fraudulent transfer is established where the debtor operated a Ponzi scheme. *Barclay v. Mackenzie (In re AFI Holding, Inc.)*, 525 F.3d 700, 704 (9th Cir. 2008).

Finally, with respect to the issues regarding Liberty's business operations, Mr. Kirk adequately represented Ms. Ho's interests in the prior litigation. As set forth in the Memorandum of Decision, Mr. Kirk testified at length in the prior litigation. Through his testimony, Mr. Kirk attempted—albeit unsuccessfully—to contest

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CONT... Liberty Asset Management Corporation

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Plaintiff's assertions that Liberty misappropriated investor funds and that Liberty was not profitable subsequent to 2012.

Based upon the foregoing, Ms. Ho is precluding from introducing any evidence or testimony contesting the findings of fact regarding Liberty's business operations that are summarized in ¶¶1-3, above.

Note 1

The Hon. Thomas B. Donovan presided over this adversary proceeding, as well as the main bankruptcy case of Liberty Asset Management Corporation ("Liberty"), from March 21, 2016 to January 29, 2017. On January 30, 2017, Liberty's main bankruptcy case and this adversary proceeding were reassigned to the undersigned Judge. Bankr. Doc. No. 325.

Note 2

Unless otherwise indicated, all "Bankr. Doc. No." citations are to the CM/ECF docket in Liberty's main bankruptcy case, Case. No. 2:16-bk-13575-ER; all "Adv. Doc. No." citations are to the CM/ECF docket in this adversary proceeding, Adv. No. 2:17-ap-01374-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By

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Liberty Asset Management Corporation

Jeremy V Richards
Gail S Greenwood

Chapter 11

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#13.00 HearingRE: [111] Motion / The Official Committee of Unsecured Creditors' Motion In Limine to Exclude Previously Undisclosed Evidence (Greenwood, Gail)

Docket 111

Tentative Ruling:

5/25/2018

For the reasons set forth below, the Committee's Motion *In Limine* is GRANTED.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Motion *In Limine* to Exclude Evidence (the "Motion") [Doc. No. 111]
- 2) No opposition to the Motion is on file as of 5/24/18

I. Facts and Summary of Pleadings

The Plaintiff in this matter is the Official Committee of Unsecured Creditors for Chapter 11 Debtor Liberty Asset Management Corporation. **[Note 1]** On August 10, 2016, the Court approved a stipulation between Liberty Asset Management Corporation ("Liberty") and Plaintiff which granted Plaintiff derivative standing to pursue this action on behalf of Liberty's estate. Bankr. Doc. No. 177. **[Note 2]**

On April 17, 2018, the Court entered an order dismissing Defendant Benjamin Kirk from this action. Adv. Doc. No. 91. As a result, the only remaining defendant is Tsai Luan Ho.

On March 27, 2018, the Court denied Ms. Ho's *Motion to Reopen Discovery and Vacate Trial Date* [Adv. Doc. No. 78] (the "Discovery Motion"). Adv. Doc. No. 84. In the Discovery Motion, Ms. Ho sought an extension of the discovery cutoff date established in the Court's *Scheduling Order*. The Court found that Ms. Ho was not entitled to modification of the deadlines set forth in the *Scheduling Order* because she had not diligently pursued discovery:

Ms. Ho maintains that discovery must be reopened because she has recently discovered evidence that her signatures on documents associated with

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CONT...

Liberty Asset Management Corporation

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the Mega Bank account were forged. However, communications between Ms. Ho's prior counsel and the Committee's counsel establish that Ms. Ho was aware of the alleged forgeries *prior* to the June 30, 2017 discovery cutoff. On June 13, 2017, Ms. Ho's prior counsel sent the Committee's counsel an e-mail which states in relevant part:

While you are waiting for my documents I am voluntarily sending you the documents we received from Mega Bank as it relates to the 88 San Fernando LLC account.

I have confirmed that each signature that which appears to be my client's has been forged.

You will see that it was set up by Vanessa and the money was deposited into this account and then went out over forged signatures.

Maybe you can find some money from the true actors.

See Opposition at Ex. C [Doc. No. 80].

Therefore, Ms. Ho had the opportunity to conduct whatever discovery she deemed necessary with respect to the alleged forgeries associated with the Mega Bank account. For unknown reasons, Ms. Ho, a real estate and business professional advised by sophisticated counsel, failed to undertake such discovery. Unfortunately, Ms. Ho's lack of diligence is not good cause for setting aside the litigation deadlines governing these proceedings.

Final Ruling Denying the Discovery Motion [Doc. No. 83] at 5.

The Court explained that although Ms. Ho's lack of diligence was by itself sufficient cause to deny the Discovery Motion, an examination of the other factors which the Court could consider in connection with a request to modify a scheduling order also supported denial of the Discovery Motion:

In ruling on a motion to amend a scheduling order to reopen discovery, the following factors may be considered:

- 1) whether trial is imminent,
- 2) whether the request is opposed,
- 3) whether the non-moving party would be prejudiced,
- 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court,
- 5) the foreseeability of the need for additional discovery in light of the

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time allowed for discovery by the district court, and

6) the likelihood that the discovery will lead to relevant evidence.

City of Pomona v. SQM N. Am. Corp., 866 F.3d 1060, 1066 (9th Cir. 2017).

Upon consideration of the *Pomona* factors, the Court finds that Ms. Ho has failed to establish good cause to reopen discovery and to continue the trial date. The Court places substantial weight upon factor six, the likelihood that the discovery will lead to relevant evidence. This factor is challenging to apply in practice, as it is impossible to know precisely what additional evidence further discovery will yield. Further, in applying this factor, the Court must also be mindful of Civil Rule 26(b)(1), which provides that discovery must be "proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

Recognizing that its determination is not an exact science, the Court finds that Ms. Ho has failed to establish that it is likely that further discovery will produce material relevant evidence. Prior to expiration of discovery cutoff date, Ms. Ho was represented by Dykema, a sophisticated law firm. At the time it sought leave to withdraw from representing Ms. Ho, Dykema had billed Ms. Ho \$363,068.93 for services rendered. Thus, Dykema's attorneys expended substantial work in connection with this case. Further, counsel had ample time to pursue discovery into relevant issues. The discovery cutoff date of June 30, 2017 gave Ms. Ho approximately one year to conduct discovery (the Complaint was filed on August 16, 2016).

The Court cannot rule out the possibility that Dykema may have overlooked potentially promising areas which, if pursued by Ms. Ho's new counsel, could yield potential evidence. Such an outcome, while possible, is unlikely, particularly given the posture in which the instant Motion comes before the Court. First, the Motion relies substantially upon the Mega Bank account statements as the justification for reopening discovery. But the e-mail excerpted above clearly establishes that Ms. Ho's prior counsel was fully aware of the possibility that the signatures contained on the Mega Bank statements were forgeries. Why, then, did present counsel wait until now to seek to reopen discovery? The most plausible explanation is that the instant Motion is nothing more than a belated attempt by Ms. Ho to enhance her

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Liberty Asset Management Corporation

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negotiating leverage after mediation before Rebecca Callahan proved unsuccessful. That conclusion is bolstered by the fact that Ms. Ho's new counsel advised the Court on November 14, 2017, that it did "not believe at this time that discovery has to be reopened."

Factor five, foreseeability of the need for additional discovery in light of the time allowed for discovery by the court, weighs against granting the Motion. The discovery cutoff deadline allowed approximately one year for discovery to be conducted. A one-year discovery period is proportional to the needs of this case. The Complaint seeks damages against Ms. Ho "in excess of \$13 million." While this is a substantial amount, the damages sought are not so high as to warrant years of discovery.

Factor four, Ms. Ho's lack of diligence, weighs against granting the Motion, for the reasons discussed above. Factor one, the imminence of trial, and factor two, the Committee's opposition to the Motion, also weigh against reopening discovery.

Final Ruling Denying the Discovery Motion [Doc. No. 83] at 5–7.

On April 18, 2018, the Court entered an order approving the *Final Joint Pretrial Stipulation Between the Official Committee of Unsecured Creditors, Tsai Luan Ho, and Benjamin Kirk as Modified by the Court* [Doc. No. 89] (the "Pretrial Stipulation"). See Order After Pretrial Conference [Doc. No. 93]. The Pretrial Stipulation contains a list of exhibits which Ms. Ho may seek to introduce into evidence.

Plaintiff moves to exclude Ms. Ho from relying upon exhibits which she failed to produce during discovery. Plaintiff's Motion was filed before Ms. Ho had served her exhibits upon the Plaintiff, so the Motion does not identify the exhibits which Plaintiff seeks to exclude by exhibit letter. [Note 3] Instead, the Motion refers to the exhibits to which Plaintiff objects as the "New Documents."

Summary of Plaintiff's Motion in Limine

Plaintiff moves *in limine* to prevent Ms. Ho from relying upon the New Documents at trial, and makes the following arguments in support of the Motion:

- 1) The Court should exclude the New Documents and any related testimony for the same reasons that the Court denied Ms. Ho's Discovery Motion. Ms. Ho had sufficient time to conduct discovery and failed to demonstrate diligence or

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good cause for reopening discovery.

- 2) The New Documents should be excluded pursuant to Civil Rule 37(c)(1) because Ms. Ho failed to produce them during discovery.
- 3) The New Documents should be excluded because they are irrelevant. Plaintiff seeks to avoid fraudulent transfers from Liberty to Ms. Ho. The New Documents purport to establish that Ms. Ho received no benefit from the fraudulent transfers. For example, certain of the New Documents purport to show that some of funds Ms. Ho received from Liberty were used to pay homeowners' association fees and other carrying costs associated with properties located at (a) 126 Atherton Avenue, Atherton, CA (the "Atherton Property") and (b) 88 E. San Fernando, San Jose, CA (the "San Jose Units"). The Atherton Property and San Jose Units were sold in Chapter 11 bankruptcy cases pending in the Northern District of California, and Ms. Ho did not receive any proceeds from the sales. However, whether Ms. Ho received any benefit from the fraudulent transfers has no relevance to the issue at hand. The issue is whether the transfers themselves were fraudulent, not whether such fraudulent transfers benefitted Ms. Ho.

II. Findings and Conclusions

Ms. Ho's attempt to introduce the New Documents at trial is not well taken. In its *Final Ruling Denying the Discovery Motion*, the Court set forth in detail the reasons why Ms. Ho would not be permitted to reopen discovery. Ms. Ho's attempt to introduce the New Documents at trial is a frivolous attempt to circumvent the Court's previous ruling which will not be tolerated.

Exclusion of the New Documents is also required under Civil Rule 37(c)(1). **[Note 4]** Civil Rule 26(a)(1)(A)(ii) requires parties to produce all documents that they may use to support their claims and defenses. Civil Rule 37(c) provides that a party who fails to timely produce the information required by Rule 26 may not rely upon that information at trial, "unless the failure was substantially justified or is harmless." The burden is on the non-compliant party to "demonstrate that failure to comply with Rule 26(a) is substantially justified or harmless." *Torres v. City of Los Angeles*, 548 F.3d 1197, 1213 (9th Cir. 2008). Exclusion of evidence under Rule 37(c) does not require the Court "to make a finding of willfulness or bad faith," and the "implementation of the sanction is appropriate 'even when a litigant's entire cause of action ... [will be] precluded.'" *Hoffman v. Constr. Protective Servs., Inc.*, 541 F.3d 1175, 1180 (9th Cir. 2008).

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Ms. Ho's attempt to introduce the New Documents is neither harmless nor substantially justified. To the contrary, in view of the Court's previous denial of Ms. Ho's motion to reopen discovery, Ms. Ho's attempt to introduce the New Documents is in bad faith and would be prejudicial to the Plaintiff.

Finally, the New Documents are irrelevant and must be excluded pursuant to Evidence Rule 402. At issue is whether Plaintiff is entitled to avoid certain transfers from Liberty to Ms. Ho as actually or constructively fraudulent. The New Documents purport to show that Ms. Ho did not benefit from the transfers because some of the transferred funds were used to maintain properties that were ultimately sold. Ms. Ho argues that she did not benefit from the sales because the sales proceeds were used exclusively to pay creditors.

The Court makes no finding as to whether Ms. Ho benefitted from the transfers, because such a finding has no bearing upon whether the transfers were fraudulent. **[Note 5]** The issue is whether Plaintiff can establish that the transfers were actually fraudulent pursuant to §544 (applying Cal. Civ. Code §3439.04(a)(1)) and §548(a)(1)(A), or constructively fraudulent pursuant to §544 (applying Cal. Civ. Code §3439.04(a)(2)). Under §548(a)(1)(A), a transfer is avoidable as actually fraudulent if the debtor makes the transfer "with actual intent to hinder, delay, or defraud" the debtor's creditors. Cal. Civ. Code §3439.04(a)(1), made applicable by §544, contains a similar standard. Under Cal. Civ. Code §3439.04(a)(2), a transfer is avoidable as constructively fraudulent if (a) the debtor does not receive reasonably equivalent value in exchange for the transfer, and (b) the debtor was engaged in a business for which the remaining assets of the debtor were unreasonably small in relation to the business, or intended to incur debts beyond the debtor's ability to repay.

None of these standards contain any requirement that the fraudulent transferee ultimately receive any benefit on account of the fraudulent transfer. Certainly some fraudulent transferees benefit from receiving a fraudulent transfer. But in many cases fraudulent transferees choose to receive transfers only to help the debtor evade creditors, with no personal benefit to themselves. This often occurs in situations where the fraudulent transferee is a family member or close friend of the debtor, and the debtor retains control or possession of the fraudulently-transferred property. Therefore, the question of whether Ms. Ho received any personal benefit in connection with the transfers has no relevance to the adjudication of whether the transfers are avoidable as fraudulent.

Based upon the foregoing, the Motion is GRANTED. Ms. Ho may not rely upon the New Documents at trial. Plaintiff shall submit an order, incorporating this

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tentative ruling by reference, within seven days of the hearing.

Note 1

The Hon. Thomas B. Donovan presided over this adversary proceeding, as well as the main bankruptcy case of Liberty Asset Management Corporation ("Liberty"), from March 21, 2016 to January 29, 2017. On January 30, 2017, Liberty's main bankruptcy case and this adversary proceeding were reassigned to the undersigned Judge. Bankr. Doc. No. 325.

Note 2

Unless otherwise indicated, all "Bankr. Doc. No." citations are to the CM/ECF docket in Liberty's main bankruptcy case, Case. No. 2:16-bk-13575-ER; all "Adv. Doc. No." citations are to the CM/ECF docket in this adversary proceeding, Adv. No. 2:17-ap-01374-ER.

Note 3

Defendant did not timely deliver an exhibit binder to the Court. On May 18, 2018, the Court issued an *Order to Comply* requiring Defendant to submit an exhibit binder and other related trial materials by no later than Wednesday, May 23, 2018. Adv. Doc. No. 103. Defendant submitted her exhibit binder and other required trial materials by the May 23 deadline, except that the exhibit binder was missing exhibits C and O. The Court issued a second *Order to Comply*, requiring Defendant to submit the missing exhibits C and O by no later than May 25, 2018. Adv. Doc. No. 112.

Note 4

Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§101–1532.

Note 5

It is worth noting that the fact that Ms. Ho did not receive any proceeds from the sale of the properties does not conclusively establish that she did not benefit from the

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sales. For example, the sales could have benefitted Ms. Ho if they resulted in the satisfaction of debts which Ms. Ho had guaranteed.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Tsai Luan Ho

Represented By
James Andrew Hinds Jr
Paul R Shankman
Rachel M Sposato

Benjamin Kirk

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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10:00 AM

2:18-13337 Cory Christopher Coleman

Chapter 7

#100.00 Hearing
RE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2011 BMW 528i; VIN: WBAFR1C5XBC748038 .

Docket 9

***** VACATED *** REASON: STIPULATION ENTERED 5-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cory Christopher Coleman

Represented By
Raymond J Bulaon

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, May 29, 2018

Hearing Room 1568

10:00 AM

2:18-13270 James S. Sinor and Sunita S. Sinor

Chapter 7

#101.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Ford Edge, VIN 2FMTK3J8XFBB73833 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

5/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... James S. Sinor and Sunita S. Sinor

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

James S. Sinor

Represented By
Michael Salanick

Joint Debtor(s):

Sunita S. Sinor

Represented By
Michael Salanick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, May 29, 2018

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10:00 AM

2:11-62696 Ted Kim

Chapter 7

#102.00 HearingRE: [119] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 946 South Victoria Avenue, Los Angeles, CA 90019 . (Schloss, Edward)

Docket 119

Tentative Ruling:

5/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See e.g. Nev. Nat'l Bank v. Casbul of Nev., Inc. (In re Casgul of Nev., Inc.)*, 22 B.R. 65, 66 (9th Cir. BAP 1982); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (9th Cir. BAP 1981).

The subject property has a value of \$1,318,951.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$1,624,688.60. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors. Additionally, the Court notes that the Debtor did

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not list the property in the Debtor's Schedules.

Further, the Court finds that there are facts presented in the Motion sufficient for the court to find bad faith pursuant to § 362(d)(4). Debtor's filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved: (a) the transfer of all or part ownership of, or interest in, the Property without the consent of Movant or court approval; and (b) multiple bankruptcy cases affecting the Property. "Declaration of Beatrice Birbal" at para. 18. The Court does not make any finding as to whether the Debtor was involved in this bad faith scheme.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

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Party Information

Debtor(s):

Ted Kim

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh
Ashton R Watkins

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, May 30, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#1.00 TRIAL

RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17; 2-26-18; 5-29-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 7-24-18 AT 10:00 A.M.**

Tentative Ruling:

7/10/2017 (amended after hearing): The Committee and Ms. Ho engaged in a day-long session of mediation on June 26, 2017, and a second mediation session is scheduled to take place on July 26, 2017. Based upon the request of both the Committee and Ms. Ho that trial not be scheduled until 2018 in order to reduce attorneys' fees, the Court ORDERS that the following dates shall apply:

A continued status conference will take place on October 17, 2017, at 10:00 a.m. A Joint Status Report, which should discuss the status of settlement negotiations between the Committee and Ms. Ho, must be submitted by no later than fourteen days prior to the hearing.

A pretrial conference will take place on January 16, at 11:00 a.m. A Joint Pretrial Stipulation must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing.

Trial will take place during the week of **February 26, 2018**. The trial day commences at 9:00 a.m. The Court's courtroom deputy will contact counsel 2-3 weeks prior and advise counsel which day of the week the matter will be tried. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

Because William Crockett's withdrawal as counsel for Benjamin Kirk will not delay

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the proceedings, the Court will grant Mr. Crockett's motion to withdraw. Mr. Kirk is strongly advised to retain new counsel. Mr. Kirk is further advised that if he does not retain counsel, he will be held to the same standard as an attorney, and the trial date will not be continued based on his lack of representation by counsel.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Nathaniel Reinhardt or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-10974 Kenneth Yoon

Chapter 7

#1.00 HearingRE: [22] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3875 Overland Ave., Culver City, California . # 2 Exh. 1(b) # 3 Exh. 2 # 4 Exh. 3 # 5 Exh. 4) (Park, Ernie)

Docket 22

Tentative Ruling:

5/31/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on July 6, 2017.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

Furthermore, the Court finds that there is sufficient evidence to grant relief

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pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Josh Darbee in support of Motion at paragraph 18; *see also* "Request for Judicial Notice" [Doc. No. 25].

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Kenneth Yoon

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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**United States Bankruptcy Court
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Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-13878 Charae D Shaw

Chapter 7

#2.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 211 NW 2nd Avenue, Visalia, California 93291 UNDER 11 U.S.C. § 362. (Exnowski, Dane)

Docket 18

Tentative Ruling:

5/31/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Tifanee T. Brown in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed

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CONT... Charae D Shaw

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circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Charae D Shaw

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#3.00 HearingRE: [91] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Ronaldo Ramos and Vince Olivar . (Bitton, Ophir)

Docket 91

Tentative Ruling:

5/31/2018

The hearing on the Motion is CONTINUED to a final hearing on June 21, 2018 at 10:00 a.m., to be heard concurrently with the Debtor's Motion to Approve the First Amended Joint Disclosure Statement [Doc. Nos. 94, 95, & 98].

The Court has set hard deadlines by which the Debtor and Red Booth must obtain approval of the First Amended Joint Disclosure Statement, and confirm the First Amended Joint Plan. In its ruling extending the preliminary injunction, the Court recognized that “Issuance of a § 105(a) preliminary injunction is a powerful remedy that the Court does not employ lightly,” and, therefore, the Court stated that the preliminary injunction was extended “to afford the Debtor the protection of a preliminary injunction for the brief period of time necessary for the Debtor to obtain timely confirmation and approval of the First Amended Plan.” Adv. Doc. No. 41.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

CONT... Rideshare Port Management, LLC

Chapter 11

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#4.00 HearingRE: [90] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Carlos Lizardo . (Bitton, Ophir)

Docket 90

Tentative Ruling:

5/31/2018

See Cal. No. 3 above, incorporated by reference.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 11

#5.00 HearingRE: [75] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2278 Canyonback Road, Los Angeles, CA 90049 . (Wong, Jennifer)

Docket 75

Tentative Ruling:

5/31/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$1,725,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$1,974,532.91. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Deepak B. Vasandani and Mira Vasandani

Chapter 11

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
Sheila Esmaili

Joint Debtor(s):

Mira Vasandani

Represented By
Sheila Esmaili

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-12147 Avelina Conde Castillo

Chapter 11

#6.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11837 Wagner St., Culver City, CA 90230-5131 with proof of service. (Richey, Cassandra)

Docket 18

Tentative Ruling:

5/31/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

This case was dismissed on May 17, 2018. *See* "Notice of Dismissal" [Doc. No. 22]. Notwithstanding the dismissal of this case, the Court retained jurisdiction on issues arising under section 362. *Id.*

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Jessica Rudynski in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the

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10:00 AM

CONT... Avelina Conde Castillo

Chapter 11

date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Avelina Conde Castillo

Represented By
Krystina T Tran

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#7.00 HearingRE: [16] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Non-Bankruptcy Action: Logan Mortgage, Inc. v. Rabenu Enterprises, et al., Los Angeles Superior Court Case No. BC671887.

Docket 16

Tentative Ruling:

5/31/2018

For the reasons set forth below, the Court finds that the Motion is moot.

This is a hearing on the "Motion for Relief from the Automatic Stay Under 11 U.S.C. section 362" (the "Motion") [Doc. No. 29] filed by the State Bank of India (California) ("SBIC"). On May 22, 2018, the Court held a hearing on the Debtor's "Motion for Order Authorizing Refinancing of Secured Debt and Related Relief" (the "Refinancing Motion") [Doc. No. 20]. *See also* Tentative Ruling at Doc. No. 46. The Movant, SBIC, filed a Limited Opposition to the Refinancing Motion [Doc. No. 39] stating that SBIC did not oppose the Refinancing Motion provided that SBIC was paid in full from the proceeds of the loan no later than June 1, 2018. *See also* Tentative Ruling at Doc. No. 46. After the hearing on the Refinancing Motion, and on the same date, the Court entered the Order Granting the Refinancing Motion [Doc. No. 47], pursuant to which the proceeds of the loan were to be distributed by the Debtor to pay, among other claims, the Movant's claim in full.

In light of the Order Granting the Refinancing Motion, and it appearing that the Movant's claim was paid in full from the proceeds of the loan--in the absence of any evidence or argument to the contrary--the Motion is moot.

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 04, 2018

Hearing Room 1568

10:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#8.00 HearingRE: [29] Motion for Relief from Stay with Supporting Declaration. (Pham, Teri)

Docket 29

Tentative Ruling:

5/31/2018

For the reasons set forth below, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 16]
- 2) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Rabenu Enterprises, LLC (the "Debtor") filed a voluntary Chapter 11 petition on April 20, 2018 (the "Petition") [Doc. No. 1]. On May 9, 2018, Logan Mortgage, Inc. (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 16].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum in an action currently pending in the California Superior Court, County of Los Angeles, captioned *Logan Mortgage, Inc. v. Rabenu Enterprises, et al.*, Case No. BC671887 (the "State Court Action"). The State

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CONT... Rabenu Enterprises, LLC

Chapter 11

Court Action was filed on August 10, 2017. Trial is estimated to require 2 days of trial/hearings. The Complaint in the State Court Action asserts claims for: breach of written contract; and quantum meruit. A mandatory settlement conference is scheduled for July and the Movant is in the midst of taking discovery. The Debtor is a co-defendant in the State Court Action along with certain non-debtors.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The Movants seek recovery primarily from third parties and agrees that the stay will remain in effect as to the enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- (2) Mandatory abstention applies under 28 U.S.C. § 1334(c)(2), and Movant agrees that the stay will remain in effect as to the enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- (3) The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum, because the State Court Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.

The Movant seeks to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. The Movant also requests waiver of the 14-day stay prescribed by FRBP 4001(a)(3).

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a

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CONT... Rabenu Enterprises, LLC

Chapter 11

summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir.

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CONT... Rabenu Enterprises, LLC

Chapter 11

1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing the Movant to continue the State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint. Therefore, the factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984) mitigate in favor of relief from stay.

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtor or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. Relief from stay is not necessary as to non-debtors, but the order may include them so that the action may proceed as set forth above.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Rabenu Enterprises, LLC

Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:18-01100 Equity Saver Construction, Inc., a California Corp v. Fuentes et al

#1.00

Status Hearing

RE: [1] Adversary case 2:18-ap-01100. Notice of Removal of State Court Action filed by Equity Saver Construction, Inc.

Docket 0

***** VACATED *** REASON: CONTINUED 6-21-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Aida Fuentes

Represented By
Robert G Uriarte

Does 1-111, inclusive

Represented By
Robert G Uriarte

Plaintiff(s):

Equity Saver Construction, Inc., a

Represented By
George Lee Liddle
Layne L Liddle

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01058 Goodrich v. Eska, Inc., a California corporation, d/b/a Event

- #2.00** Status conference RE: [1] Adversary case 2:17-ap-01058. **to monitor the status of the consummation of the Settlement Agreement** Complaint by David M. Goodrich against Eska, Inc., a California corporation, d/b/a Event Spice Wear. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-25-17; 12-12-17

Docket 1

Tentative Ruling:

6/4/2018

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments over a period of approximately one year, with the final payment to be made on November 20, 2018.

Pursuant to the Chapter 7 Trustee's request, a status conference to monitor the status of the consummation of the Settlement Agreement shall take place on **December 11, 2018, at 10:00 a.m.** The Trustee must submit a Status Report by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Shasa USA LLC

Chapter 7

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Eska, Inc., a California corporation,

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupan

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupan

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01065 Goodrich v. Have Fashion, Inc., a California corporation

#3.00 Status Conference RE: [1] Adversary case 2:17-ap-01065 **to monitor the status of the consummation of the Settlement Agreement** Complaint by David M. Goodrich against Have Fashion, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-12-17; 12-12-17

Docket 1

Tentative Ruling:

6/4/2018

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments over a period of approximately one year, with the final payment to be made on December 15, 2018.

Pursuant to the Chapter 7 Trustee's request, a status conference to monitor the status of the consummation of the Settlement Agreement shall take place on **January 15, 2019, at 10:00 a.m.** The Trustee must submit a Status Report by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Have Fashion, Inc., a California

Represented By
Michael H Yi

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01071 Goodrich v. Line Up, Inc., a California corporation

#4.00 Status Conference

RE: [1] Adversary case 2:17-ap-01071. Complaint by David M. Goodrich against Line Up, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547 (b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 9-12-17; 12-12-17

Docket 1

Tentative Ruling:

6/4/2018

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments over a period of approximately one year, with the final payment to be made on August 1, 2018.

Pursuant to the Chapter 7 Trustee's request, a status conference to monitor the status of the consummation of the Settlement Agreement shall take place on **August 21, 2018, at 10:00 a.m.** The Trustee must submit a Status Report by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Line Up, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01117 Goodrich v. Must Have Inc., a California corporation, d/b/a Da

#5.00 Status Conference

RE: [1] Adversary case 2:17-ap-01117. Complaint by David M. Goodrich against Must Have Inc., a California corporation, d/b/a Danbee. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr: 9-25-17; 1-29-18

Docket 1

Tentative Ruling:

6/4/2018

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments over a period of approximately one year, with the final payment to be made on December 15, 2018.

Pursuant to the Chapter 7 Trustee's request, a status conference to monitor the status of the consummation of the Settlement Agreement shall take place on **January 15, 2019, at 10:00 a.m.** The Trustee must submit a Status Report by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Must Have Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:18-01082 Gardner v. Soo-Hoo et al

#6.00 Status Hearing RE: [1] Adversary case 2:18-ap-01082. Complaint by Tamara Nicole Gardner against Bryan J Soo-Hoo, Law Offices of Brian J Soo-Hoo, APC dba Bankruptcy Law Professionals. (Charge To Estate). Summons and Adversary Cover Sheet Nature of Suit: (91 (Declaratory judgment)) (Havkin, Stella)

Docket 1

Tentative Ruling:

6/4/2018

Plaintiff states that the parties have been discussing settlement and requests a one-month continuance of the status conference to see if the case can be settled. The Court will hold a continued status conference in one month as requested by the Plaintiff, but will maintain the previously ordered litigation deadlines. In the Court's experience, the maintenance of litigation deadlines is the best means of facilitating settlement. Accordingly, the Court HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **7/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/30/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/29/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for

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CONT...

Tamara Nicole Gardner

Chapter 7

- dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/29/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the

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CONT...

Tamara Nicole Gardner

Chapter 7

requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).

i) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

Bryan J Soo-Hoo

Pro Se

Law Offices of Brian J Soo-Hoo,

Pro Se

**United States Bankruptcy Court
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10:00 AM

CONT... Tamara Nicole Gardner
DOES 1 through 10

Pro Se

Chapter 7

Plaintiff(s):

Tamara Nicole Gardner

Represented By
Stella A Havkin

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee v.

#7.00 Status Hearing RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

Tentative Ruling:

6/4/2018

The Answer to the Complaint was signed by Lorenzo Arteaga and Angelica M. Arteaga as "Defendants *in pro se*." However, the Answer was electronically filed via CM/ECF by attorney Michael F. Checkian at 8:17 p.m. on April 9, 2018.

Local Bankruptcy Rule ("LBR") 9011-2(b)(1) states that the "electronic filing or lodging of a document by a Filer through the CM/ECF ... system, constitutes a signature on that document by such Filer and shall subject the Filer to the same consequences as if the Filer had signed such document by hand, including sanctions under FRBP 9011 and liability for perjury." LBR 9011-2(b)(1) further provides that the electronic filing of a document through CM/ECF constitutes a signature on the document by the filer even if the document does not include in the signature block an "/s/" followed by the name of the filer.

Pursuant to LBR 9011-2(b)(1), by electronically filing the Answer on behalf of the Defendants, Mr. Checkian is deemed to have signed the Answer, notwithstanding the absence of his signature upon the Answer itself. By signing the Answer, Mr. Checkian is deemed to have made an appearance on behalf of the Defendants, and he will be treated as the Defendants' counsel of record, unless the Court authorizes him to withdraw from representation. The Clerk of the Court is directed to update the docket to reflect Mr. Checkian's representation of the Defendants.

The Court notes that in addition to filing and apparently drafting the Answer on behalf of the Defendants, Mr. Checkian has performed other legal services for the Defendants in this litigation. In response to the Court's *Order to Comply*, Plaintiff's counsel, Karen Ragland, filed a declaration stating that she received a proposed Status Report from the Defendants from Mr. Checkian.

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CONT... Lorenzo Arteaga

Chapter 7

Having reviewed the Joint Status Report submitted by the parties, the Court
HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **7/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/30/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/29/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/29/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:

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CONT...

Lorenzo Arteaga

Chapter 7

- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
- ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

Because the parties ultimately filed a Joint Status Report subsequent to issuance

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CONT... Lorenzo Arteaga

Chapter 7

of the *Order to Comply*, no sanctions will be imposed.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Lorenzo Arteaga	Pro Se
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Defendant(s):

Angelica Maria Arteaga	Pro Se
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Lorenzo Arteaga	Pro Se
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Joint Debtor(s):

Angelica Maria Arteaga	Pro Se
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Plaintiff(s):

FIDELITY NATIONAL TITLE	Represented By Karen A Ragland
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:17-24965 Jesus Jose Nevarez

Chapter 7

Adv#: 2:18-01069 Nevarez v. Shellpoint Mortgage Servicing et al

#8.00 Status Hearing RE: [1] Adversary case 2:18-ap-01069. Complaint by Jesus J Nevarez against Shellpoint Mortgage Servicing , Quality Loan Servicing Corp , Mortgage Electronic Registration Systems, Inc , Bank of America N.A. . (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)) ,(71 (Injunctive relief - reinstatement of stay)) ,(81 (Subordination of claim or interest)) ,(91 (Declaratory judgment)) ,(01 (Determination of removed claim or cause))(Serrano, Vera)

Docket 1

Tentative Ruling:

6/4/2018

In this action, Jesus Jose Nevarez ("Plaintiff"), proceeding *in pro se*, seeks a judgment (1) enjoining Shellpoint Mortgage Servicing ("Defendant") from foreclosing upon his residential property (the "Property") and requiring Defendant to modify Plaintiff's loan; (2) requiring Defendant to provide Plaintiff all paperwork pertaining to Plaintiff's loan; (3) requiring Defendant to submit a Proof of Claim in Plaintiff's underlying Chapter 7 bankruptcy case; and (4) requiring Defendant to provide to Plaintiff all records pertaining to any payments that Defendant has received on account of Plaintiff's loan.

By separate order, the Court will require Plaintiff to show cause why this action should not be dismissed, pursuant to Civil Rule 12(b)(6), for failure to state a claim upon which relief can be granted. *See Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6)"). The previously ordered litigation deadlines are VACATED. In the Order to Show Cause, the Court will require Plaintiff to address the Preliminary Findings set forth below.

Preliminary Findings

The Complaint alleges that Defendant refused to provide the requested loan documents to Plaintiff in view of the automatic stay arising in Plaintiff's Chapter 7 case. Transmission of such loan documents could be construed as an attempt to collect a debt in violation of the stay; thus, Defendant's refusal to provide the documents did

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10:00 AM

CONT... Jesus Jose Nevarez

Chapter 7

not violate applicable law.

On March 9, 2018, the Court entered an order confirming that a loan modification discussion would not violate the automatic stay. Bankr. Doc. No. 16. Plaintiff filed the instant Complaint shortly thereafter, on March 13, 2018, possibly before Defendant had received notice of the order. Therefore, it appears that the issues regarding Defendant's alleged refusal to provide loan documents may have been resolved.

The Complaint fails to allege specific facts showing that Defendant is barred from exercising its remedies, including foreclosure, with respect to the Property. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (requiring that a Complaint set forth *specific facts* showing that the pleader is entitled to relief, as opposed to threadbare, conclusory allegations). Nor does the Complaint allege any specific facts showing that the terms of the note require Defendant to offer Plaintiff a loan modification. Finally, the Complaint's demand that Defendant be required to file a Proof of Claim fails as a matter of law because this is a no-asset case in which creditors are not required to file Proofs of Claim.

Conclusion

Based upon the foregoing, by separate order the Court will require the Plaintiff to show cause why this action should not be dismissed, pursuant to Civil Rule 12(b)(6). The previously-ordered litigation deadlines are VACATED. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jesus Jose Nevarez

Pro Se

Defendant(s):

Quality Loan Servicing, Corp.

Pro Se

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Hearing Room 1568

10:00 AM

CONT... Jesus Jose Nevarez Chapter 7

Shellpoint Mortgage Servicing Pro Se

Mortgage Electronic Registration Pro Se

Bank of America N.A. Pro Se

Plaintiff(s):

Jesus J Nevarez Pro Se

Trustee(s):

Jason M Rund (TR) Pro Se

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:17-25586 Soheil Khanian

Chapter 7

Adv#: 2:18-01080 Khankhanian v. Khanian

- #9.00** Status Hearing RE: [1] Adversary case 2:18-ap-01080. Complaint by Bahram Khankhanian against Soheil Khanian . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) , (68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

Tentative Ruling:

6/4/2018

Trial is currently set for the week of January 28, 2019. Plaintiff requests that trial take place during the week of February 4, 2019, because of a conflict with trial in another action in which settlement does not appear to be possible. Defendant is also amenable to trial during the week of February 4, 2019.

The week of February 4, 2019 is not available for trials; however, the Court will continue the trial to the week of **February 25, 2019**. Associated litigation deadlines will also be continued so that they correspond to the continued trial date.

Based upon the foregoing, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this proceeding:
 - a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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CONT...

Soheil Khanian

Chapter 7

- e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and

**United States Bankruptcy Court
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CONT...

Soheil Khanian

Chapter 7

may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).

i) Trial is set for the week of **2/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Soheil Khanian

Represented By
Mitchell R Sussman

Defendant(s):

Sohiel Khanian

Pro Se

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Hearing Room 1568

10:00 AM

CONT... Soheil Khanian

Chapter 7

Plaintiff(s):

Bahram Khankhanian

Represented By
Dean P Sperling

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#10.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud)) (Tran, Kelly Ann)

Docket 1

***** VACATED *** REASON: CONTINUED 7-17-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01277 10TH STREET SANTA MONICA PROJECT, LLC et al v. MAXWELL

#11.00 Hearing
STATUS CONFERENCE RE: [70] Motion for Leave to File Counterclaim to Debtor's Second Amended Complaint in Adversary Proceeding and Combine Claim Therein; Memorandum of Points and Authorities

FR. 5-17-17; 8-15-17; 12-13-17; 3-6-18

Docket 70

Tentative Ruling:

6/4/2018

Appearances required.

On September 14, 2017, the Court approved a settlement agreement (the "Settlement Agreement") resolving this action. *See* Doc. Nos. 419, 428, and 433, Case No. 2:16-bk-13575-ER. The material terms of the Settlement Agreement are as follows:

- 1) Defendants shall pay Liberty Asset Management Corporation ("Liberty") \$1 million (the "Settlement Payment"). Settlement Agreement at ¶1 [Doc. No. 419 at Ex. A, Case No. 2:16-bk-13575]. Upon full payment of the Settlement Amount, Liberty "will promptly file a notice or stipulation of dismissal of the action." *Id.* at ¶6.
- 2) Defendants shall execute and deliver to Liberty a Stipulated Judgment against Defendants and in favor of Liberty in the amount of \$1.5 million. Liberty shall not record the Stipulated Judgment unless Defendants fail to make the Settlement Payment. Settlement Agreement at ¶2.
- 3) Defendants shall use their best efforts to sell property located at 17634 Bellflower Boulevard, CA (the "Bellflower Property") to a third party within twelve months (the "Sale Period"). Settlement Agreement at ¶3. Defendants shall receive the first \$150,000 of the sales proceeds (net of certain costs), with Liberty to receive the balance. If the Bellflower Property is not sold within the Sale Period, Liberty shall have the option, subject to Bankruptcy Court approval, to purchase the Bellflower Property from Defendants for \$150,000. *Id.* at ¶5.

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CONT... Liberty Asset Management Corporation

Chapter 11

Defendants have made the Settlement Payment. At a Status Conference conducted on March 6, 2018, Defendants stated that issues remain regarding the sale of the Bellflower Property:

Defendant wants to sell the [Bellflower Property] but has not yet received approval by [Liberty] (although Defendant has the right to sell the property, without such written approval). If the matter cannot be resolved between the parties it will require Defendant to file a Motion with the Court seeking approval of the sale of the dilapidated [Bellflower Property] to an adjoining landowner for its fair market value as provided to [Liberty], in writing, by Defendant. Therefore, the case should not be dismissed and a further status conference [should be] set out for 75 days.

Joint Status Report [Doc. No. 89] at ¶G.

At the March 6 Status Conference, Liberty asserted that because the Settlement Amount had been paid, it has "circulated a stipulation for dismissal ... and will file [the] stipulation once it is signed by Defendant." *Id.* at ¶G.

The Court made the following findings at the March 6 Status Conference:

In the Court's view, dismissal of the action at this juncture would be premature, given that the issues regarding the Bellflower Property have not been resolved and given that Defendants have not consented to execution of a stipulation for dismissal. However, on the present record, there is no compelling reason why consummation of the Settlement Agreement's provisions regarding sale of the Bellflower Property should require Court intervention. Those provisions are straightforward and the Court expects the parties to negotiate and resolve any issues regarding the sale in good faith.

Final Ruling at 5–6.

In the Status Report filed in connection with this Status Conference, the parties make conflicting representations regarding the Bellflower Property. Plaintiff states that the sales and marketing efforts of the Bellflower Property are continuing; Defendants state that the Bellflower Property has been sold. The parties must appear to clarify this inconsistency.

If the Bellflower Property has in fact been sold, the Court would be inclined to approve a stipulated dismissal of this action, with the Court retaining jurisdiction to enforce the terms of the Settlement Agreement.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

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CONT... Liberty Asset Management Corporation

Chapter 11

David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

MAXWELL REAL ESTATE	Represented By Julie A Esposito
CHUNBO ZHANG a/k/a GEORGE	Represented By Julie A Esposito
CHENHAN WU a/k/a CHENG	Represented By Julie A Esposito

Movant(s):

MAXWELL REAL ESTATE	Represented By Julie A Esposito
MAXWELL REAL ESTATE	Represented By Julie A Esposito

Plaintiff(s):

10TH STREET SANTA MONICA	Represented By Jeffrey S Kwong David B Golubchik
LIBERTY ASSET	Represented By Jeffrey S Kwong David B Golubchik John-Patrick M Fritz Lindsey L Smith Eve H Karasik Irving M Gross

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

Adv#: 2:18-01067 Base Architecture Planning & Engr., Inc. v. UNITED STATES OF

#12.00 Status Hearing RE: [1] Adversary case 2:18-ap-01067. Complaint by Base Architecture Planning & Engr., Inc. against UNITED STATES OF AMERICA on behalf of the INTERNAL REVENUE SERVICE. (Fee Not Required). Nature of Suit: (91 (Declaratory judgment)) (Hayes, M)

Docket 1

Tentative Ruling:

6/4/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this proceeding:
 - a) The last day to amend pleadings and/or join other parties is **7/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/30/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/29/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/29/2018**. (If the non-expert discovery

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CONT...

Base Architecture Planning & Engr Inc.

Chapter 11

cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).

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CONT...

Base Architecture Planning & Engr Inc.

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- i) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

Defendant(s):

UNITED STATES OF AMERICA

Pro Se

Plaintiff(s):

Base Architecture Planning & Engr.,

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#13.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Oganessian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

FR. 2-13-18; 4-17-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-21-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman

Pro Se

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Pro Se

Hassan Mahmoudi

Pro Se

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CONT... Rideshare Port Management, LLC

Chapter 11

Howard Miller	Pro Se
Jose Diaz	Pro Se
Juan Martinez	Pro Se
Kaushaal Laxmee	Pro Se
Raymond Moradian	Pro Se
Roberto Martinez	Pro Se
Ronaldo Ramos	Pro Se
Valo Khalatian	Pro Se
Vince Olivar	Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Adv#: 2:18-01108 Yolanda Flores Corporation v. Beverly Hills South Pacific Surgery Center,

#14.00 Status Hearing RE: [1] Adversary case 2:18-ap-01108. Notice of Removal of State Court Case to Bankruptcy Court [28 U.S.C. Section 1452(a); FRBP 9027, and LBR 9027-1(a)]; State Court Complaint, and Proof of Service by Yolanda Flores Corporation. Nature of Suit: (01 (Determination of removed claim or cause)) (Steinberg, Peter)

Docket 1

Tentative Ruling:

6/4/2018

Beverly Hills South Pacific Surgery Center, Inc., the Defendant herein and the Debtor in the underlying Chapter 11 case, removed this action to the Bankruptcy Court on April 19, 2018. Prior to the removal, trial before the Los Angeles Superior Court (the "State Court") was set for March 19, 2018. The Debtor and Defendant filed a voluntary Chapter 11 petition on March 15, 2018.

According to the Complaint, Plaintiff entered into a contract to provide medical billing and collection services to the Debtor and Defendant on June 26, 2009. The Complaint alleges that the Debtor and Defendant breached the contract, and seeks damages in excess of \$400,000.

By separate order, the Court will require the Debtor and Defendant to show cause why this action should not be remanded to the State Court. Title 28 U.S.C §1452 provides that the Court may remand an action "on any equitable ground." Courts consider the following factors in determining whether equitable grounds support remand:

- 1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- 2) the extent to which state law issues predominate over bankruptcy issues;
- 3) the difficult or unsettled nature of applicable law;
- 4) the presence of related proceeding commenced in state court or other nonbankruptcy proceeding;

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CONT...

Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

- 5) the jurisdictional basis, if any, other than § 1334;
- 6) the degree of relatedness or remoteness of proceeding to main bankruptcy case;
- 7) the substance rather than the form of an asserted core proceeding;
- 8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 9) the burden on the bankruptcy court's docket;
- 10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- 11) the existence of a right to a jury trial;
- 12) the presence in the proceeding of nondebtor parties;
- 13) comity; and
- 14) the possibility of prejudice to other parties in the action.

Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.), 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003).

In the Court's view, multiple *Enron* facts support remand. First, with respect to factor one, remand will not impair the efficient administration of the estate. After the State Court determines Debtor and Defendant's liability and damages, if any, the Debtor can seek confirmation of a Chapter 11 Plan. Second, with respect to factor two, the action involves only issues of state law. Third, with respect to factor ten, it appears that the removal may have involved forum shopping, given that the bankruptcy petition was commenced on the eve of trial. Finally, although not one of the specifically delineated *Enron* factors, the Court notes that the interests of judicial efficiency weigh in favor of remand, because prior to removal the State Court was on the verge of trying the action.

Based upon the foregoing, the Court will issue a separate order, requiring the Debtor and Defendant to show cause why this action should not be remanded to the State Court.

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CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

Defendant(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

Plaintiff(s):

Yolanda Flores Corporation

Represented By
Jerry Jen

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

10:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#15.00 HearingRE: [220] Ex parte application Ex Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex Parte Application for Order Shortening Time to Hear Motion; Memorandum of Points and Authorities; Declaration of Timothy L. Neufeld; and [Proposed] Order (Shikai, Yuriko)

Docket 220

Tentative Ruling:

6/4/2018

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Ex-Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex-Parte Application for Order Shortening Time to Hear Motion (the "Motion") [Doc. No. 220]
- 2) Order Setting Hearing on Shortened Notice on Defendant's Motion to Extend the Time to Disclose Rebuttal Experts [Doc. No. 221]
 - a) Declaration of Jennifer Mikolevine Re Notice of Order Setting Hearing on Shortened Notice of Defendant's Motion to Extend the Time to Disclose Rebuttal Experts [Doc. No. 224]
- 3) JL Am Plus, LLC's Opposition to Defendant MBN's Ex-Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex-Parte Application for Order Shortening Time to Hear Motion [Doc. No. 225]
 - a) Declaration of John S. Purcell in Support of JL Am Plus, LLC's Opposition to Defendant MBN's Ex-Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex-Parte Application for Order Shortening Time to Hear Motion [Doc. No. 226]
- 4) Reply Brief in Support of Defendant's Ex-Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex-Parte Application for Order Shortening Time to Hear Motion [Doc. No. 227]

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CONT... **Morad Javedanfar**

Chapter 7

I. Facts and Summary of Pleadings

On May 24, 2018, Defendant MBN Real Estate Investments, LLC, filed an *Ex-Parte Application for Order to Extend Time for the Disclosure of Rebuttal Experts, or, in the Alternative, Ex-Parte Application for Order Shortening Time to Hear Motion* [Doc. No. 220] (the "Motion"). On May 25, 2018, the Court issued an order setting a hearing on the Motion on shortened time. Doc. No. 221.

Trial in this action was initially set for the week of May 29, 2018. On May 9, 2018, the Court approved a stipulation continuing the trial to July 30, 2018. Doc. No. 210. The parties stipulated to the continuance to provide time for Plaintiff to pursue a motion to set aside a judgment which dismissed the action as to Defendant Morad Neman. Doc. No. 138.

Defendant moves to extend the deadline to disclose two rebuttal experts from March 7, 2018 to July 10, 2018. The March 7 deadline was set by a Scheduling Order entered on January 30, 2018. Doc. No. 186. Defendant states that if the Motion is granted, it will make its rebuttal experts available for deposition on July 12 and 13, 2018. Defendant states that the extension is necessary because the law firm responsible for trial strategy did not associate into the case until April 26, 2018, after the deadline to disclose rebuttal experts had passed.

In opposition to the Motion, Plaintiff argues that Defendant's failure to timely disclose rebuttal experts is neither substantially justified nor harmless. Plaintiff further argues that Defendant has failed to show good cause for the granting of relief upon an *ex-parte* application.

In its Reply in support of the Motion, Defendant asserts that Plaintiff's arguments regarding the *ex-parte* nature of the Motion are irrelevant because the Court set a briefing schedule on the Motion. Defendant states that Plaintiff will not be adversely affected if the extension is granted because it has offered to provide the rebuttal experts for deposition on July 12 and 13, 2018, prior to the trial date.

II. Findings and Conclusions

At the outset, the Court notes that contrary to the implication of Plaintiff's arguments, this is not an *ex-parte* matter. Although the Motion initially sought *ex-parte* relief in the alternative, the Court declined to consider the Motion on an *ex-parte* basis and instead set a briefing schedule. Plaintiff has filed an opposition to the Motion.

Turning to the merits, Defendant's deadline to disclose rebuttal experts was set by a Scheduling Order entered on January 30, 2018. Doc. No. 186. Civil Rule 16(b)(4)

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CONT... Morad Javedanfar

Chapter 7

provides that a scheduling order "may be modified only for good cause and with the judge's consent." "Rule 16(b)'s good cause' standard primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (internal citations omitted).

Because Defendant has failed to show it acted diligently with respect to the rebuttal expert disclosure deadline, the Motion is DENIED. Defendant seeks an extension based on the fact that its lead trial counsel had not associated into the case until after the rebuttal expert disclosure deadline had elapsed. However, Plaintiff was represented by sophisticated counsel at the time of the deadline. That counsel should have been aware that actions he took with regard to the disclosure (or nondisclosure) of experts and rebuttal experts would have a meaningful impact upon the trial. The fact that lead trial counsel had not yet associated in and therefore did not have an opportunity to review these decisions does not establish cause for an extension.

Plaintiff shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

**United States Bankruptcy Court
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CONT... **Morad Javedanfar**
 MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn
Yuriko M Shikai

Chapter 7

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01429 TIMOTHY J. YOO, Chapter 7 Trustee v. ALLIANCE MARKETING

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01429. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ALLIANCE MARKETING PARTNERS. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 2-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ALLIANCE MARKETING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01430 TIMOTHY J. YOO, Chapter 7 Trustee v. EIN CAPITAL

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01430. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against EIN CAPITAL. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

EIN CAPITAL

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01445 TIMOTHY J. YOO, Chapter 7 Trustee v. GREEN CAPITAL FUNDING

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01445. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GREEN CAPITAL FUNDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GREEN CAPITAL FUNDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01450 TIMOTHY J. YOO, Chapter 7 Trustee v. POWERUP LENDING

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01450. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against POWERUP LENDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

POWERUP LENDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-13104 Thomas Michael Garcia

Chapter 7

Adv#: 2:17-01336 Torrance Community Federal Credit Union v. Garcia

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01336. Complaint by Torrance Community Federal Credit Union against Thomas Garcia. false pretenses, false representation, actual fraud)) (Ferns, Amanda)

fr. 4-17-18

Docket 1

***** VACATED *** REASON: DISMISSED 5-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas Michael Garcia

Represented By
Daniel King

Defendant(s):

Thomas Garcia

Pro Se

Plaintiff(s):

Torrance Community Federal Credit

Represented By
Amanda N Ferns

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#108.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d), (e))) (Rafatjoo, Hamid)

FR. 6-12-18

Docket 1

Tentative Ruling:

6/4/2018

On May 24, 2018, the Court issued an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Pretrial and Trial Procedures* [Doc. No. 29] (the "Order to Comply"). In response to the Order to Comply, Plaintiff filed a declaration stating that the action has settled, that the parties have agreed to execute a Stipulated Judgment, and that the parties anticipate filing the Stipulated Judgment prior to the Pretrial Conference. As of the date of issuance of this tentative ruling, the Stipulated Judgment has not been filed.

Plaintiff is ORDERED to file the Stipulated Judgment by no later than **June 19, 2018**. The trial date is VACATED. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Felicidad Ferrer

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

Antony Thekkek

Represented By
Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-14457 Theresa Christine Wahl

Chapter 7

Adv#: 2:17-01367 Lemus v. Wahl et al

#109.00 Pre-Trial Conference RE: [23] Amended Complaint by Ramin R Younessi on behalf of Juan Antonio Lemus against all defendants. (RE: related document(s)1 Complaint by Juan Antonio Lemus against Theresa Christine Wahl. willful and malicious injury))

fr: 6-12-18

Docket 0

Tentative Ruling:

6/4/2018

On May 31, 2018, Defendant filed a *Motion to Approve Compromise Under Rule 9019 Between Defendant Theresa Christine Wahl and Plaintiff Juan Antonio Lemus* [Doc. No. 51] (the "Rule 9019 Motion") on a negative-notice basis. The Rule 9019 Motion provides that Defendant shall pay \$15,000 to the Plaintiff. Provided that no objections are filed, the Court is inclined to grant the Rule 9019 Motion. The trial date is VACATED. Defendant shall submit an order in connection with the Rule 9019 Motion as soon as the period to object has elapsed.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Theresa Christine Wahl

Chapter 7

Debtor(s):

Theresa Christine Wahl

Represented By
Nicholas M Wajda

Defendant(s):

Theresa Wahl

Represented By
Sheila Esmaili
Sanaz S Bereliani

Does 1 Through 20, Inclusive

Pro Se

Plaintiff(s):

Juan Antonio Lemus

Represented By
Ramin R Younessi
Sheila Esmaili

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01357. Complaint by Chasen Kyle Stanley against Education Finance Partners, ACS Loan Science, Asset Recovery Solutions, LLC, DEPARTMENT OF EDUCATION, Navient, Federal Loan Services, National Payment Center, Sallie Mae, Associated Recovery Systems. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Potier, Amanda)

FR. 6-12-18

Docket 1

Tentative Ruling:

6/4/2018

This action to determine the dischargeability of Plaintiff's student loans involves multiple Defendants. Stipulated judgments have been entered with respect to Defendants Navient Solutions, LLC (aka Navient), Doc. No. 51, and the United States Department of Education, Doc. No. 55. Defendant Sallie Mae has been dismissed, Doc. No. 49. The Clerk of the Court has entered default with respect to remaining Defendants (1) Education Finance Partners, (2) ACS Loan Science, (3) Asset Recovery Solutions, LLC, (4) National Payment Center, (5) Associated Recovery Systems, and (6) Federal Loan Services (collectively, the "Defaulted Defendants"). Plaintiff has filed motions seeking the entry of default judgment against each of the Defaulted Defendants.

Generally, it is not necessary for the plaintiff to serve a Motion for Default Judgment upon a defendant whose default has been entered. Civil Rule 5(a)(2)—made applicable to these proceedings by Bankruptcy Rule 7005—provides that "[n]o service is required on a party who is in default for failing to appear." Here, the Court will require Plaintiff to serve the Motions for Default Judgment upon the certain of the Defaulted Defendants. As set forth in greater detail below, the Court is concerned that some of the Defaulted Defendants may not have received sufficient notice of the Complaint.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

The Complaint seeks a judgment that three student loans have been discharged by the Plaintiff's Chapter 7 case. The Complaint alleges that Plaintiff is liable to multiple parties in connection with each student loan. Specifically, the Complaint alleges that the following loans have been discharged:

- 1) Loan #8573, in the approximate amount of \$23,478, made between the Plaintiff and (a) Education Finance Partners, (b) ACS Loan Science, and (c) Asset Recovery Solutions, LLC.
- 2) Loan #7469, made between the Plaintiff and (a) the United States Department of Education, (b) Navient, (c) Federal Loan Services, and (d) National Payment Center.
- 3) Loan #0280, made between the Plaintiff and (a) Sallie Mae and (b) Associates Recovery Systems.

It appears that in addition to suing the originator of the debt, Plaintiff also named the servicers and guarantors associated with each loan.

The Court will enter default judgment upon each named Defendant, provided the Court is satisfied that each Defendant has been properly served. However, in entering default judgment, the Court is determining only that any indebtedness which Plaintiff may owe to such Defendant has been discharged. The Court is not making a finding that Plaintiff is in fact indebted to each Defendant named in the Complaint.

This clarification is necessary in view of the large and complex ecosystem that has developed in the United States to service student loan debt. Student loans are typically owned by noteholders who contract with third parties, known as servicers, to collect the indebtedness. However, depending upon the precise terms of elaborate *Loan Master Servicing Agreements* entered into between noteholders and servicers, the servicers may have some residual economic interest in the cash flow stream generated by the underlying notes. In this sense, it could be argued that a student loan borrower owes at least a portion of the indebtedness arising from a student loan to the servicer.

In some cases, further complication results from the introduction of an administrative agent into the mix. The administrative agent supervises the servicer and in some cases provides consulting services to increase collections. Again depending upon the relevant contracts, an administrative agent may have a residual economic interest in the cash flows generated by the underlying note.

On the present record, the Court cannot determine the level of Plaintiff's indebtedness, if any, to each Defendant. Attempting to make such a determination is not necessary and would prove unduly burdensome. However, because it appears that

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

certain of the Defaulted Defendants may not have received sufficient notice of the Complaint, Plaintiff must serve the Motions for Default Judgment, accompanied by a copy of the Complaint, as follows:

ACS Loan Science

The records of the Texas Secretary of State do not contain a listing for "ACS Loan Science." There is an entry for "Loan Science, LLC," and the address of this entity corresponds to the address listed on the Proof of Service attached to the Summons and Complaint. However, Plaintiff did not serve this defendant's agent for service of process. The Motion for Default Judgment must be served upon the following addresses:

Loan Science, LLC
c/o Incorp Services, Inc.
815 Brazos, Ste. 500
Austin, TX 78701

Loan Science, LLC
Attn: Officer or Managing Agent
2111 Kramer Ln, Ste. 200
Austin, TX 78758-4069

Asset Recovery Solutions

Plaintiff properly served this Defendant at its principal office, located at 2200 Devon Ave., Ste. 200, Des Plaines, IL 60018. No further service of the Motion for Default Judgment is required. The Court will enter default judgment against this Defendant.

Associated Recovery Systems

The Summons and Complaint were not properly served upon this Defendant. The Motion for Default Judgment must be served upon the following addresses:

Associated Recovery Systems, Inc.
c/o Illinois Corporation Service Co.
801 Adlai Stevenson Drive
Springfield, IL 62703

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

Associated Recovery Systems, Inc.
Attn: Brandon Balck, President
201 W Grand Ave
Escondido, CA 92025

Education Finance Partners

According to the Complaint, this entity is a business of form unknown headquartered in California. The records of the California Secretary of State indicate that this entity is a Delaware corporation whose agent for service of process resigned in April 2009. It appears that this entity may have been dissolved.

The Court has been unable to determine the basis for Plaintiff's assertion that this entity can be served at 2227 220th Street, Carson, CA 90810. Nor can the Court determine the basis for the assertion that the entity is a California corporation; as noted, the records of the California Secretary of State show that this entity is (or was) a Delaware corporation.

The Court will not enter default judgment against a corporate entity unless Plaintiff establishes the jurisdiction in which the entity exists. Should Plaintiff wish to pursue the entry of default judgment against Education Finance Partners, Plaintiff must serve the Motion for Default Judgment upon this entity. Concurrently with such service, Plaintiff must submit a declaration establishing the entity's existence and establishing that the entity was served at the proper address.

Federal Loan Services

According to the Complaint, this entity is a business of form unknown headquartered in Pennsylvania. The records of the Pennsylvania Secretary of State do not contain a listing for "Federal Loan Services." The address upon which this entity was served corresponds to the current address of the Pennsylvania Higher Education Authority ("PHEAA").

The Court will not enter default judgment against a corporate entity unless Plaintiff establishes that such an entity actually exists. Should Plaintiff wish to pursue the entry of default judgment against Federal Loan Services, Plaintiff must serve the Motion for Default Judgment upon this entity. Concurrently with such service, Plaintiff must submit a declaration establishing the entity's existence and establishing that the entity was served at the proper address.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

National Payment Center

According to the Complaint, this entity is a business of form unknown headquartered in Minnesota. The records of the Minnesota Secretary of State do not contain a listing for "National Payment Center."

The Court will not enter default judgment against a corporate entity unless Plaintiff establishes that such an entity actually exists. Should Plaintiff wish to pursue the entry of default judgment against National Payment Center, Plaintiff must serve the Motion for Default Judgment upon this entity. Concurrently with such service, Plaintiff must submit a declaration establishing the entity's existence and establishing that the entity was served at the proper address.

Plaintiff shall serve the Motions for Default Judgment, as directed above, by no later than **June 12, 2018**. In the event that Plaintiff elects not to pursue default judgment against any of the Defaulted Defendants, Plaintiff shall file a notice dismissing each such Defaulted Defendant by no later than **June 12, 2018**. The trial, set for the week of June 25, 2018, is VACATED.

The Motions for Default Judgment shall be served on a negative notice basis, in accordance with the procedure set forth in Local Bankruptcy Rule 9013-1(o). In the event no timely opposition is filed, Plaintiff shall submit proposed default judgments in connection with each Motion. The hearings on the Motions for Default Judgment—currently set for June 21, 2018—are taken off calendar.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

ACS Loan Science	Pro Se
Asset Recovery Solutions, LLC	Pro Se
Navient	Pro Se
Federal Loan Services	Pro Se
National Payment Center	Pro Se
Sallie Mae	Pro Se
Associated Recovery Systems	Pro Se
US Department of Education	Represented By Elan S Levey
DOES 1 through 4, et al	Pro Se
Navient Solutions, LLC	Represented By Robert S Lampl

Plaintiff(s):

Chasen Kyle Stanley	Represented By Amanda J Potier
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Trustee(s):

Heide Kurtz (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01470 Swan Fence Incorporated v. Robbins

#111.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01470. Complaint by Swan Fence Incorporated against Brad Hilton Robbins. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Wainer, Maurice)

FR. 6-12-18

Docket 1

Tentative Ruling:

6/4/2018

Appearances required.

The Court has reviewed the Complaint and the Pretrial Stipulation. In the interests of judicial efficiency, the Court requires further information regarding the stipulated facts set forth in the Pretrial Stipulation. The Court is concerned that this action may not state a claim upon which relief can be granted against the Defendant, Brad Hilton Robbins.

The following facts have been established by the Pretrial Stipulation. Defendant Brad Hilton Robbins is and was at all relevant times the owner of Century Specialties Corporation ("Century"). Beginning in 2014 and continuing at least through January 2016, Mr. Robbins caused Century's president, Mr. Jun Ando, to make representations to Plaintiff Swan Fence, Inc. ("Swan Fence") regarding the sum of receivables owed to Century. Based upon these representations, Swan Fence extended credit.

The Court's concern arises from the Pretrial Stipulation's failure to specify whether Swan Fence extended credit to Mr. Robbins, to Century, or to both. The Pretrial Stipulation's list of facts remaining to be litigated suggests that Swan Fence extended credit to Century, although the Pretrial Stipulation is not entirely clear. If Swan Fence extended credit only to Century, it is unclear how Swan Fence could hold Mr. Robbins liable for the indebtedness (even if Mr. Robbins made misrepresentations

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

CONT... Brad Hilton Robbins

Chapter 7

to induce Swan Fence to lend the money to Century), unless Mr. Robbins was a guarantor. The Complaint does not allege that Mr. Robbins was the alter ego of Century.

Unless Plaintiff can establish a basis upon which Mr. Robbins is liable for the credit it extended, the Court will require Plaintiff to show cause why this action should not be dismissed, pursuant to Civil Rule 12(b)(6), for failure to state a claim upon which relief can be granted.

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

Brad Hilton Robbins

Pro Se

Plaintiff(s):

Swan Fence Incorporated

Represented By
Maurice Wainer

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

Adv#: 2:17-01476 Rund Chapter 7 Trustee v. Ulloa

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01476. Complaint by Jason Rund Chapter 7 Trustee against Lawrence Martin Ulloa. (Charge To Estate). with proof of service Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lee, Angie)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: DISMISSED 3-22-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Irene L Ulloa	Pro Se
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Defendant(s):

Lawrence Martin Ulloa	Pro Se
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Plaintiff(s):

Jason Rund Chapter 7 Trustee	Represented By Angie S Lee
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Trustee(s):

Jason M Rund (TR)	Represented By Angie S Lee
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 05, 2018

Hearing Room 1568

11:00 AM

2:17-24505 Sandra Monica Derpic

Chapter 7

#113.00 Hearing
RE: [23] Motion to Dismiss Case for Abuse and Notice of Motion (BNC)
Pursuant to 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to
Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's
Discharge; Memorandum of Points and Authorities and Declaration of Wendy
Carole Sadovnick in Support Thereof (Attachments: # 1 Exhibit 2 (cont.) to 5 #
2 Exhibit 5 (cont.) to 6) (Mar, Alvin)

FR. 4-17-18

Docket 23

***** VACATED *** REASON: WITHDRAWAL FILED 5-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sandra Monica Derpic

Represented By
Donald A Hayes

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 06, 2018

Hearing Room 1568

10:00 AM

2:14-25055 Noam Bouzaglou

Chapter 7

Adv#: 2:14-01645 Haworth v. Bouzaglou

#1.00 Hearing re [74] Application for appearance and examination of judgment debtor
NOAM BOUZAGLOU

Docket 0

***** VACATED *** REASON: CONTINUED 8-22-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Noam Bouzaglou

Represented By
Shai S Oved

Defendant(s):

Noam Bouzaglou

Represented By
Shai S Oved

Plaintiff(s):

Jeanne Haworth

Represented By
John P Byrne
Rachel M Sposato

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 06, 2018

Hearing Room 1568

10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#2.00 Show Cause Hearing

RE: [1] Plaintiff To Appear And Show Cause Why This Action Should Not Be Dismissed For Failure To Prosecute re: Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers , Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious injury)

Docket 1

Tentative Ruling:

For the reasons set forth below, the Order to Show Cause is DISCHARGED. A continued Status Conference shall take place on **September 11, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute [Doc. No. 21] (the "Order to Show Cause")
 - a) BNC Certificate of Notice of Order to Show Cause [Doc. No. 24]
- 2) Order Setting Continued Status Conference for June 6, 2018, at 10:00 a.m. [Doc. No. 23]
 - a) BNC Certificate of Notice of Order Setting Status Conference [Doc. No. 25]
- 3) Order to Comply with Local Bankruptcy Rule 7016-1 Re: Status Conference [Doc. No. 26]
 - a) BNC Certificate of Notice of Order to Comply [Doc. No. 27]
- 4) Plaintiff's Status Report [Doc. No. 28]
- 5) Defendant's Status Report [Doc. No. 30]
- 6) Plaintiff's Opposition to OSC Re: Rule 41(b) Dismissal [Doc. No. 29]
- 7) Defendant's Objection to Plaintiff's Opposition Regarding Order to Show Cause Re: Dismissal [Doc. No. 31]

I. Facts and Summary of Pleadings

In this dischargeability action, Plaintiffs allege that Defendant committed willful and malicious injury by secretly videotaping Plaintiffs changing and using the restroom. On March 15, 2017, the Court stayed this action pending resolution of the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 06, 2018

Hearing Room 1568

10:00 AM

CONT... Kevin Thomas Roy

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underlying state court action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable (the "State Court Action"). The Court made it abundantly clear that it was necessary for Plaintiffs to obtain a final judgment in the State Court Action before the instant action could be litigated:

The most efficient way to resolve this action is for Plaintiffs to prosecute the State Court Action to final judgment. In the event Plaintiffs obtain a final judgment in their favor, Plaintiffs may then return to this Court for a determination as to whether the judgment is dischargeable....

To be clear, Plaintiffs are required to obtain a judgment in the State Court Action if they wish to pursue in this Court their non-dischargeability claim. In the event that, for whatever reason, Plaintiffs do not prosecute the State Court Action to final judgment, Plaintiffs will not be permitted to return to this Court to attempt to establish Defendant's liability.

Final Ruling Denying Defendant's Motion to Dismiss [Doc. No. 11] at 6.

On January 25, 2018, the State Court issued an order providing in relevant part:

FINAL STATUS CONFERENCE

Case is not called for hearing.

[Plaintiffs'] Counsel represents case has not been served....

All future dates are ... placed off calendar.

An Order to Show Cause Re: dismissal for failure to serve is set for April 4, 2018 at 8:30 a.m. in Department 91. If the case is not served with proof of service filed by this hearing date, the case may be dismissed.

Minute Order Dated January 25, 2018.

On April 25, 2018, this Court issued an *Order Requiring Plaintiff to Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute* [Doc. No. 21] (the "Order to Show Cause"). The Order to Show Cause required Plaintiffs to respond to the Court's *Preliminary Findings*, which provided in relevant part:

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The fact that service defects existed at the time of the *final* status conference in the State Court Action is of serious concern to this Court. The Court has clearly advised Plaintiffs that it was necessary for them to obtain a final judgment in the State Court Action if they wished to prosecute the instant action. Given the Court's admonition, Plaintiff's apparent failure to diligently prosecute the State Court Action is tantamount to a failure to prosecute the instant action. Unless Plaintiff can demonstrate to the Court that it has been diligently prosecuting the State Court Action, the Court will likely order the dismissal of the instant action for failure to prosecute.

Order to Show Cause at 3.

On April 24, 2018, the State Court issued an order dismissing the State Court Action based upon Plaintiffs' failure to appear and failure to prosecute. (The dismissal of the State Court Action was not referenced in this Court's Order to Show Cause, because the dismissal had not been docketed as of the issuance of the Order to Show Cause.) In support of dismissal, the State Court's order stated that neither Plaintiffs or Defendant had appeared or had contacted the court in connection with the hearing on the Order to Show Cause Re: Dismissal.

On June 1, 2018, Plaintiffs filed an untimely opposition to this Court's Order to Show Cause. Plaintiffs state that they have obtained an order vacating the dismissal of the State Court Action. Plaintiffs further assert that despite setbacks, they are now diligently prosecuting the State Court Action. To support this contention, Plaintiffs attach a copy of an order issued by the State Court on May 31, 2018, requiring the Los Angeles Police Department to release evidence to the Plaintiffs.

Defendant submitted a declaration supporting dismissal of the instant case. In the declaration, Defendant asserts that the Complaint in the State Court Action has never been served upon him. Defendant further asserts that Plaintiffs have failed to serve various ex-parte motions in the State Court Action upon him.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of

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prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

Moneymaker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

As noted above, Plaintiffs' diligence in prosecuting the State Court Action is relevant to assessing Plaintiffs' diligence in prosecuting the instant action. The Court has made clear to Plaintiffs that obtaining final judgment in the State Court Action is a pre-requisite to litigating the instant action. Plaintiffs' prosecution of the State Court Action has hardly been a model of diligence. However, the dismissal of the State Court Action has been vacated and that action is now proceeding toward trial. Notwithstanding Plaintiffs' dilatory conduct, dismissal of the instant action would be too harsh a sanction in view of the public policy favoring disposition of cases on their merits. The Order to Show Cause is discharged.

The Court does not address Defendant's contention that he has not been properly served in the State Court Action. The dismissal of the State Court Action has been vacated and that action is now proceeding on the State Court's calendar. Issues regarding service of a state court complaint are for the state court to determine - not this court.

A continued status conference to monitor the progress of the State Court Action shall be held on **September 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. In addition to the Joint Status Report, Plaintiff must submit a detailed declaration, accompanied by supporting exhibits as appropriate, setting forth the actions Plaintiff has undertaken to prosecute the State Court Action to completion.

The Court will enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:16-23176 Kevin Thomas Roy

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Adv#: 2:17-01008 Schrauwers et al v. Roy

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17

Docket 1

Tentative Ruling:

6/5/2018

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:17-20784 Hiep Tan Tran

Chapter 7

#4.00 Hearing

RE: [44] Motion for Turnover of Property with proof of service (Avery, Wesley)

Docket 44

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 5-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Trustee(s):

Timothy Yoo (TR)

Represented By
Wesley H Avery

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2:17-20920 Patricio Diaz Guevarra

Chapter 7

#5.00 Hearing
RE: [14] Motion to Convert Case From Chapter 7 to 13.

FR. 4-3-18

Docket 14

***** VACATED *** REASON: PER ORDER ENTERED 5-14-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

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10:00 AM

2:18-10088 Daniel Raul Domenzain and Elizabeth Domenzain

Chapter 7

#6.00 Hearing
RE: [12] Motion to Redeem Property of the Estate (Wilks, Misty)

Docket 12

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Court finds that the redemption value of the Debtors' Vehicle is \$13,665.05.

Pleadings Filed and Reviewed:

- 1) Motion to Redeem Property of the Estate (the "Motion") [Doc. No. 12]
- 2) Opposition to the Motion (the "Opposition") [Doc. No. 13]
- 3) Debtors' Reply to the Opposition (the "Reply") [Doc. No. 19]
- 4) Order Setting Hearing and Briefing Schedule on the Motion [Doc. No. 24]
- 5) Supplemental Declaration of Jeff Goldenberg in Opposition to the Motion (the "Golddenberg Decl.") [Doc. No. 28]
- 6) Supplemental Declaration of Bret Allen in Opposition to the Motion (the "Supp. Allen Decl.") [Doc. No. 27]

I. Facts and Summary of Pleadings

Daniel Domenzain and Elizabeth Domenzain (the "Debtors") filed a voluntary Chapter 7 petition on January 3, 2018 (the "Petition") [Doc. No. 1]. The "Order of Discharge" was granted to the Debtors on April 23, 2018 [Doc. No. 22].

Procedural History

On February 21, 2018, the Debtors filed the "Motion to Redeem Property of the Estate" (the "Motion") [Doc. No. 12]. The Motion seeks to redeem certain personal property consisting of a 2012 Volkswagen Routan (the "Vehicle"), which is intended

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primarily for personal or family use, pursuant to 11 U.S.C. § 722.

On March 6, 2018, Exeter Finance, LLC (the "Creditor") filed the "Opposition to the Motion" (the "Opposition") [Doc. No. 13], in which the Creditor requested a continuance in order to allow the Creditor to inspect and evaluate the Vehicle.

On April 13, 2018, the Debtors filed the "Reply to the Opposition" (the "Reply") [Doc. No. 19]. The Reply argued that the Debtors gave the Creditor permission to contact the Debtors to schedule an evaluation of the Vehicle, however, the Debtors were not contacted by the Creditor to schedule the evaluation. The Debtors further argued that the Opposition failed to state a basis upon which to deny the Motion, and that the Opposition failed to include any evidence that would tend to rebut the Debtors' Valuation of the Vehicle. Based on this, the Debtors requested that the Court grant the Motion.

On April 26, 2018, the Court entered the "Order Setting Hearing and Briefing Schedule on the Motion" (the "Order Setting Hearing") [Doc. No. 24]. In its Order Setting Hearing, the Court stated, in pertinent part:

There is no merit to Debtor's position that Movant is not entitled to a hearing in connection with the Motion. Debtor contends that Exeter Finance LLC ("Creditor"), the entity holding a security interest in the vehicle, failed to request a hearing in its Opposition to the Motion. The Debtor's argument places substance over form. In the Opposition, Creditor "requests a continuance of this matter until it is able to inspect the vehicle" and states that it "needs approximately a 30-day extension of the existing hearing date to inspect the vehicle and submit its evidence to the Court." Opposition at 2. While these statements lack clarity and create confusion—especially considering that the Motion had not been set for hearing at the time the Opposition was filed—the Court deems the statements to constitute a request for a hearing on the Motion. Consequently, pursuant to the procedures set forth in LBR 9013-1(o), Creditor is entitled to a hearing on a Motion.

Doc. No. 24 (footnotes omitted). Based on this, the Court set a hearing on the Motion, and set a deadline for, among other things, the Creditor to submit evidence regarding the value of the Vehicle. *Id.*

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The Debtors' Appraisal

As evidence of the value of the Vehicle, the Debtors submit the independent valuation prepared by Collateral Valuation Services, LLC. *See* Motion, Ex. A (the "Debtors' Appraisal"). The Debtors' Valuation was prepared on February 1, 2018, and appraises the value of the Vehicle as \$6,083.00 "based on KBB." *Id.* Additionally, the Debtors submit an online printout from Kelley Blue Book. *See* Motion, Ex. B. Based on this evidence, the Debtors contend that the redemption value of the Vehicle is \$6,083.00.

The Creditor's Appraisal

Pursuant to the Order Setting Hearing, on May 17, 2018, the Creditor filed the "Supplemental Declaration of Bret Allen in Opposition to the Motion" (the "Supp. Allen Decl.") [Doc. No. 27], which included an appraisal of the Vehicle prepared by Property Damage Appraisers on May 16, 2018, *see* Supp. Allen Decl., Ex. A; however, the appraisal submitted by the Creditor was not accompanied by a declaration from the Creditor's Appraiser. On May 18, 2018, the Creditor filed the "Supplemental Declaration of Jeff Goldenberg in Opposition to the Motion" (the "Supp. Goldenberg Decl.") [Doc. No. 28], the appraiser who prepared the appraisal attached to the Supplemental Allen Declaration. The appraisal of the Vehicle prepared by Mr. Goldenberg on May 16, 2018 as a representative of Property Damage Appraisers, is attached as "Exhibit A" to the Supplemental Goldenberg Declaration (the "Creditor's Appraisal").

The Creditor's Appraisal appraises the value of the Vehicle as \$13,665.05. The Creditor's Appraisal also lists the sale or list price and adjusted value of six vehicles which were determined by Mr. Goldenberg to be comparable to the Debtors' Vehicle.

II. Findings of Fact and Conclusions of Law

Section 722 of the Bankruptcy Code provides in full:

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted

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under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption.

11 U.S.C. § 722. "The changes made to Bankruptcy Code § 506 by BAPCPA now make clear that the valuation is 'as of the date of the filing of the petition.'" *In re Ayers*, 2010 Bankr. LEXIS 519 n.3 (N.D. Cal. Bankr. 2010).

The amount to be paid to a creditor to redeem pursuant to § 722 is determined by 11 U.S.C. § 506(a) which provides in relevant part:

(a)(2) if the debtor is an individual in a case under chapter 7 . . . , such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.

11 U.S.C. § 506(a)(2). Courts consider retail values in the N.A.D.A. Guide or Kelly Blue Book in determining the replacement value of a vehicle for purposes of § 506(a)(2). *In re Labostrie*, 2012 WL 6554727 at *3 (BAP 9th Cir. 2012); *In re Morales*, 387 B.R. 36, 43 and 46 (Bankr. C.D. Cal. 2008). Moreover, this Court has held that:

absent unusual circumstances, the retail value should be calculated by adjusting the Kelley Blue Book or N.A.D.A. Guide retail value for a like vehicle by a reasonable amount in light of any additional evidence presented regarding the condition of the vehicle and any other relevant factors. Value should be calculated as of the petition date, not the valuation hearing. The burden in proving the reasonableness of any deviation from the guide retail value rests with the debtor because the debtor has the best access to information about the condition of the vehicle.

In re Morales, 387 B.R. at 45.

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The Court further acknowledged that "the condition of the vehicle might easily be established based predominantly on declarations submitted with the motion." *Id.* at 48. Further, the fair market value "is the price which a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy would agree upon after the property has been exposed to the market for a reasonable time." *In re Taffi*, 96 F.3d 1190 (9th Cir. 1996) (*en banc*), *cert. denied*, 521 U.S. 1103 (1997).

Here, the Court finds that the Creditor's Appraisal is the most accurate evidence of the redemption value of the Vehicle, and that the Debtor has not submitted sufficient evidence to show that the Creditor's Appraisal is unreasonable. Importantly, the Creditor's Appraisal contains a list of six comparable vehicles to the Debtors' Vehicle, which together have an average base value of \$12,422.77. In contrast, the Debtors' Appraisal does not list any comparable vehicles, and the Debtors' have not submitted any additional evidence that the Creditor's Appraisal is unreasonable. Furthermore, the Debtors' Appraisal, which is "based on KBB," appears to set forth the trade-in value of the Vehicle, *see* Motion, Ex. B (Kelly Blue Book "Trade-in Range"). The trade-in value is not typically indicative of "the price which a willing seller under no compulsion to sell and a willing buyer under no compulsion to buy would agree upon after the property has been exposed to the market for a reasonable time." *In re Taffi*, 96 F.3d at 1190; *see also* 11 U.S.C. § 506(a)(2) (the movant must establish a redemption value based on "the price a retail merchant would charge for property of that kind considering the age and condition of the property").

Therefore, in accordance with § 506(a)(2), the Court finds that the Creditor's Appraisal of \$13,665.05 more accurately reflects the price a retail merchant would charge for the Vehicle.

III. Conclusion

Based on the foregoing, the Court finds that the redemption value of the Debtors' Vehicle is \$13,665.05.

The Creditor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to

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submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Daniel Raul Domenzain

Represented By
Misty Wilks

Joint Debtor(s):

Elizabeth Domenzain

Represented By
Misty Wilks

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:14-31581 Rosales Meat Distributors Inc

Chapter 11

#7.00 POST Confirmation status conference re chapter 11 plan

fr. 8-2-16; 3-13-17; 3-6-18; 3-7-18

Docket 222

***** VACATED *** REASON: FINAL DECREE ENTERED 4-27-18**

Tentative Ruling:

3/6/2018

No appearances required. This is a post-confirmation status conference. The Debtor will shortly be filing a motion for entry of a discharge and final decree. The Court continues the status conference to **June 6, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. If a discharge and final decree have been entered prior to that date, the status conference will go off calendar.

Party Information

Debtor(s):

Rosales Meat Distributors Inc

Represented By
Rosendo Gonzalez

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

#8.00 HearingRE: [633] Motion for order confirming chapter 11 plan Official Unsecured Creditors Committees Notice Of Motion And Motion For Order Confirming First Amended Chapter 11 Plan Of Liquidation Dated January 31, 2018; Declaration Of C. Alex Naegele

Docket 633

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Plan is CONFIRMED.

Pleadings Filed and Reviewed:

- 1) Official Unsecured Creditors' Committee's Notice of Motion and Motion for Order Confirming First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 [Doc. No. 633] (the "Confirmation Motion")
 - a) Analysis of Ballots for Accepting or Rejecting First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 [Doc. No. 634]
 - b) Errata Re Analysis of Ballots for Accepting or Rejecting First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 [Doc. No. 636]
 - c) Notice of: (1) Approval of Official Unsecured Creditors' Committee's First Amended Disclosure Statement; (2) Plan Confirmation Hearing; (3) Dates and Deadlines Relating to Plan Confirmation Hearing; and (4) Manner of Service [Doc. No. 614]
 - i) Declaration of Myra Kulick Re Service by Mail of Plan Solicitation Materials [Doc. No. 617]
 - d) Supplemental Proof of Service of: (1) Official Unsecured Creditors' Committee's Notice of Motion and Motion for Order Confirming First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018; Declaration of C. Alex Naegele; and (2) Analysis of Ballots for Accepting or Rejecting First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018; Declaration of Beth Dassa [Doc. No. 637]
 - e) First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset

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CONT... Liberty Asset Management Corporation Chapter 11

Management Corporation [Ex. A, Doc. No. 609]

- 2) Objection of Benjamin Kirk and the Board of Directors of Liberty Asset Management Corporation to the First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by Official Unsecured Creditors' Committee for Liberty Asset Management Corporation [Doc. No. 647]

I. Facts and Summary of Pleadings

The Official Committee of Unsecured Creditors for Liberty Asset Management Corporation (the "Committee") seeks confirmation of its *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 Proposed by the Official Unsecured Creditors' Committee for Liberty Asset Management Corporation* (the "Plan"). Creditors entitled to vote support the Plan by an overwhelming margin. The only party objecting to confirmation is Benjamin Kirk, who claims an equity interest in Liberty Asset Management Corporation ("Liberty") which will be cancelled under the Plan. For the reasons set forth below, Mr. Kirk's opposition is overruled and the Plan is CONFIRMED.

The key provisions of the Plan are as follows:

- 1) All of the Debtor's assets will be liquidated. The liquidation will be overseen by a Plan Administrator, Bradley D. Sharp of Development Specialists, Inc. ("DSI"). The Plan Administrator's current hourly rate is \$640.00. It is estimated that total fees and costs payable to the Plan Administrator will not exceed \$200,000. The Plan Administrator may retain counsel to assist him in liquidating the estate's assets. It is contemplated that the Committee's counsel will serve as the Plan Administrator's counsel.
- 2) Upon the Effective Date, the Plan Administrator shall establish the amount of the Plan Reserves. The Plan Reserves shall consist of assets necessary to fund litigation related to ongoing causes of action, fees owing to the United States Trustee, and the Plan Administrator's fees and expenses.
- 3) The Debtor's principal remaining assets consist of cash; real estate; twenty million shares of common stock in California International Bank, N.A.; interests in investment entities that owned real estate; and causes of action against Benjamin Kirk, Lucy Gao, Shelby Ho, and Steven Tsang. The primary litigation asset is a judgment entered against Mr. Kirk and Ms. Gao in the amount of approximately \$74 million; an appeal of that judgment is currently pending before the District Court. The Committee estimates that, not including that Kirk/Gao Judgment, there will be between \$11.9 and \$13.8 million

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Liberty Asset Management Corporation

Chapter 11

available for distribution to holders of general unsecured claims (Class 3).

- 4) The Committee estimates that the aggregate amount of general unsecured claims (Class 3) will be approximately \$75 million to \$80 million. The Plan Administrator will make a distribution to holders of Class 3 claims on a quarterly basis, provided that the Plan Administrator has cash on hand of at least \$100,000 to distribute.

The Plan's classification scheme, and the votes submitted by creditors, may be summarized as follows:

- 1) Class 1 consists of priority claims. Class 1 is unimpaired and is deemed to accept the Plan.
- 2) Class 2 (and its attendant subclasses) consists of the secured claim of Los Angeles County (Class 2.A), the secured claim of Los Angeles County on account of property located in Azusa (Class 2.A.1), and the secured claim of Los Angeles County on account of property located in Mel Canyon (Class 2.A.2). Class 2 is unimpaired and is deemed to accept the Plan.
- 3) Class 3 consists of the claims of general unsecured creditors. Creditors holding 71% in number and 94% in dollar amount accepted the Plan. (This tabulation does not include the claims of Richbest Holdings LLC, Minyu Jessica Chang, YCJS 2012 LLC, and Shelby Ho, all of which have been disallowed for the reasons set forth in concurrently-issued tentative rulings.)
- 4) Class 4 consists of Liberty's equity interests. No property will be distributed to Class 4 under the Plan. Class 4 is deemed to reject the Plan.

Benjamin Kirk, who asserts an equity interest in Liberty, objects to confirmation of the Plan. Mr. Kirk asserts that the Plan does not provide for the "fair and equitable" treatment of Class 4, as required by §1129(b)(1). Mr. Kirk argues that the Plan fails to provide any oversight of professional fees because it allows the Plan Administrator to hire attorneys, financial advisors, and consultants on whatever fee arrangement he chooses. Mr. Kirk further argues that the Plan is not in the best interests of creditors as required by §1129(a)(7), because the professional fees incurred by the Plan Administrator to liquidate the remaining assets will exceed the costs of liquidation under Chapter 7.

The Committee has not submitted a Reply to Mr. Kirk's Opposition.

II. Findings and Conclusions

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CONT... Liberty Asset Management Corporation

Chapter 11

A. Mr. Kirk's Objections to Confirmation Are Overruled

Mr. Kirk's objections to confirmation of the Plan are overruled. It is true that the Plan allows the Plan Administrator to liquidate the remaining assets with minimal oversight. Article VII(D)(2)(o) allows the Plan Administrator to "engage employees and professionals to assist the Plan Administrator with respect to his or her responsibilities, including, but not limited to, any professionals employed by the Debtor or Committee." Article VII(D)(2)(f) authorizes the Plan Administrator to "pay all expenses, including Plan Expenses" Pursuant to Article I, "Plan Expenses" include expenses incurred by the Plan Administrator to pay professional fees. Therefore, the Plan allows the Plan Administrator to pay professionals with minimal oversight.

Normally such provisions would give the Court pause. However, this case has been characterized by intense litigation between the Committee and Mr. Kirk regarding who was entitled to exercise ultimate control over Liberty's operations. The Committee eventually prevailed, but the dispute significantly increased administrative costs. Creditors—who support the Plan by an overwhelming margin—could have reasonably concluded that any mechanism providing for Court oversight of the Plan Administrator's fees would only invite further litigation (and its attendant costs) from Mr. Kirk. Creditors could have decided that an absence of Court oversight with respect to the Plan Administrator's fees would ultimately result in a larger recovery upon their claims. It is not the place of the Court to second-guess the creditors' voting decision.

Mr. Kirk's contention that the Plan does not provide Class 4 with fair and equitable treatment, as required by §1129(b)(1), is overruled. Mr. Kirk asserts that he holds 100% of the equity in Liberty. Testimony elicited in connection with a previous hearing established that Lucy Gao may hold a 20–50% beneficial interest in Liberty. The Court has never ruled upon the issue of who holds Liberty's equity, and makes no such ruling today. However, assuming *arguendo* that Mr. Kirk and Ms. Gao are the holders of Liberty's equity, the Plan does not deprive them of fair and equitable treatment. The only way that Class 4 could receive any distribution in connection with the liquidation of Liberty's assets would be if the Committee succeeds in collecting upon the \$74 million judgment against Mr. Kirk and Ms. Gao. Absent that judgment, the Committee anticipates that between \$11.9 million and \$13.8 million will be available for distribution to general unsecured creditors. General unsecured claims are estimated to be between \$75 million and \$80 million. Therefore, Mr. Kirk and Ms.

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Gao would not receive a distribution unless the Committee collected upon its judgment against them. Of course, if the Committee collected upon the judgment, the distribution would be economically meaningless since it would merely return to Mr. Kirk and Ms. Gao the funds that had been collected from them.

B. The Plan Complies With All Applicable Provisions of §1129

As set forth below, the Court finds that the Plan complies with all applicable provisions of §1129.

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification scheme complies with §1122(a). Class 1 consists of priority claims; Class 2 and its attendant subclasses consists of secured claims; Class 3 consists of general unsecured claims; and Class 4 consists of equity interests.

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of ever unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority

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tax claims], and classes of interest." There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan separately classifies § 507(a)(2) administrative expense claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan." Classes that are impaired are separately classified. The Plan satisfied §1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan." The Plan specifies the treatment of general unsecured claims, which are impaired. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." Each claim or interest in a particular class is afforded the same treatment as other claims or interests in that same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation." The Plan provides for the appointment of Bradley D. Sharp as the Plan Administrator who will be responsible for liquidating the remaining assets. The Plan contains provisions authorizing the Plan Administrator to hire professionals to complete the liquidation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation . . . , of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of

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default in the payment of such dividends."

The Plan provides for the cancellation of all equity interests. Section 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Plan identifies Mr. Sharp, an experienced professional, as the Plan Administrator. The Plan satisfies § 1123(a)(7).

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization. The Plan contains certain of § 1123(b)'s optional provisions. The Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that Committee as plan proponent has complied with the applicable provisions of the Bankruptcy Code by obtaining approval of a Disclosure Statement and by soliciting votes in connection with the Plan in the manner ordered by the Court. The Committee has satisfied the requirements of § 1129(a)(2).

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The Plan presented here seeks results consistent with the purposes and objectives of the code—namely, the liquidation of the Liberty's remaining assets and the

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distribution of those assets to the holders of allowed general unsecured claims.

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." The Plan requires professionals to file fee applications to obtain payment for work performed during the pendency of the case. The plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses the identity of the Plan Administrator. The Plan satisfies § 1129(a)(5).

SECTION 1129(A)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(A)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

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For the reasons set forth in *Section A*, above, the Court finds that the Plan satisfies §1129(a)(7). In addition, the Court notes that liquidation under the Plan will be less expensive than liquidation under Chapter 7, because the Plan Administrator has the option to engage the Committee, which is already familiar with the case, to assist with the liquidation process.

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. Class 3, the only class which is impaired, has accepted the Plan. The Plan satisfies §1129(a)(8).

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment. The Plan provides for the payment of administrative and priority claims upon the Effective Date. The Plan satisfies § 1129(a)(9).

SECTION 1129(A)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan. Class 3 is impaired and has accepted the Plan. The Plan satisfies § 1129(a)(10).

SECTION 1129(A)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Plan provides for the appointment of an experienced Plan Administrator to liquidate the remaining assets. The Plan is feasible and satisfies §1129(a)(11).

SECTION 1129(A)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date. All fees payable to the UST will be paid prior to the Effective Date of the Plan. The Plan satisfies § 1129(a)(12).

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SECTION 1129(A)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(A)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

Liberty is a for-profit entity. Section 1129(a)(6) does not apply.

SECTION 1129(D)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes. No securities are issued under the Plan. The Plan satisfies § 1129(d).

III. Conclusion

Based upon the foregoing, the Plan is CONFIRMED. The Committee shall submit an appropriate order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#9.00 Hearing re [627] Objection to Claim #24 by Claimant Richbest Holding LLC and Minyu Jessica Chang in the amount of \$ 750,000 Filed by Creditor Committee Committee

Docket 0

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Committee's Claim Objection is SUSTAINED, and Claim No. 24 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Objection to Claim Number 24 Filed by Richbest Holding LLC (the "Claim Objection") [Doc. No. 627]
 - a) Notice of Objection to Claim [Doc. No. 628]
- 2) Reply of Richbest Holding LLC to the Claim Objection from the Official Committee of Unsecured Creditors (the "Opposition") [Doc. No. 645]
- 3) No Reply to the Opposition is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and

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identifying real properties for purchase and sale.

B. Claim 24 Asserted by Richbest Holding LLC

On October 25, 2016, Richbest Holding LLC ("Richbest") filed Proof of Claim 24-1 ("Claim 24"). Minyu Jessica Chang is the managing member of Richbest. Chang Decl. at ¶1 [Doc. No. 645]. Richbest asserts a general unsecured claim in the amount of \$750,000.

In support of Claim 24, Ms. Chang submitted a declaration stating that she met Benjamin Kirk and Shelby Ho in 2011, and agreed to accept a referral fee of \$1 million, which was later negotiated downward to \$750,000, in exchange for locating a purchaser for property located in San Francisco. Ms. Chang located a purchaser for the property and the transaction successfully closed.

On July 6, 2013, Richbest and Liberty executed two *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Estate Assets Agreement* (the "First Investment Contracts"). Ms. Chang states that she agreed to accept two properties from Mr. Kirk in lieu of a cash referral fee, and caused her wholly-owned entity Richbest to execute the Investment Contracts for the purpose of receiving title to the properties. Ms. Chang states that the properties set forth in the Investment Contract were never transferred to her.

On January 8, 2014, Liberty and Richbest executed a *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Estate Assets Agreement* (the "Second Investment Contract"). Ms. Chang states that Ms. Ho advised her that the properties referenced in the First Investment Contracts were undesirable and that it was better for her to take a partial ownership interest in the property referenced in the Second Investment Contract. Ms. Chang states that based upon these representations, she caused Richbest to cancel the First Investment Contracts and enter into the Second Investment Contract. Ms. Chang states that she never received title to the ownership interested contemplated by the Second Investment Contract.

In further support of the claim, Ms. Chang also submitted a letter signed by herself and countersigned by Ms. Ho. The letter provides in relevant part:

I am writing to confirm our understanding with respect to referral fees that you and your company have agreed to pay to Ms. Jessica Chang ("Broker") for the referral of the property (currently known as Saks Fifth Ave men [sic] Store building) located at 220 Post Street, San Francisco, CA. Per our conversation, if Broker presents you with one or more individuals or entities (the "Potential

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Purchaser") to purchase the property (or part of the property) and the property (or part of the property) is purchased by the Potential Purchaser, you agree to pay a referral fee to Broker of one million dollars ... within seven (7) days after the consummation of the transaction.

Claim 24 at p. 6.

C. Summary of the Committee's Objection to Claim 24 Filed by Richbest

The Committee asserts that Claim 24, filed by Richbest, should be disallowed for the following reasons:

- 1) The claim is unenforceable against Liberty because the referral agreement was between North American Capital Co. ("NAC") and Ms. Chang personally, not between Liberty and Richbest.
- 2) Ms. Chang states that Ms. Ho informed her that the referral fee would be paid by Liberty. This representations amounts to an oral modification of the agreement between NAC and Ms. Chang. Pursuant to the statute of frauds, an agreement for a commission must be in writing by the party charged or by the party's agent. Richbest lacks a written referral agreement executed by Liberty. Any oral agreement is unenforceable.
- 3) According to the claim, Mr. Kirk agreed to give Ms. Chang properties in lieu of a cash referral fee, and Richbest and Liberty subsequently entered into various Investment Contracts and Cancellations. Liberty did not receive \$750,000 in cash or services from Richbest. By 2012, Liberty was no longer profitable. Any promise by Liberty to transfer properties for no cash consideration was an intentionally or constructively fraudulent transfer for less than reasonably equivalent value, and claims based thereon should be disallowed.

D. Summary of Richbest's Opposition to the Committee's Claim Objection

Richbest makes the following arguments in its Opposition to the Committee's Claim Objection:

- 1) The Committee does not dispute the existence of the written agreement between NAC, on the one hand, and Richbest and Ms. Chang, on the other hand, which provided for the referral fee. Nor does the Committee dispute the existence of subsequent written agreements between Liberty, on the one hand, and Richbest and Ms. Chang, on the other hand, which provided that Liberty

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would transfer properties to satisfy its obligations in connection with the referral fee. The record therefore clearly establishes that like every other creditor of Liberty, Richbest and Ms. Chang are innocent victims whose claims must be paid.

- 2) There is no merit to the Committee's assertion that the claim is barred by the statute of frauds. The subsequent Investment Contracts and Cancellations entered into between Liberty and Richbest are sufficient to satisfy the statute of frauds.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." The documentation and testimony of Ms. Chang submitted in support of the claim do not establish that Richbest holds a claim that is enforceable against Liberty.

The letter memorializing the referral agreement provides that Ms. Ho and Ms.

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Ho's company, NAC, agreed to pay Ms. Chang personally a referral fee. There is no reference in the letter to Richbest. Ms. Chang argues that the subsequent Investment Contracts executed between Liberty and Richbest are sufficient to establish that Richbest holds a claim. But none of these Investment Contracts contain any reference to Ms. Chang's referral fee. The nexus between the Investment Contracts and the referral fee is established only by Ms. Chang's testimony regarding oral representations that were made to her. The referral fee at issue qualifies as an agreement to employ an agent to purchase or sell real estate within the meaning of Cal. Civ. Code §1624(a)(4). Pursuant to Cal. Civ. Code §1624(a)(4), such an agreement is not enforceable unless it is "in writing and subscribed by the party to be charged by the party's agent." Here, no such written agreement is present. As noted, the Investment Contracts do not qualify as a written agreement within the statute of frauds because they contain no mention of the transactions giving rise to the referral fee.

The Court is sympathetic to Ms. Chang's situation. However, the Court must enforce the clear requirements of the Bankruptcy Code and California law. Under applicable law, Richbest has failed to establish that it holds an enforceable claim against Liberty. Consequently, Richbest's claim must be disallowed.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 24 is DISALLOWED in its entirety. The Committee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on

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December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#10.00 Hearing re [625] Objection to Claim #36 by Claimant Minyu Jessica Chang. in the amount of \$ 907,500 Filed by Creditor Committee.

Docket 0

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Committee's Claim Objection is SUSTAINED, and Claim No. 36 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Objection to Claim Number 36 Filed by Minyu Jessica Chang (the "Claim Objection") [Doc. No. 625]
 - a) Notice of Objection to Claim [Doc. No. 626]
- 2) Reply of Minyu Jessica Chang to the Claim Objection from the Official Committee of Unsecured Creditors (the "Opposition") [Doc. No. 646]
- 3) No Reply to the Opposition is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

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B. Claim 36 Asserted by Minyu Jessica Chang

On October 25, 2016, Minyu Jessica Chang ("Ms. Chang") filed Proof of Claim 36-1 ("Claim 36"). Ms. Chang asserts an unsecured claim in the amount of \$907,500. In support of the claim, Ms. Chang attaches a *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Estate Assets Agreement* (the "Investment Contract") entered into between Liberty and JC Investment Management 2011 LLC ("JC Investment"). Ms. Chang states that JC Investment is her LLC, and that she caused \$690,000 to be wired to Shoreline Escrow Services, at the direction of Benjamin Kirk and Shelby Ho, in connection with the Investment Contract.

C. Summary of the Committee's Objection to Claim 36 Filed by Ms. Chang

The Committee asserts that Claim 36, filed by Ms. Chang, should be disallowed for the following reasons:

- 1) The claim is unenforceable against Liberty because the Investment Contract establishing the claim was entered into between Liberty and JC Investment. There is no evidence that the investment was assigned to Ms. Chang.
- 2) The claim is barred by the statute of limitations. The claim arises from Liberty's alleged breach of the Investment Contract, which was executed on November 3, 2011. JC Investment did not sue Liberty within four years of execution of the Investment Contract, and did not enter into any further agreements with Liberty regarding the alleged debt.

D. Summary of Ms. Chang's Opposition to the Committee's Claim Objection

Ms. Chang makes the following arguments in her Opposition to the Committee's Claim Objection:

- 1) Although it is true that the claim arises from the Investment Contract that was executed between Liberty and JC Investment, JC Investment is a single-purpose LLC, solely owned by Ms. Chang, that was created expressly for this transaction. JC Investment was dissolved after the dispute with Liberty arose. Based upon a unity of interest between Ms. Chang and JC Investment, the claim is enforceable against Liberty.
- 2) The claim is not barred by the statute of limitations, because the statute of limitations is tolled by Liberty's inequitable conduct and its concealment of the true facts from Ms. Chang.

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II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." The documentation and testimony of Ms. Chang submitted in support of the claim do not establish that she holds a claim that is enforceable against Liberty.

There is no dispute that the claim arises in connection with a contract entered into between Liberty and JC Investment. To the extent a claim is enforceable, such claim must be enforced by JC Investment. Ms. Chang asserts that she should be entitled to enforce JC Investment's claim based upon a "unity of interest" between herself and JC Investment, but cites no authority for this novel proposition. [Note 2] The Court cannot so cavalierly disregard corporate formalities. Presumably Ms. Chang used JC Investment to facilitate the transaction to mitigate her exposure to liability or to obtain tax advantages. Having taken advantage of the protections afforded by the use of an LLC, Ms. Chang cannot simply disregard the LLC's existence because she failed to cause the LLC to take the actions necessary to protect its rights.

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In addition, the claim is barred by the statute of limitations. Pursuant to Cal. Code Civ. Proc. §337, an action to recover upon a written contract must be brought within four years. Here, the Investment Contract was executed on November 3, 2011. Therefore, an action for breach of the Investment Contract became time-barred as of 2015.

There is no merit to Ms. Chang's contention that the statute of limitations is tolled based upon Liberty's alleged inequitable conduct. There is no dispute that Ms. Chang was aware that Liberty had failed to perform under the Investment Contract. This awareness triggered the statute of limitations. The reasons for Liberty's failure to perform under the Investment Contract do not toll the statute of limitations. If that were the case, the statute of limitations would be rendered meaningless because it could always be argued that the non-performing party's failure to perform was inequitable.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim No. 36, asserted by Ms. Chang, is DISALLOWED in its entirety. The Committee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

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Note 2

It is true that the concept of "unity of interest" may sometimes support a finding that an individual is the alter ego of a corporate entity. Such a finding is typically made to prevent a person from exploiting the corporate form to the detriment of creditors. Here, Ms. Chang invokes the "unity of interest" concept in an attempt to effectively revive the rights of a defunct corporate entity, when it is Mr. Chang who is responsible for failing to take the actions necessary to maintain the corporation's rights. The Court is unaware of any authority applying the "unity of interest" concept in such a manner.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#11.00 Hearing RE: [623] Objection to Claim #2 by Claimant YCJS 2012 LLC and their counsel David S. HenshawYCJS 2012 LLC. in the amount of \$ 1,210,191.78
Filed by Creditor Committee

Docket 591

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Committee's Claim Objection is SUSTAINED, and Claim No. 2 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Objection to Claim Number 2
Filed by YCJS 2012 LLC (the "Claim Objection") [Doc. No. 623]
 - a) Notice of Objection to Claim [Doc. No. 624]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

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B. Claim 2 Asserted by YCJS 2012 LLC

On April 13, 2016, YCJS 2012 LLC ("YCJS") filed Proof of Claim 2-1 ("Claim 2"). YCJS asserts an unsecured claim in the amount of \$1,210,191.78, based upon breach of contract. The contract allegedly breached is a *Disclosure Acknowledgment and Commitment to Purchase and Sell Distressed Real Estate Assets Agreement* (the "Purchase and Sale Agreement") entered into between Liberty and YCJS on October 10, 2012. The Purchase and Sale Agreement provided that Liberty would purchase, on YCJS' behalf, property located at 119 Furlong Lane, Bradbury, CA 91008 (the "Bradbury Property") in exchange for a \$900,000 payment. On account of the \$900,000 payment, YCJS would acquire a 10% interest in the Bradbury Property.

C. YCJS and the San Jose Units

On July 2, 2015, Lucy Gao, Benjamin Kirk, and Tsai-Luan Ho (aka Shelby Ho) executed a Memorandum of Understanding (the "MOU") pertaining to two condominium units located at 88 E. San Fernando Street, Units 89 and 99, San Jose, CA 95113 (the "San Jose Units"). Pursuant to the MOU, Mr. Kirk and Ms. Gao transferred a 100% ownership interest in NC Project Management LLC—which held title to the San Jose Units—to Ms. Ho. Ms. Ho agreed to transfer one of the San Jose Units (Unit 89) to YCJS on or before September 30, 2015, for the purpose of satisfying Liberty's indebtedness to YCJS.

In a Pretrial Stipulation entered into in connection with pending litigation between the Committee and Ms. Ho, Ms. Ho has admitted the following facts:

- 1) On August 5, 2015, on behalf of NC Project Management LLC, Ms. Ho quitclaimed all interest in the San Jose Units to her solely-owned entity, Big Max LLC ("Big Max").
- 2) Ms. Ho did not transfer any portion of the San Jose Units to YCJS, allegedly because YCJS did not want the property.
- 3) On August 3, 2016, Ms. Ho granted YCJS a lien on the San Jose Units to secure payment of \$1.23 million.
- 4) On or after August 2015, Ms. Ho caused the San Jose Units to be encumbered with various deeds of trust and received the net proceeds generated from these financings.
- 5) On January 10, 2018, Ms. Ho caused Big Max to commence a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Northern District of California, Case No. 18-bk-30031-DM.

Final Joint Pretrial Stipulation Between the Official Committee of Unsecured

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Creditors, Tsai Luan Ho, and Benjamin Kirk and Modified by the Court [Doc. No. 89, Adv. No. 2:16-ap-01374-ER] at ¶¶45–55.

D. The Settlement Between YCJS and Big Max

On March 29, 2018, YCJS filed Claim 6 in Big Max's Chapter 11 case, asserting a secured claim in the amount of \$1.3 million based upon the lien Ms. Ho had granted YCJS against the San Jose Units. On April 30, 2018, the Bankruptcy Court for the Northern District of California approved a settlement agreement between YCJS and Big Max (the "Settlement Agreement"). Doc. No. 71, Case No. 18-bk-30031-DM. The Settlement Agreement provided that YCJS would hold an allowed secured claim in the amount of \$1.3 million in the Big Max case, and further provided that YCJS would receive payment in full on its claim from the sales proceeds of the San Jose Units. *See* Doc. Nos. 59 and 71, Case No. 18-bk-30031-DM.

E. Summary of the Committee's Objection to Claim No. 2 Filed by YCJS

The Committee asserts that Claim No. 2, filed by YCJS, should be disallowed on the grounds that YCJS's indebtedness will be satisfied from the Settlement Agreement reached in the Big Max case. The Committee argues that YCJS cannot seek a double recovery from Liberty, to the detriment of Liberty's other creditors who will not receive a full recovery.

No opposition to the Committee's Claim Objection is on file.

II. Findings and Conclusions

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway*

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Transport, Inc.), 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Here, YCJS' claim is unenforceable because the indebtedness arising from Liberty's alleged breach of its contract with YCJS will be satisfied in connection with the Settlement Agreement reached in the Big Max case. Allowing YCJS' claim in this case would permit YCJS to obtain a double recovery, to the detriment of unsecured creditors who are unlikely to obtain a full recovery on account of their claims.

On October 10, 2012, Liberty and YCJS entered into the Purchase and Sale Agreement, which provided that Liberty would purchase the Bradbury Property on YCJS' behalf, and that YCJS would receive a 10% interest in the Bradbury Property in exchange for paying Liberty \$900,000. Liberty subsequently rolled the Purchase and Sale Agreement pertaining to the Bradbury Property into a similar agreement pertaining to property located at 3981 Alemany Blvd., San Francisco, CA (the "3981 Property"). After Liberty failed to transfer the 3981 Property to YCJS, Mr. Kirk and Ms. Gao, acting on Liberty's behalf, caused Liberty to enter into a Memorandum of Understanding with Ms. Ho, the purpose of which was to satisfy Liberty's indebtedness to YCJS. Specifically, the Memorandum of Understanding provided that Ms. Ho would transfer one of the San Jose Units (Unit 89) to YCJS on or before September 30, 2015.

Ms. Ho failed to transfer Unit 89 to YCJS and instead granted YCJS a lien against the San Jose Units in the amount of approximately \$1.23 million. The Settlement Agreement approved in the Big Max case provides that YCJS shall have an allowed secured claim in the amount of \$1.3 million against the Big Max estate, and further provides that YCJS shall receive payment of its claim in full from the sales proceeds of the San Jose Units. See Doc. Nos. 59 and 71, Case No. 18-bk-30031-DM. Accordingly, Liberty's indebtedness to YCJS, which initially arose on account of Liberty's alleged breach of the Purchase and Sale Contract pertaining to the Bradbury Property, has been satisfied in full in connection with the Settlement Agreement

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approved in the Big Max case. As a result of the satisfaction of YCJS' indebtedness, YCJS claim against the Liberty estate is unenforceable.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim No. 2, asserted by YCJS, is DISALLOWED in its entirety. The Committee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#12.00 Hearing re [621] re The Official Committee Of Unsecured Creditors objection To Late-Filed Claim Number 39 Filed Tsai Luan Ho aka Shelby Ho, and James Hinds, Esq.

Docket 0

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Committee's Claim Objection is SUSTAINED, and Claim No. 39 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Objection to Late-Filed Claim Number 39 Filed by Tsai Luan Ho aka Shelby Ho (the "Claim Objection") [Doc. No. 621]
 - a) Notice of Objection to Claim [Doc. No. 622]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

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B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claims Filed or Asserted by Tsai Luan Ho aka Shelby Ho

On October 29, 2016, Tsai Luan Ho aka Shelby Ho filed Proof of Claim No. 30-2 on behalf of her wholly-controlled entity Great Vista Real Estate Corporation ("Great Vista"). On October 30, 2016, Ms. Ho filed Proof of Claim 33-1 on behalf of Washe LLC.

Approximately thirteen months later, on November 17, 2017, Ms. Ho filed Proof of Claim No. 39 ("Claim 39") on behalf of herself. Ms. Ho asserts a general unsecured claim, in the amount of \$11,503,387, on account of "commissions earned on real estate transactions."

D. Summary of the Committee's Objection to Claim No. 39 Filed by Ms. Ho

The Committee asserts that Claim No. 39, filed by Ms. Ho, should be disallowed for the following reasons:

- 1) Pursuant to §502(b)(9), the claim must be disallowed because it was filed almost a year after the claims bar date.
- 2) Ms. Ho cannot escape application of the claims bar date by asserting that Claim No. 39 qualifies as an amended claim. There is no relationship between Claim No. 39 and the claims that Ms. Ho caused to be filed on behalf of Great Vista and Washe LLC.
- 3) Pursuant to the statute of frauds, codified at Cal. Civ. Code §1624(a)(4), the claim for real estate commissions is not enforceable because there is no written agreement supporting the claim.
- 4) Even if the statute of frauds did not bar the claim, the claim would still be time-barred because the statute of limitations applicable to enforcement of an oral contract is two years, and the majority of transactions supporting Claim 39 took place in 2011, five years prior to the petition date.
- 5) Pursuant to §502(d), the claim should be disallowed because the Committee is pursuing fraudulent transfer claims against Ms. Ho in a pending adversary proceeding.

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No opposition to the Committee's Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502(b)(9) requires the Court to disallow a claim if the "proof of such claim is not timely filed." Here, Ms. Ho filed Claim 39 approximately one year subsequent to the claims bar date. Notice of the claims bar date was provided to Ms. Ho and her attorney. In addition, Ms. Ho's awareness of the claims bar date is established by the fact that she caused proofs of claim to be filed on behalf of two other entities in which she held an interest. Because Claim No. 39 was not timely filed, it is DISALLOWED.

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Here, the claim is unenforceable under California law and therefore must be disallowed for this additional reason. Specifically, Cal. Civ. Code §1624(a)(4) provides that an agreement

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employing an agent to purchase or sell real estate is not enforceable unless the agreement is "in writing and subscribed by the party to be charged by the party's agent." Here, Claim 39 is not supported by any written agreement.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 39, asserted by Ms. Ho, is DISALLOWED in its entirety. The Committee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#13.00 Hearing
RE: [609] confirmation of the Debtors' Amended Chapter 11 Plan

fr. 4-3-18

Docket 591

Tentative Ruling:

6/5/2018

See Cal. No. 8, above, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:17-18394 Marco Antonio Cueto

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#14.00 Hearing
RE: [100] Confirmation of the debtor's second amended chapter 11 plan of reorganization

fr. 12-5-17; 2-21-18; 4-25-18

Docket 38

Tentative Ruling:

6/5/2018

Tentative Ruling:

For the reasons set forth below, the Debtor's Second Amended Chapter 11 Plan of Reorganization is CONFIRMED.

Pleadings Filed and Reviewed:

- 1) Second Amended Chapter 11 Plan of Reorganization (the "Second Amended Plan") [Doc. No. 100]
- 2) Ruling after Hearing RE Hearing on Confirmation of First Amended Plan [Doc. No. 98]
- 3) Motion to Confirm First Amended Chapter 11 Plan of Reorganization (the "Motion") [Doc. No. 90]
 - a) First Amended Chapter 11 Plan of Reorganization (the "First Amended Plan") [Doc. No. 68]
- 4) Opposition to Motion filed by Creditor Homestreet Bank (the "Opposition") [Doc. No. 95]
- 5) Reply to the Opposition (the "Reply") [Doc. No. 96]
- 6) Order Approving First Amended Chapter 11 Disclosure Statement (the "Disclosure Statement Order ") [Doc. No. 84]

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Marco Antonio Cueto

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- a) First Amended Disclosure Statement in Support of Plan of Reorganization (the "Amended Disclosure Statement") [Doc. No. 67]
- 7) Objection of Secured Creditor HomeStreet Bank to Approval of the Amended Disclosure Statement and Amended Plan of Reorganization (the "HomeStreet Objection") [Doc. No. 79]
 - a) Request for Judicial Notice in Support of the HomeStreet Objection [Doc. No. 80].

I. Facts and Summary of Pleadings

Marco Antonio Cueto (the "Debtor") filed a voluntary Chapter 11 Petition on July 11, 2017 (the "Petition") [Doc. No. 1]. The Debtor has continued to operate his business as a debtor-in-possession, and no Committee of Unsecured Creditors has been appointed in this case. On February 22, 2018, the Court entered the "Order Approving First Amended Chapter 11 Disclosure Statement" (the "Disclosure Statement Order ") [Doc. No. 84].

On January 9, 2018, the Debtor filed the "First Amended Chapter 11 Plan of Reorganization" (the "First Amended Plan") [Doc. No. 68]. The Debtor filed the "Motion to Confirm First Amended Chapter 11 Plan of Reorganization" (the "Motion") [Doc. No. 90] on April 4, 2018.

On April 11, 2018, Creditor HomeStreet Bank ("HomeStreet") filed the Opposition to Motion (the "Opposition") [Doc. No. 95]. The Opposition objected to the confirmation of the First Amended Plan on the following grounds: (1) the Amended Plan's proposal to repay HomeStreet's Secured Claim with interest payable at 5% amortized over 30 years from the Effective Date was insufficient—HomeStreet contended that 5.875% is an appropriate interest rate using the prime rate of 4.50% and adding a risk adjustment of 1.50%; (2) the First Amended Plan's proposal to pay a monthly payment of \$1,699.00 per month for 30 years beginning on the Effective Date was not sufficient to cure the arrearage amounts as of the Petition Date; (3) the First Amended Plan did not contain a specific undertaking as to which party will be responsible for post-confirmation real estate taxes and casualty insurance; and (4) the First Amended Plan proposed an extension of the maturity date of HomeStreet's loan to 2048—HomeStreet objected to any extension of the maturity date.

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On April 16, 2018, the Debtor filed the Reply to the Opposition (the "Reply") [Doc. No. 96]. The Reply stated that the Debtor was willing to modify the First Amended Plan in order to resolve each of the objections raised in the Opposition.

The Court held a hearing on the Motion on April 25, 2018. The Court continued the hearing to June 6, 2018 at 10:00 a.m. in order for the Debtor to make the contemplated modifications to the treatment of the Class 5(b) Impaired Secured Claim of HomeStreet, and to file a Second Amended Plan. See "Ruling after Hearing RE Hearing on Confirmation of First Amended Plan" [Doc. No. 98].

The Second Amended Plan

On May 16, 2018, the Debtor filed the "Second Amended Chapter 11 Plan of Reorganization" (the "Second Amended Plan") [Doc. No. 100]. The Second Amended Plan is summarized as follows:

- (1) Unclassified Claims including Administrative Priority and Tax claims: these claims include (i) professional fees and costs; (ii) United States Trustee's fees; and (iii) postpetition domestic support obligations. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later. Holders of priority tax claims are entitled to priority under § 507(a)(8), and such claims shall be paid over five years from the date of the entry of the order for relief with 4% interest. Holders of involuntary gap period claims allowed under § 502(f), which are entitled to priority under § 507(a)(3), will be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
 - (a) Priority Tax Claim of the IRS: The IRS has an Unsecured Priority Claim in the amount of \$1,827.40. The Debtor proposes to pay the Unsecured Priority Claim of the IRS in equal monthly payments of \$156.00 over a one year period with an interest rate of 4%.
- (2) Administrative Claims/Fees: The Debtor estimates his attorney fees and costs to Anyama Law Firm to be \$10,000.00. The Debtor proposes to pay his administrative fees from his earnings in the amount of \$10,000.00 on the Effective Date of the Plan. The Debtor understands that

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Administrative fees are subject to Court approval after notice and a hearing.

- (3) Class 5(b)—Impaired Secured Claim of Home Street Bank: HomeStreet Bank is the First lienholder on the Debtor's real property located at 15111 Freeman Ave., Apt. 72, Lawndale, CA 90260 (the "Freeman Property") and as of July 11, 2017, has an allowed secured claim in the amount of \$337,995.57 (the "HomeStreet Claim"). The Debtor proposes to pay the HomeStreet Claim over 30 years. The Second Amended Plan proposes to pay Home Street Claim over a period of 30 years with the total amount of payments over time totaling \$719,767.00, with an interest rate of 5.875%. The first payment date is the Plan Effective Date. The Debtor proposes to pay monthly installments on the first day of each month in the amount of \$1,999.00 with an anticipated final payment date of June 1, 2048.
- (4) Class 5(c)—Impaired Secured Claim of Citi Mortgage: Citi Mortgage is the Second lienholder on the Freeman Property and as of July 11, 2017, has an impaired secured claim for \$118,475.52. The total amount of payments over time to satisfy the Home Street Claim is \$118,475.52, with an interest rate of 0%. The first payment date was December 1, 2017. The Debtor proposes to pay monthly installments on the first day of each month in the amount of \$416.71 with an anticipated final payment date of February 21, 2037. The payments are based on the "Stipulation Agreement" entered into between the Debtor and Citi Mortgage. *See* "First Amended Chapter 11 Plan of Reorganization" (the "Second Amended Plan") [Doc. No. 100] Exhibit 1.
- (5) Class 6(b): Other General Unsecured Creditors: Other general unsecured creditors will be paid 100% of their allowed claims over one year in equal monthly installments due on the first day of each calendar month without interest starting on the first such date after the Effective Date. The total amount of the two claims in this class is \$1,040.42. *See* "First Amended Disclosure Statement in Support of Plan of Reorganization" (the "Amended Disclosure Statement") [Doc. No. 67], Exhibit C.
- (6) Executory Contracts and Unexpired Leases: The Debtor assumes the unexpired lease with Christina E. Blais, 15111 Freeman Ave., Apt. 72,

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Lawndale, CA 90260 (the "Blais Lease"). *See* Amended Disclosure Statement, Exhibit E. The Blaise Lease is a one year lease commencing on July 1, 2017 and ending July 1, 2018.

- (7) Sources of Plan Payments: The Debtor intends to make the payments required under the Plan from the following sources:
- (a) Available Cash: The Debtor projects \$10,500.00 cash will be available on the Effective Date.
- (b) Future Disposable Income: The Debtor estimates that projected monthly disposable income available to creditors for the one year period following confirmation will be \$1,024.46. This is based on the monthly income of \$10,142.59 and expenses of \$9,118.13 as set forth in the "Debtor's Declaration of Current/Postpetition Income and Expenses," Amended Disclosure Statement Exhibit A.
- (8) Risk Factors: The Plan has the following risks: the Debtor has a one year rental agreement with his tenant. The tenant may refuse to renew the lease which may result in a lapse in time before the Debtor can secure new tenants. Furthermore, tenants may default on their rental obligations.
- (9) Liquidation Analysis: Pursuant to the Debtor's liquidation analysis, the Disclosure Statement shows that, under Chapter 7 liquidation, unsecured creditors would likely be paid 0% on their claims. The Debtor asserts that under the proposed Plan, unsecured creditors would receive 100% recovery.

II. Findings of Fact and Conclusions of Law

As set forth below, the Court finds that the Second Amended Plan complies with all applicable provisions of § 1129.

Section 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the Collier, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting:

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'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" Collier on Bankruptcy ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

Each of the secured claims is classified separately, as is appropriate because each secured claimant has unique rights with respect to specific collateral. The claims of unsecured creditors in Class 6 are substantially similar to each other. The Second Amended Plan satisfies § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Amended Plan does not separately classify certain unsecured claims. Section 1122(b) is inapplicable.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary Chapter 11 case. The Second Amended Plan separately classifies § 507(a)(2) administrative expense claims and § 507(a)(8) priority tax claims. The Second Amended Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the plan "specify any class of claims or interests that is not impaired under the plan."

There are no unimpaired classes. The Amended Plan satisfies § 1123(a)(2).

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5. Section 1123(a)(3)

Section 1123(a)(3) requires that the plan "specify the treatment of any class of claims or interests that is impaired under the plan."

The description of each class set forth in the Second Amended Plan details the treatment of the impaired classes. The Second Amended Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Second Amended Plan provides the same treatment to claims and interests of the same class. The Second Amended Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the plan "provide adequate means for the plan's implementation."

The Second Amended Plan describes the means for implementation of the Second Amended Plan's provisions. The Second Amended Plan provides for funding from: \$10,500.00 of cash on hand on the Effective Date, and additional cash from projected disposable income, which is projected to be \$850.46 per month for the one-year period following confirmation. The Second Amended Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

The Debtor is an individual. Section 1123(a)(6) does not apply.

9. Section 1123(a)(7)

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Section 1123(a)(7) requires that the plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Debtor is an individual. Section 1123(a)(6) does not apply.

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization.

The Second Amended Plan contains certain of § 1123(b)'s optional provisions. The Second Amended Plan is consistent with § 1123(b).

Section 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title."

The Court finds that the Debtor as Second Amended Plan proponent has:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Disclosure Statement and Fixing Time for Filing Acceptance or Rejections of Plan" [Doc. No. 84]); and
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Motion in Individual Chapter 11 Case for Order Employing Professional" [Doc. No. 15]).

Accordingly, the Debtor has satisfied the requirements of § 1129(a)(2).

Section 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

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The Second Amended Plan presented here seeks results consistent with the purposes and objectives of the code. The Debtor negotiated the Second Amended Plan provisions with its secured creditors and at least one member of the unsecured creditor classes. The Second Amended Plan satisfies §1129(a)(3).

Section 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Second Amended Plan provides for payment of attorney and other professional fees only upon application to, and approval by, the Court. The Second Amended Plan satisfies § 1129(a)(4).

Section 1129(a)(5)

Section 1129(a)(5) requires that the plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Debtor is an individual; therefore, § 1129(a)(5) does not apply.

Section 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the Second Amended Plan, does not apply.

Section 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder

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of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Based upon its review of the Liquidation Analysis included with the Disclosure Statement, under Chapter 7 liquidation unsecured creditors would likely be paid 0% on their claims. The Second Amended Plan provides each holder of a claim in an impaired with a recovery or property of value, as of the Effective Date, that is not less than the amount that such holder would receive in a Chapter 7 liquidation. The Second Amended Plan satisfies § 1129(a)(7).

Section 1129(a)(8)

Section 1129(a)(8) requires each class to accept the plan, unless the class is not impaired. To accept a plan, members of a class must affirmatively vote in favor of the plan. *In re M. Long Arabians*, 103 B.R. 211, 215-16 (B.A.P. 9th Cir. 1989).

Classes 5(c), and 6(b) are both impaired and both classes voted to confirm the Second Amended Plan. Class 5(b) voted against the Classes 5(c), and 6(b) are both impaired and both classes voted to confirm the First Amended Plan; however, it appears that the Second Amended Plan has addressed the issues raised by HomeStreet in its initial Opposition to the Motion.

In addition to the above, to be "fair and equitable," a plan must comply with the "absolute priority rule." *See Case v. Los Angeles Lumber Co.*, 308 U.S. 106 (1939). In applying § 1129(b)(2)(B), this Court follows the approach set forth in *In re Arnold*, 471 B.R. 578 (Bankr. C.D. Cal. 2012) and applies the absolute priority rule to individual chapter 11 debtors. Collier defines that absolute priority rule:

A plan of reorganization may not allocate any property whatsoever to any junior class on account of the members' interest or claim in a debtor unless all senior classes consent, or unless such senior classes receive property equal in value to the full amount of their allowed claims, or the debtor's reorganization value, whichever is less.

7 Collier on Bankruptcy ¶ 1129.03 02 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

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As required by the Bankruptcy Code, the Second Amended Plan places claims and interests into various Classes according to their priority, with the exception of the "unclassified claims" consistent with the provisions of § 1123(a)(1). The Second Amended Plan complies with the absolute priority rule.

In sum, the Second Amended Plan satisfies the applicable requirements of § 1129(a)(8) and § 1129(b).

Section 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount on the effective date of the plan, unless the claimant agrees to different treatment.

The Second Amended Plan provides for payment of attorney and other professional fees only upon application to, and approval by, the Court. The Debtor will pay other claims allowed under § 503(b) and entitled to priority under § 507(a)(2), including United States Trustee's fees, in full on the Effective Date except to the extent that a holder of these claims agrees to other terms.

The Second Amended Plan satisfies § 1129(a)(9).

Section 1129(a)(10)

Section 1129(a)(10) requires that at least one class of impaired claims accept the plan.

Classes 5(c), and 6(b) are both impaired and both classes voted to confirm the Second Amended Plan. The Second Amended Plan satisfies § 1129(a)(10).

Section 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

Based upon its review of the budget projections included with the Amended Disclosure Statement, the Court finds that the Debtor's projected income and cash available on the Effective date are sufficient to make required plan payments. The

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Second Amended Plan is feasible and satisfies § 1129(a)(11).

Section 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

The Second Amended Plan and the projections in the Amended Disclosure Statement include payment of all Administrative Claims. The Second Amended Plan satisfies § 1129(a)(12).

Section 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

Section 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

Section 1129(a)(15)

Section 1129(a)(15) provides:

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2) [11 USCS § 1325(b)(2)]) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

The Court's "Ruling after Hearing RE Hearing on Confirmation of First Amended Plan" [Doc. No. 98], set May 23, 2018 as the deadline for any supplemental opposition to the Second Amended Plan. As of the date of this tentative ruling, no

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supplemental opposition to the Second Amended Plan has been filed. Therefore, the Second Amended Plan meets the requirements of § 1129(a)(15).

Section 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Debtor is an individual; therefore, § 1129(a)(16) does not apply.

Section 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Second Amended Plan on the grounds that the Second Amended Plan's purpose is the avoidance of taxes. The Second Amended Plan was proposed in good faith, and the principal purpose of the Second Amended Plan is to allow the Debtor to restructure his finances while paying creditors at least as much as they would receive in a Chapter 7 liquidation. The Second Amended Plan satisfies § 1129(d).

III. Conclusion

Based on the foregoing, the Debtor's Second Amended Chapter 11 Plan of Reorganization is CONFIRMED.

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

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2:10-62208 EPD Investment Co., LLC

Chapter 7

#15.00 HearingRE: [1265] Motion to Approve Compromise Under Rule 9019 Chapter 7 Trustee's Motion for Approval of Compromise with MUFG Union Bank, N.A., a National Association f/k/a Union Bank of California, N.A.; Memorandum of Points and Authorities; Declaration of Jason M. Rund in Support Thereof (Davis, Michael)

Docket 1265

Tentative Ruling:

6/5/2018

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Chapter 7 Trustee's Motion for Approval of Compromise with MUFG Union Bank, NA, a National Association fka Union Bank of California, NA [Doc. No. 1265] (the "Motion")
 - a) Notice of Motion [Doc. No. 1266]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of a compromise with MUFG Union Bank, NA, a National Association fka Union Bank of California, NA ("Union Bank"). On December 3, 2012, the Trustee commenced an adversary proceeding against Union Bank, alleging that the Trustee was entitled to avoid transfers from Union Bank to EPD in the amount of \$104,852.82. Pursuant to the proposed Settlement Agreement, Union Bank will pay the estate \$75,000 in full and complete satisfaction the Trustee's claims against Union Bank.

No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the

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litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that all three of the settlement agreements are adequate, fair, and reasonable, and are in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Settlement Agreement will yield \$75,000 for the estate—approximately three-quarters of the amount sought by the Trustee in the Complaint. No creditors have objected to approval of the Settlement Agreement.

Difficulties to Be Encountered in the Matter of Collection

The Trustee is unaware of any issues that would make it difficult to collect a potential judgment against Union Bank. Nonetheless, this factor weighs in favor of approving the Settlement Agreement, because even if the Trustee obtained judgment in the full amount demanded by the Complaint, the costs of collecting such a judgment would diminish the recovery, potentially leaving the estate worse off.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The litigation is fact-intensive and, in view of the comparatively small amount at issue, litigation costs could easily swamp any excess recovery that the Trustee might obtain should he pursue the action to final judgment.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. As noted, even if additional litigation could potentially yield an increased recovery, from the

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perspective of the estate and creditors, the victory would be pyrrhic given that the increased administrative costs would swamp any additional recovery for creditors.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:17-23023 Audrae LaMuriel Broadnaux

Chapter 7

#100.00 APPLICANT: Trustee - John J. Menchaca

Hearing re [23] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/5/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,856.55

Total Expenses: \$128.50

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Audrae LaMuriel Broadnaux

Represented By
Speros P Maniates

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 06, 2018

Hearing Room 1568

11:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#101.00

POST CONFIRMATION status conference re [121] FIRST AMENDED
Confirmation of chapter 11 plan

f. 7-25-12; 9-12-12; . 12-11-12; 2-27-13; 7-17-13; 8-21-13; 2-18-14; 5-7-14; 8-6-14; 2-17-15; 2-19-15; 2-16-16; 2-7-17; 6-13-17; 12-12-17

Docket 0

***** VACATED *** REASON: RESCHEDULED 6-20-18 AT 10:00 A.M.**

Tentative Ruling:

12/11/2017

This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to June 6, 2018 at 11:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno
Alexandre I Cornelius
Jeffrey Lee Costell

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 06, 2018

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#102.00 Hearing re [635] Chapter 11 Status Conference

Docket 0

Tentative Ruling:

6/5/2018

No appearances required. In compliance with a previous Court order the Debtor submitted the Status Report on May 23, 2018 [Doc. No. 645].

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, June 07, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#1.00 HearingRE: [68] Motion to Avoid Lien JUDICIAL LIEN with FINANCIAL PACIFIC LEASING

Docket 68

Tentative Ruling:

6/6/2018

For the reasons set forth below, the Second Renewed Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Second Renewed Motion to Avoid Judicial Lien of Financial Pacific Leasing LLC (the "Second Renewed Motion") [Doc. No. 68]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of Powell Industries [Doc. No. 31]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of Powell Industries without Prejudice [Doc. No. 42], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

On February 13, 2018, the Debtor filed the Renewed Motion to Avoid Judicial Lien of Powell Industries (the "Renewed Motion") [Doc. No. 53]. After the hearing on

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CONT... Jeannette Dore Broberg

Chapter 7

the Renewed Motion, the Court determined that service of the Renewed Motion did not comply with the Court's instructions to serve the Renewed Motion in a manner authorized under FRBP 7004(b). Thus, the Court denied the Renewed Motion without prejudice and directed the Debtor to file a Second Renewed Motion in accordance with the detailed and specific instructions for service set forth by the Court.

On April 25, 2018, the Debtor filed the Second Renewed Motion to Avoid Judicial Lien of Financial Pacific Leasing LLC (the "Second Renewed Motion") [Doc. No. 68]. The Second Renewed Motion was served on Financial Pacific Leasing LLC in a manner authorized by FRBP 7004(b). The Debtor is the owner of certain real property located at 7651 Kyle Street, Tujunga, CA 91042 (the "Property"). Second Renewed Motion at 2; "Declaration of Jeannette Broberg" ("Broberg Declaration") [Doc. No. 68] at ¶ 3. The Debtor claimed an exemption in the Property as her principal residence under Cal. Code Civ. P. § 703.140(b)(1). Petition, Schedule C. According to the Debtor's Schedule A, the Property has a fair market value of \$250,000.00. The Property is encumbered by a First Deed of Trust held by Wells Fargo Bank N.A. in the amount of \$352,818.00. The Second Renewed Motion seeks to avoid the judicial lien of Financial Pacific Leasing LLC in the amount of \$53,802.82, recorded on February 22, 2010. *See* Second Renewed Motion, Exhibit D. The Second Renewed Motion contends that the above-described judicial lien of Financial Pacific Leasing LLC impairs exemptions to which the Debtor would be entitled under 11 U.S.C. § 522(b).

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and

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CONT... Jeannette Dore Broberg

Chapter 7

(4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). “As the moving party, the debtor carries the burden of proof on all factors.” *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the pleadings and supporting declarations filed and reviewed, the Court finds that the Debtor has satisfied the requirements of § 522(f) and GRANTS the Second Renewed Motion.

The calculation of impairment is as follows: \$250,000 (FMV) - \$1.00 (the Debtor’s Exemption) - \$352,818.00 (Wells Fargo First Mortgage) = (\$102,819.00). Thus, the Court finds that the Judicial Lien of Financial Pacific Leasing LLC impairs the Debtor’s Exemption. Based on the foregoing, the Court GRANTS the Debtor’s Second Renewed Motion. The Judicial Lien of Financial Pacific Leasing LLC is avoided pursuant to 11 U.S.C. § 522(f) in its entirety.

The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Thursday, June 07, 2018

Hearing Room 1568

10:00 AM

2:10-26084 Jeannette Dore Broberg

Chapter 7

#2.00 HearingRE: [67] Motion to Avoid Lien JUDICIAL LIEN with POWELL INDUSTRIES

Docket 67

Tentative Ruling:

6/6/2018

For the reasons set forth below, the Second Renewed Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Second Renewed Motion to Avoid Judicial Lien of Powell Industries (the "Second Renewed Motion") [Doc. No. 67]
- 2) No Opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Jeannette Broberg (the "Debtor") filed a voluntary Chapter 7 petition on April 26, 2010 (the "Petition") [Doc. No. 1]. On March 21, 2011, the Court entered the Order of Discharge [Doc. No. 27], and on April 8, 2011, the Debtor's case was ordered closed pursuant to the "Order Closing Case" [Doc. No. 29].

On December 25, 2017, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 30]. On January 12, 2018, the Court entered the "Order Granting Motion to Reopen to File Lien Avoidance Motions" [Doc. No. 36]. On December 25, 2017, the Debtor filed, among other Lien Avoidance Motions, the First Motion to Avoid Judicial Lien of Powell Industries [Doc. No. 31]. On January 31, 2018, the Court entered the Order Denying the First Motion Avoid Judicial Lien of Powell Industries without Prejudice [Doc. No. 42], and ordered the Debtor to file a renewed motion pursuant to LBR 9013-1(o), served in a manner authorized under FRBP 7004(b).

On February 13, 2018, the Debtor filed the Renewed Motion to Avoid Judicial Lien of Powell Industries (the "Renewed Motion") [Doc. No. 53]. After the hearing on

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CONT... Jeannette Dore Broberg

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the Renewed Motion, the Court determined that service of the Renewed Motion did not comply with the Court's instructions to serve the Renewed Motion in a manner authorized under FRBP 7004(b). Thus, the Court denied the Renewed Motion without prejudice and directed the Debtor to file a Second Renewed Motion in accordance with the detailed and specific instructions for service set forth by the Court.

On April 25, 2018, the Debtor filed the Second Renewed Motion to Avoid Judicial Lien of Powell Industries (the "Second Renewed Motion") [Doc. No. 67]. The Second Renewed Motion was served on Powell Industries in a manner authorized by FRBP 7004(b). The Debtor is the owner of certain real property located at 7651 Kyle Street, Tujunga, CA 91042 (the "Property"). Second Renewed Motion at 2; "Declaration of Jeannette Broberg" ("Broberg Declaration") [Doc. No. 67] at ¶ 3. The Debtor claimed an exemption in the Property as her principal residence under Cal. Code Civ. P. § 703.140(b)(1). Petition, Schedule C. According to the Debtor's Schedule A, the Property has a fair market value of \$250,000.00. The Property is encumbered by a First Deed of Trust held by Wells Fargo Bank N.A. in the amount of \$352,818.00. The Second Renewed Motion seeks to avoid the judicial lien of Powell Industries in the amount of \$69,977.77, recorded on August 28, 2009. *See* Second Renewed Motion, Exhibit D. The Second Renewed Motion contends that the above-described judicial lien of Powell Industries impairs exemptions to which the Debtor would be entitled under 11 U.S.C. § 522(b).

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006).

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CONT... Jeannette Dore Broberg

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“As the moving party, the debtor carries the burden of proof on all factors.” *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the pleadings and supporting declarations filed and reviewed, the Court finds that the Debtor has satisfied the requirements of § 522(f) and GRANTS the Second Renewed Motion.

The calculation of impairment is as follows: \$250,000 (FMV) - \$1.00 (the Debtor’s Exemption) - \$352,818.00 (Wells Fargo First Mortgage) = (\$102,819.00). Thus, the Court finds that the Judicial Lien of Powell Industries impairs the Debtor’s Exemption. Based on the foregoing, the Court GRANTS the Debtor’s Second Renewed Motion. The Judicial Lien of Powell Industries is avoided pursuant to 11 U.S.C. § 522(f) in its entirety.

The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Dore Broberg

Represented By
Gerald McNally Jr
Andrew M Wyatt

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, June 07, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#3.00 HearingRE: [49] Motion For Summary Judgment Chapter 7 Trustee's Notice Of Motion And Motion For Summary Judgment On First, Third, And Fifth Claims For Relief; Memorandum Of Points And Authorities And Request For Judicial Notice In Support Thereof with Proof of Service

Docket 49

Tentative Ruling:

6/6/2018

For the reasons set forth below, the Motion is GRANTED. The Court finds that the Chapter 7 Trustee is entitled to partial summary adjudication in his favor with respect to the Complaint's first, third, and fifth claims for relief.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Summary Judgment on First, Third, and Fifth Claims for Relief [Doc. No. 49] (the "Motion")
 - a) Notice of Lodgment of Proposed Summary Judgment [Doc. No. 50]
 - b) Plaintiff's Proposed Statement of Uncontroverted Facts and Conclusions of Law Re Motion for Summary Judgment on First, Third, and Fifth Claims for Relief
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

The Debtor was married to Ronald Peterson ("Ronald") [**Note 1**], one of the defendants herein, from 1997 to 2010. Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Chapter 7 Trustee (the "Trustee") of undisclosed assets, and the Debtor's case was reopened.

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On October 19, 2017, the Trustee initiated the instant Complaint against Ronald and two LLCs—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona"). The Complaint seeks a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Real Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Complaint seeks turnover of the Real Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

The Trustee moves for partial summary adjudication on his claims for (1) declaratory judgment that the Real Property is community property and therefore property of the estate, (2) turnover of the Real Property, and (3) dissolution of Maitreya Nevada (the first, third, and fifth claims for relief). The Trustee states that if the Motion is granted, he will consent to dismissal, without prejudice, of the remaining claims. No Opposition to the Motion is on file.

II. Findings and Conclusions

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

For the reasons set forth below, the Court finds that the Trustee is entitled to partial summary adjudication in his favor, with respect to his claims for (1)

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declaratory judgment that the Real Property is community property and therefore property of the estate, (2) turnover of the Real Property, and (3) dissolution of Maitreya Nevada.

A. Material Facts as to Which there is No Genuine Dispute

Having reviewed the Motion, the pleadings on file, and the evidence submitted in support of the Motion, the Court finds that there is no genuine dispute as to the following material facts:

- 1) At all relevant times, defendant Ronald was and is an individual residing in the County of San Bernardino, State of California.
- 2) Ronald was married to the Debtor from 1997 to 2010.
- 3) At all relevant times, defendant Maitreya Nevada was and is a limited liability company operating by virtue of the laws of the State of Nevada.
- 4) At all relevant times, defendant Maitreya Arizona was and is a limited liability company by virtue of the laws of the State of Arizona. (Ronald, Maitreya Nevada, and Maitreya Arizona are collectively referred to as the "Defendants.")
- 5) The Debtor filed a voluntary petition for relief (the "Petition") under Chapter 7 of title 11 of the United States Code (the "Bankruptcy Code") on or about December 14, 2011 (the "Petition Date").
- 6) The Debtor's bankruptcy case was closed on April 30, 2012, reopened in March 2013, closed again in June 2013, and reopened again on July 6, 2016. The Trustee was reappointed on or about July 14, 2016.
- 7) On or about September 28, 2001, the Debtor and Ronald acquired and took title by Grant Deed (the "2001 Grant Deed") to a parcel of real property in San Bernardino County commonly known as 359 W. Langston Street, Upland, California 91786 (the "Real Property"), as "husband and wife as joint tenants."
- 8) The organizing documents for Maitreya Nevada were filed with the Nevada Secretary of State on or about February 10, 2004.
- 9) On or about February 23, 2004, the Debtor and Ronald executed and recorded in the San Bernardino County Recorder's Office, document number 2004-0126221, a Grant Deed transferring title to the Real Property to Maitreya Nevada (the "2004 Grant Deed"). The documentary transfer tax with respect to the recording of the 2004 Grant Deed was \$0.00.
- 10) There was no written agreement between Maitreya Nevada and Ronald and/or the Debtor relating to the recording of the 2004 Grant Deed.

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- 11) According to Ronald, the only reason the 2004 Grant Deed was recorded was that it appeared to Ronald to be a way to protect the Real Property from people who he believed wished Ronald and the Debtor harm.
- 12) On or about March 31, 2010, in proceedings pending in case number FAMRS1001158 in the San Bernardino Superior Court (the "State Court"), the Debtor served a *Schedule of Assets and Debts* on Ronald, which lists her interest in the Real Property, along with personal property (the "Personal Property").
- 13) On June 27, 2016, the State Court entered an order finding, among other things, that a prenuptial agreement entered into between Ronald and the Debtor was void because the Debtor was not fully apprised of the nature of the agreement.
- 14) Ronald caused the organizing documents for Maitreya Arizona to be filed with the Arizona Secretary of State on or about February 17, 2012.

B. The Trustee is Entitled to Partial Summary Adjudication on the First Claim for Relief for a Declaration that the Real Property is Property of the Estate

Pursuant to §541(a)(2), "[a]ll interests of the debtor and the debtor's spouse in community property as of the commencement of the case" constitute property of the estate. Because the State Court had not entered an order providing for the final disposition of property between the Debtor and Ronald as of the commencement of the Debtor's Chapter 7 petition, all community property of the Debtor and Ronald is property of the estate. *See Keller v. Keller (In re Keller)*, 185 B.R. 796, 799–800 (B.A.P. 9th Cir. 1995).

In *Marriage of Valli*, the California Supreme Court summarized the standards applicable to the determination of whether property is separate property or community property:

Property that a spouse acquired before the marriage is that spouse's separate property. (Fam.Code, § 770, subd. (a)(1).) Property that a spouse acquired during the marriage is community property (*id.*, § 760) unless it is (1) traceable to a separate property source (*In re Marriage of Lucas* (1980) 27 Cal.3d 808, 815, 166 Cal.Rptr. 853, 614 P.2d 285; *In re Marriage of Mix* (1975) 14 Cal.3d 604, 610, 612, 122 Cal.Rptr. 79, 536 P.2d 479), (2) acquired by gift or bequest (Fam.Code, § 770, subd. (a)(2)), or (3) earned or accumulated while the spouses are living separate and apart (*id.*, § 771, subd. (a)). A spouse's claim

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that property acquired during a marriage is separate property must be proven by a preponderance of the evidence. (*In re Marriage of Etefagh* (2007) 150 Cal.App.4th 1578, 1591, 59 Cal.Rptr.3d 419; see *Estate of Murphy* (1976) 15 Cal.3d 907, 917, 126 Cal.Rptr. 820, 544 P.2d 956 [a spouse asserting that property acquired by purchase during a marriage is separate property must prove that the property is not community].) ...

Married persons may, through a transfer or an agreement, transmute—that is, change—the character of property from community to separate or from separate to community. (Fam.Code, § 850.) A transmutation of property, however, "is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." (*Id.*, § 852, subd. (a).)
In re Marriage of Valli, 58 Cal. 4th 1396, 1400, 324 P.3d 274, 276 (2014)

Valli v. Valli (In re Marriage of Valli), 58 Cal. 4th 1396, 1400, 324 P.3d 274, 276 (2014).

Here, the Real Property is community property and is therefore property of the estate. The Debtor and Ronald acquired the Real Property while they were married; the Grant Deed providing for the transfer of title states that the Debtor and Ronald took title as "husband and wife as joint tenants." Because the Real Property was acquired during marriage, the Real Property is community property unless it is (1) traceable to a separate property source, (2) acquired by gift or bequest, or (3) earned or accumulated while Ronald and the Debtor were living separate and apart.

In testimony elicited during a Rule 2004 Examination, Ronald attempted to assert that he made the down payment on the Real Property using his separate property. In support of this contention, Ronald produced a \$5,000 check from his company Rotten Records, as well as a cashier's check, in the amount of \$78,441.79, that was purchased by Rotten Records. Ronald claimed that these checks were used to make a down payment in the approximate amount of \$83,000.

Notwithstanding the two checks and Ronald's testimony during the Rule 2004 Examination, the Court finds that there is no genuine dispute that the Real Property is community property. First, Ronald has failed to establish that the two checks were actually used to make the down payment. Even if Ronald could demonstrate that the checks were used for the down payment, he has not shown that the funds were his separate property. The fact that the funds purportedly originated from Ronald's company, Rotten Records, does not demonstrate that the funds were separate property;

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business income generated by Rotten Records during the marriage would constitute community property. The cashier's check for \$78,441.79 is dated September 26, 2001; the check for \$5,000 is dated July 18, 2001. Ronald and the Debtor were married in 1997. Therefore, for the checks to qualify as Ronald's separate property, Ronald would have to show that the funds were traceable to work he performed prior to 1997. Ronald has not made this showing.

Nothing in the record suggests that the Real Property was acquired by gift or bequest or was earned or accumulated while Ronald and the Debtor were living apart. Since the Real Property was acquired during marriage and none of the exceptions apply, the Real Property is community property.

There can be no genuine dispute that the Real Property is property of the estate notwithstanding the transfer of the Real Property to Maitreya Nevada in 2004. The Debtor and Ronald hold 100% of the equity interests in Maitreya Nevada, and the Real Property was community property at the time it was transferred to Maitreya Nevada in 2004. The Debtor and Ronald did not pay any transfer taxes in connection with the transfer, and the purpose of the transfer was to shield the Real Property from people who wished to inflict harm upon the Debtor and Ronald. Under these circumstances, the Real Property remained community property of Ronald and the Debtor.

C. The Trustee is Entitled to Partial Summary Adjudication on the Third Claim for Relief for Turnover of the Real Property

Section 542 provides: "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title ..., shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." The "property" referred to in §542 "is generally understood to mean 'property of the estate,' as defined in section 541." *Collier on Bankruptcy* 542.02[2] (16th rev'd ed. 2015).

As set forth in *Section B*, the Real Property is property of the estate. Accordingly, the Trustee is entitled to turnover of the Real Property.

D. The Trustee is Entitled to Partial Summary Adjudication on the Fifth Claim for Relief for Dissolution of Maitreya Nevada

Nevada Revised Statute §86.495 provides in relevant part:

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Upon application by or for a member, the district court may decree dissolution of a limited-liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement.

The Trustee requested that Ronald produce copies of Maitreya Nevada's organizational documents. Ronald did not produce any organizational documents, claiming that he does not have them. Ronald has admitted that the purpose of Maitreya Nevada was to shield marital assets from people who intended to harm Ronald and the Debtor. Given that Ronald and the Debtor's marriage is in the process of dissolution, Maitreya Nevada lacks a business purpose.

Having been created during the Debtor's marriage to Ronald, Maitreya Nevada is community property and is therefore property of the estate. The Trustee may exercise control over Maitreya Nevada. In view of the absence of any business purpose for Maitreya Nevada, the Trustee is entitled to partial summary adjudication on his claim for dissolution of the entity.

III. Conclusion

Based upon the foregoing, the Court will enter partial summary adjudication, in the Trustee's favor, on the first, third, and fifth claims for relief. Pursuant to the Trustee's request, the Court will dismiss the remaining claims, without prejudice.

The Trustee lodged a proposed judgment at the time the Motion was filed. The Trustee is not required to lodge an additional proposed judgment.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

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CONT... Anne Lan Peterson

Chapter 7

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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Hearing Room 1568

10:00 AM

2:17-15174 Christopher S Backos and Lori A Backos

Chapter 7

#4.00 APPLICANT: Trustee: BRAD D. KRASNOFF

Hearing RE [54] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

6/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,747.80

Total Expenses: \$309.99

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Christopher S Backos

Represented By
Mark T Young

Joint Debtor(s):

Lori A Backos

Represented By
Mark T Young

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-16360 Michael McNulty

Chapter 11

#5.00 HearingRE: [102] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) .

Docket 102

Tentative Ruling:

6/6/2018

The Court will conduct the auction in accordance with the procedures set forth below.

Key Sale Terms:

- 1) Proposed purchaser: Don Dieser
- 2) Property for Sale: 1110 E. Acacia Avenue, El Segundo, CA 90245
- 3) Purchase price: \$1,175,000.00
- 4) Overbids: The initial overbid shall be \$1,200,000.00; subsequent overbids shall be in the amount of \$50,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding.

Pleadings Filed and Reviewed:

- 1) Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief (the "Motion") [Doc. No. 102]
- 2) Conditional Non-Opposition to the Motion (the "Non-Opposition") [Doc. No. 110]

I. Facts and Summary of Pleadings

On May 23, 2017, Michael McNulty (the "Debtor") filed a voluntary Chapter 11 petition (the "Petition") [Doc. No. 1]. The Debtor is the owner of certain real property located at 1110 E. Acacia Avenue, El Segundo, CA 90245 (the "Property"). The Debtor scheduled the Property to have a value of \$876,000.00 with liens in the amount of \$605,336.63.

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CONT... Michael McNulty

Chapter 11

On April 27, 2018, the Debtor filed the "Motion in Individual Chapter 11 Case for Order Employing Brett Zebrowski as Real Estate Broker" (the "Broker Application") [Doc. No. 101]. The Court has not yet entered an order approving the Broker Application; however, the period to request a hearing pursuant to LBR 9013-1(o)(4) has expired, and no opposition and request for hearing has been filed. The Broker Application seeks to employ Brett Zebrowski as broker (the "Broker") with respect to the Property. The Broker Application states that the Broker's compensation will be in the amount of 6% of the listing price upon close of escrow, subject to court approval pursuant to 11 U.S.C. § 330.

The Motion

On May 3, 2018, the Debtor filed the "Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief" (the "Motion") [Doc. No. 102]. The Motion seeks approval of the sale of the Property to Don Dieser (the "Purchaser"), or the prevailing bidder at the auction. The Debtor received an offer from the Purchaser to purchase the Property for \$1,175,000.00 subject to the following contingencies: (1) the Purchaser has made a cash offer with the initial deposit of \$35,250.00, and the balance of the purchase price to be deposited with the certain Escrow Holder; (2) approval of the termite report and any inspection results; (3) approval of Title; and (4) receipt of Seller-paid Fidelity National Home Warranty Policy with a cost not to exceed \$675.00 to Seller. *See* "Purchase and Sale Agreement," Motion, Ex. C (the "Purchase Agreement").

The Broker Application provides for a 6% commission to be divided between the listing and selling agents. *See* Motion, Ex. D ("Listing Agreement"). The Broker represents the seller in the proposed sale transaction and will, thus, receive a 4% commission, while the broker representing the buyer will receive the remaining 2% commission.

The Debtor believes that the sale of the Property to the Buyer will yield significant value to the Estate, with such value allowing the Debtor to pay all his creditor's claims in full. The key sale terms are as follows:

- 1) Proposed purchaser: Don Dieser;
- 2) Property for Sale: 1110 E. Acacia Avenue, El Segundo, CA 90245;
- 3) Purchase price: \$1,175,000.00;

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Chapter 11

- 4) Overbids: The Debtor proposes the initial overbid to be \$1,185,000.00, and subsequent overbids to be in the amount of \$1,000.00.

The Debtor seeks authority for the distribution of the sale proceeds through escrow as follows: (1) for normal closing costs; (2) for payment of broker's commissions as set forth in the "Listing Agreement", *see* Motion, Ex. D; (3) for the reimbursement of Buyer, in the event of successful overbid, of case-related expenses up to \$1,500.00 pursuant to an appropriate demand; (4) for payment of real property taxes according to the terms of the Purchase Agreement; (5) for payment of all mortgage liens against the Property, with the sale to be free and clear of liens pursuant to § 363(f); and (6) for such other unanticipated items that may be necessary to close escrow, not to exceed an aggregate of \$2,000.00.

The Conditional Non-Opposition

On May 24, 2018, Specialized Loan Servicing LLC (the "Secured Creditor") filed the "Conditional Non-Opposition to the Motion" (the "Non-Opposition") [Doc. No. 110]. The Secured Creditor holds a lien against the Property. On January 24, 2018, the Secured Creditor filed Proof of Claim No. 4-1 in the amount of \$605,336.63 (the "Claim"). The Non-Opposition states that the Secured Creditor does not oppose the Motion provided that the Secured Creditor's Claim is paid in full for the balance owed, based on an updated payoff statement provided by the Secured Creditor.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the Chapter 11 Debtor-in-Possession (the "Debtor"), as trustee, to sell estate property outside the ordinary course of business, subject to court approval. The Debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Debtor articulates a sufficient business justification for the sale. The Debtor believes the proposed sale of the Property is in the best interest of the Estate, and furthermore, that the sale price represents the fair market value of the Property. The sale of the Property will provide the benefit of receiving immediate payment for the Property, which will allow the Debtor to pay all the creditors' claims in full. Additionally, the sale is subject to overbids, which allows any party wishing to purchase the Property at

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CONT... Michael McNulty

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a higher price to do so. The purchase offer of \$1,175,000.00 was obtained by the Debtor through arm's length negotiations.

Lastly, the Debtor has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of § 363(f)(3). The price at which the Property is to be sold is greater than the aggregate value of all the liens on the Property.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$1,200,000.00. Subsequent overbids will be increments of \$50,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Purchaser prevails at the auction, the Court will take

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CONT... Michael McNulty

Chapter 11

testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Debtor's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#6.00 HearingRE: [231] Application for Compensation / First and Final Application for Allowance of Fees and Reimbursement of Expenses of Sheppard, Mullin, Richter & Hampton LLP; Declaration of Ricahrd W. Brunette in Support Thereof (with Exhibits A-C) [with Proof of Service Document] for Richard W Brunette, Debtor's Attorney, Period: 9/14/2017 to 1/31/2018, Fee: \$27,500.00, Expenses: \$0.

Docket 231

Tentative Ruling:

6/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$17,500.00 (after voluntary reduction, \$27,500.00 fees - \$10,000.00 retainer)

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan
Richard W Brunette

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Hearing Room 1568

10:00 AM

2:12-49084 Valeria Ivanna Leiva

Chapter 7

#7.00 HearingRE: [23] Motion to Avoid Lien Judicial Lien with Brian L. Miller dba Westhill Management Company with proof of service.

Docket 23

Tentative Ruling:

6/6/2018

6/6/2018: For the reasons set forth below, GRANT Motion.

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien with Brian L. Miller, dba Westhill Management Company (the "Motion") [Doc. No. 23]
- 2) Response to the Motion (the "Response") [Doc. No. 24]

I. Facts and Summary of Pleadings

Valeria Leiva (the "Debtor") filed a voluntary Chapter 7 petition on November 26, 2012 (the "Petition") [Doc. No. 1]. On March 4, 2013, the Court entered the Order of Discharge [Doc. No. 15], and on March 15, 2013, the Debtor's case was ordered closed.

On April 11, 2018, the Debtor filed the "Motion to Reopen Case" (the "Motion to Reopen") [Doc. No. 18]. On April 16, 2018, the Court entered the "Order Granting Motion to Reopen to File a Motion to Avoid Judicial Lien" [Doc. No. 21]. On April 26, 2018, the Debtor filed the "Motion to Avoid Judicial Lien with Brian L. Miller, dba Westhill Management Company" (the "Motion") [Doc. No. 23].

The Debtor is the owner of certain real property located at 1128 Strawberry Lane, Glendora, CA 91740 (the "Property"). Motion, Ex. 1. The Debtor claims an exemption in the Property as her principal residence under Cal. Code Civ. P. § 703.140(b)(1). According to the Debtor's Schedule A, the Property has a fair market value of \$240,000.00. The Debtor additionally submits the certain appraisal of the

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CONT...

Valeria Ivanna Leiva

Chapter 7

Property performed by Jose Miguel Castillo which indicates a value of \$239,000.00. *See* Motion, Ex. 4. The Property is encumbered by a First Deed of Trust held by Wells Fargo Home Mortgage in the amount of \$274,856.00. The Motion seeks to avoid the judicial lien with Brian L. Miller, dba Westhill Management Company in the amount of \$12,749.05, recorded on October 3, 2012. *See* Motion, Ex. D. The Motion contends that the Subject Lien impairs an exemption to which the Debtor would be entitled under 11 U.S.C. § 522(b).

The Opposition

On May 11, 2018, Brian Miller dba Westhill Management Co. (the "Lienholder") filed the "Response to the Motion" (the "Opposition") [Doc. No. 24]. The Opposition requested a hearing date, and stated that the Lienholder believes that the value of the Property provided by the Debtor in the Motion is too low. The Lienholder requested that the hearing be set on a date to allow sufficient time for the Lienholder to complete an independent appraisal of the Property.

As of the date of this tentative ruling, the Lienholder has not filed any additional documents to supplement the Opposition.

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; *see also In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d

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CONT... **Valeria Ivanna Leiva**
1405, 1406 (9th Cir. 1993).

Chapter 7

Based on the pleadings and supporting declarations filed and reviewed, and in the absence of contrary evidence being filed by the Lienholder, the Court finds that the Debtor has satisfied the requirements of § 522(f) and GRANTS the Motion.

The calculation of impairment is as follows: \$240,000 (FMV) - \$0.00 (the Debtor's Exemption) - \$274,856.00 (Wells Fargo First Mortgage) = (\$34,856.00). Thus, the Court finds that the Subject Lien impairs the Debtor's Exemption. Based on the foregoing, the Court GRANTS the Debtor's Second Renewed Motion. The Judicial Lien of Brian L. Miller, dba Westhill Management Company is avoided pursuant to 11 U.S.C. § 522(f) in its entirety.

The Debtor shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Valeria Ivanna Leiva

Represented By
Marjorie S Archer
Arthur H Lampel

Trustee(s):

Alberta P Stahl (TR)

Pro Se

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10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#8.00 Hearing
RE: [227] Application / First and Final Application for Allowance of Fees and Reimbursement of Expenses of Sheppard, Mullin, Richter & Hampton LLP; Declaration of Ricahrd W. Brunette in Support Thereof (with Exhibits A-C) [with Proof of Service Document]

Docket 227

Tentative Ruling:

6/6/2018

See Cal. No. 6 above, incorporated by reference.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan
Richard W Brunette

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10:00 AM

2:17-16360 Michael McNulty

Chapter 11

#9.00 Hearing
RE: [97] Motion for approval of chapter 11 disclosure statement

fr: 5-22-18

Docket 97

Tentative Ruling:

6/6/2018

Hearing required.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
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Thursday, June 07, 2018

Hearing Room 1568

11:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#100.00 Hearing
RE: [20] Motion to Borrow "Notice Of Motion And Motion For Order Authorizing Refinancing Of Secured Debt And Related Relief; Memorandum Of Points And Authorities; Declaration(s) And Exhibit(s) In Support Thereof"

Docket 20

***** VACATED *** REASON: CONTINUED TO 5-22-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
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Monday, June 11, 2018

Hearing Room 1568

10:00 AM

2:18-11853 Miguel A Garcia

Chapter 7

#1.00 HearingRE: [27] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: U 2017 CHEVROLET CAMARO; 1G1FB1RS1H0114804 with Exhibits and Proof of Service. (Lees, Megan)

Docket 27

Tentative Ruling:

6/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Miguel A Garcia

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Miguel A Garcia	Pro Se
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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Hearing Room 1568

10:00 AM

2:18-12762 Noel L Valeza

Chapter 7

#2.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 18823 Erwin Street, Tarzana, CA 91335 with Exhibits and Proof of Service. (Zahradka, Robert)

Docket 10

Tentative Ruling:

6/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Melba Arredondo in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed

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CONT... Noel L Valeza

Chapter 7

circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Noel L Valeza

Represented By
William J Smyth

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-14972 Felicia Patrice Hoke

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Buick Lacrosse, VIN 1G4GB5G31FF248880 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

6/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 11, 2018

Hearing Room 1568

10:00 AM

CONT... Felicia Patrice Hoke

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Felicia Patrice Hoke

Represented By
Heather J Canning

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1575 Calendar**

Monday, June 11, 2018

Hearing Room 1575

10:00 AM

2:18-15092 Sam E Patmone and Cynthia Kay Patmone

Chapter 7

#4.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Fiesta .

Docket 9

Tentative Ruling:

6/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1575 Calendar**

Monday, June 11, 2018

Hearing Room 1575

10:00 AM

CONT... Sam E Patmone and Cynthia Kay Patmone Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sam E Patmone

Represented By
Steven A Alpert

Joint Debtor(s):

Cynthia Kay Patmone

Represented By
Steven A Alpert

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 11, 2018

Hearing Room 1568

10:00 AM

2:18-14832 Yong Suk Ro

Chapter 7

#5.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3451 West Century Blvd., Suite B-7, Inglewood, CA 90303 . (Djang, Caroline)

Docket 11

Tentative Ruling:

6/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this court's approved procedures. Pursuant to the Court's "Order Granting Application and Setting Hearing on Shortened Notice" [Doc. No. 13], the deadline for any written opposition to the Motion to be filed was June 7, 2018. No opposition has been filed as of the date of this tentative ruling.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on March 9, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The Court further finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 11, 2018

Hearing Room 1568

10:00 AM

CONT... Yong Suk Ro

Chapter 7

hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval. Declaration of Stephen A. Ellis in support of Motion at paragraph 18.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 11, 2018

Hearing Room 1568

10:00 AM

CONT... Yong Suk Ro

Chapter 7

Debtor(s):

Yong Suk Ro

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

10:00 AM

2:12-31372 First Regional Bancorp

Chapter 11

#1.00 Hearing RE [257] Post-Confirmation Status Conference

FR. 5-23-14; 4-10-14; 10-22-14; 4-22-15; 6-16-15; 1-6-16; 7-13-16; 12-7-16; 6-6-17; 9-12-17; 3-14-18

Docket 0

Tentative Ruling:

6/11/2018

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to **September 12, 2018 at 10:00 a.m.** A post-confirmation status report is due 14 days prior to the hearing. If a final decree is entered prior to the continued status conference, the status conference will go off calendar.

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#2.00 Status Hearing re post confirmation status conference

fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17; 3-13-18

Docket 0

Tentative Ruling:

6/11/2018

No appearances are required. This is a post-confirmation status conference. The Debtor will be filing a motion for entry of a discharge and final decree once the Debtor has concluded the repairs on the Debtor's Lawndale, CA property. A continued post-confirmation Status Conference will be held on September 12, 2018, at 10:00 a.m. If a discharge and final decree have been entered prior to that date, the status conference will go off calendar.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#100.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01475. Complaint by Rudy E. Fuentes against David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes. (Fee Not Required). for (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Uriarte, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Pro Se

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-11-18 ST 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01419 Gonzalez, Chapter 7 Trustee v. Investment Grade Loans, Inc.

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01419. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Investment Grade Loans, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 12/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Investment Grade Loans, Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED TO 9-11-18 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Pro Se
Henry A. Hakopian	Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01423 Gonzalez, Chapter 7 Trustee v. Azatian

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01423. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Andranik Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 11-29-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Andranik Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#107.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Vineland Sunshine Properties, LLC,

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01427 Gonzalez, Chapter 7 Trustee v. Haik Global Services, Inc., a California

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01427. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Haik Global Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-27-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Haik Global Services, Inc., a

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01428 Gonzalez, Chapter 7 Trustee v. Global Investment Properties, Inc., a

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01428. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Global Investment Properties, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-27-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Global Investment Properties, Inc., a	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01431 Gonzalez, Chapter 7 Trustee v. The Board of Trustees of the California State

#111.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01431. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against The Board of Trustees of the California State University. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 2-16-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

The Board of Trustees of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01433 Gonzalez, Chapter 7 Trustee v. Gharibian

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01433. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Haroutioun Gharibian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Haroutioun Gharibian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01435 Gonzalez, Chapter 7 Trustee v. Azatyan

#113.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01435. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Ervand Azatyan. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Ervand Azatyan

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01436 Gonzalez, Chapter 7 Trustee v. Azatian

#114.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01436. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Azat Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Azat Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01437 Gonzalez, Chapter 7 Trustee v. EHC, LLC, a California Limited Liability

#115.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01437. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against EHC, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 1-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

EHC, LLC, a California Limited	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01439 Gonzalez, Chapter 7 Trustee v. Arakelyan

#116.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01439. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hovanes Arakelyan. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hovanes Arakelyan

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01426 TIMOTHY J. YOO, Chapter 7 Trustee v. ACE FUNDING SOURCE, LLC

#117.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01426. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ACE FUNDING SOURCE, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ACE FUNDING SOURCE, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01429 TIMOTHY J. YOO, Chapter 7 Trustee v. ALLIANCE MARKETING

#118.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01429. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ALLIANCE MARKETING PARTNERS. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ALLIANCE MARKETING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01430 TIMOTHY J. YOO, Chapter 7 Trustee v. EIN CAPITAL

#119.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01430. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against EIN CAPITAL. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 5-4-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

EIN CAPITAL

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01432 TIMOTHY J. YOO, Chapter 7 Trustee v. STARTERVINE

#120.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01432. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against STARTERVINE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

STARTERVINE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#121.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01438 TIMOTHY J. YOO, Chapter 7 Trustee v. B TWO DIRECT, LLC

#122.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01438. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against B TWO DIRECT, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

B TWO DIRECT, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01440 TIMOTHY J. YOO, Chapter 7 Trustee v. COMPANY RESPONDER INC

#123.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01440. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against COMPANY RESPONDER INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

COMPANY RESPONDER INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01441 TIMOTHY J. YOO, Chapter 7 Trustee v. FLEX MARKETING GROUP

#124.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01441. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against FLEX MARKETING GROUP. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

FLEX MARKETING GROUP

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA

#125.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01445 TIMOTHY J. YOO, Chapter 7 Trustee v. GREEN CAPITAL FUNDING

#126.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01445. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GREEN CAPITAL FUNDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GREEN CAPITAL FUNDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01446 TIMOTHY J. YOO, Chapter 7 Trustee v. INBOX MEDIA LLC

#127.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01446. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INBOX MEDIA LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INBOX MEDIA LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01447 TIMOTHY J. YOO, Chapter 7 Trustee v. INTERLINCX MEDIA

#128.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01447. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INTERLINCX MEDIA CORPORATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INTERLINCX MEDIA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01448 TIMOTHY J. YOO, Chapter 7 Trustee v. IOVATION

#129.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01448. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against IOVATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IOVATION

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01449 TIMOTHY J. YOO, Chapter 7 Trustee v. LEADSMARKET

#130.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01449. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against LEADSMARKET. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 12-11-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

LEADSMARKET

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01450 TIMOTHY J. YOO, Chapter 7 Trustee v. POWERUP LENDING

#131.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01450. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against POWERUP LENDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

POWERUP LENDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#132.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PRETRIAL 10-9-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#133.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01453 TIMOTHY J. YOO, Chapter 7 Trustee v. W4 LLC

#134.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01453. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against W4 LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

W4 LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#135.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d), (e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Renato Ferrer

Pro Se

Felicidad Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Antony Thekkek

Represented By
Hamid R Rafatjoo

Prema Thekkek

Represented By

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

11:00 AM

CONT... Felicidad Ferrer

Chapter 7

Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-14457 Theresa Christine Wahl

Chapter 7

Adv#: 2:17-01367 Lemus v. Wahl et al

#136.00 Pre-Trial Conference RE: [23] Amended Complaint by Ramin R Younessi on behalf of Juan Antonio Lemus against all defendants. (RE: related document(s)1 Complaint by Juan Antonio Lemus against Theresa Christine Wahl. willful and malicious injury))

Docket 0

***** VACATED *** REASON: PRETRIAL 6/5/2018 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa Christine Wahl

Represented By
Nicholas M Wajda

Defendant(s):

Theresa Wahl

Represented By
Sheila Esmaili
Sanaz S Bereliani

Does 1 Through 20, Inclusive

Pro Se

Plaintiff(s):

Juan Antonio Lemus

Represented By
Ramin R Younessi
Sheila Esmaili

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#137.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01357. Complaint by Chasen Kyle Stanley against Education Finance Partners, ACS Loan Science, Asset Recovery Solutions, LLC, DEPARTMENT OF EDUCATION, Navient, Federal Loan Services, National Payment Center, Sallie Mae, Associated Recovery Systems. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Potier, Amanda)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

Navient Solutions, LLC

Represented By
Robert S Lampl

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

CONT... Chasen Kyle Stanley Chapter 7

National Payment Center Pro Se

Sallie Mae Pro Se

Associated Recovery Systems Pro Se

Plaintiff(s):

Chasen Kyle Stanley Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01470 Swan Fence Incorporated v. Robbins

#138.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01470. Complaint by Swan Fence Incorporated against Brad Hilton Robbins. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Wainer, Maurice)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

Brad Hilton Robbins

Pro Se

Plaintiff(s):

Swan Fence Incorporated

Represented By
Maurice Wainer

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01473 Construction Laborers Trust Funds For Southern Cal v. ROBBINS

#139.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01473. Complaint by Construction Laborers Trust Funds for So Calif against BRADLEY HILTON ROBBINS. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Hamasaki, Marsha)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 1-18-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

BRADLEY HILTON ROBBINS

Represented By
Sergio J Siderman

Plaintiff(s):

Construction Laborers Trust Funds

Represented By
Marsha M Hamasaki
J. David Sackman

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

Adv#: 2:17-01476 Rund Chapter 7 Trustee v. Ulloa

#140.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01476. Complaint by Jason Rund Chapter 7 Trustee against Lawrence Martin Ulloa. (Charge To Estate). with proof of service Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lee, Angie)

Docket 1

***** VACATED *** REASON: RESCHEDULED 6-5-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Irene L Ulloa	Pro Se
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Defendant(s):

Lawrence Martin Ulloa	Pro Se
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Plaintiff(s):

Jason Rund Chapter 7 Trustee	Represented By Angie S Lee
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Trustee(s):

Jason M Rund (TR)	Represented By Angie S Lee
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#141.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) (Richards, Jeremy)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 AM..**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a	Pro Se
Lantern Brands, Inc., a California	Pro Se
TT Investment Los Angeles Fund I,	Pro Se

Plaintiff(s):

Official Unsecured Creditors	Represented By Jeremy V Richards
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 18, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#1.00 Hearing
RE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2395 Roanoke Road, San Marino, CA 91108 . (Wilkinson, Reilly)

fr: 2-20-18; 3-19-18; 4-23-18

Docket 28

Tentative Ruling:

6/13/2018

Hearing required.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 19, 2018

Hearing Room 1568

10:00 AM

2:18-14257 Eliseo Vera and Guadalupe Vera

Chapter 7

#1.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 644 South Armel Drive, Covina, California 91723 .

Docket 13

Tentative Ruling:

6/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Kevin Mayers in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real

**United States Bankruptcy Court
Central District of California
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Tuesday, June 19, 2018

Hearing Room 1568

10:00 AM

CONT... Eliseo Vera and Guadalupe Vera

Chapter 7

property shall accept a certified copy of this order for indexing and recording.

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Eliseo Vera	Pro Se
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Joint Debtor(s):

Guadalupe Vera	Pro Se
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Trustee(s):

David M Goodrich (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, June 19, 2018

Hearing Room 1568

10:00 AM

2:18-15105 Jesse Dwayne Hall and Mette Hall

Chapter 7

#2.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 10844 Rose Avenue #3 Los Angeles, CA 90034 with Proof of Service. (Unruh, Carol)

Docket 14

Tentative Ruling:

6/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

This Motion has been filed to allow the Movant to proceed with an unlawful detainer action in state court. The unlawful detainer action may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, June 19, 2018

Hearing Room 1568

10:00 AM

CONT... Jesse Dwayne Hall and Mette Hall

Chapter 7

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jesse Dwayne Hall	Pro Se
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Joint Debtor(s):

Mette Hall	Pro Se
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Trustee(s):

Edward M Wolkowitz (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 19, 2018

Hearing Room 1568

10:00 AM

2:14-28392 Pablo Javier Aspiazu

Chapter 7

#3.00 HearingRE: [128] Notice of Motion and Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. 362(j) or That No Stay is in Effect under 11 U.S.C. 362(c)(4)(A)(ii) 18951 Damasco St., West Covina, CA 91792-3038 with proof of service.

Docket 128

Tentative Ruling:

6/18/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. § 362(j) or that No Stay is in Effect under 11 U.S.C. § 362(c)(4)(A)(ii) 18951 Damasco St., West Covina, CA 91792 (the "Motion") [Doc. No. 128]
- 2) No opposition has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Pablo Javier Aspiazu (the "Debtor") filed a voluntary Chapter 7 petition on September 26, 2014 (the "Petition") [Doc. No. 1]. The Debtor received a discharge on June 26, 2017. *Order of Discharge* [Doc. No. 85]. The Debtor claimed an interest in certain real property located at 18951 Damasco St., West Covina, CA 91792 (the "Property"). *See Petition*, Schedule A [Doc. No. 1]. Wesley H. Avery was appointed as the Chapter 7 Trustee (the "Trustee").

On January 27, 2015, the Trustee filed the *Motion Objecting to the Debtor's Amended Claims of Exemption in [the Property]* (the "Trustee's Objection") [Doc. No. 35]. The Court held a hearing on the Trustee's Objection on April 20, 2016. *See* Doc. No. 61. On April 29, 2016, the Court entered the *Order Sustaining the Trustee's Objection* [Doc. No. 62].

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10:00 AM

CONT... Pablo Javier Aspiazu

Chapter 7

On August 2, 2017, the Trustee filed the *Motion to Approve Compromise under Rule 9019* (the "Compromise Motion") [Doc. No. 99], which sought approval of the terms of the certain Settlement Agreement entered into by the Debtor and the Trustee on July 27, 2017, whereby the Debtor agreed to purchase the Estate's interest in the Property. See *Compromise Motion* at 4, 6. On August 24, 2017, the Court entered the *Order Granting the Compromise Motion* [Doc. No. 106], which approved the terms of the Settlement Agreement.

The Motion

On May 25, 2018, Creditor Wells Fargo Bank, N.A. (the "Movant") filed the *Motion in Individual Case for Order Confirming Termination of Stay under 11 U.S.C. § 362(j) or that No Stay is in Effect under 11 U.S.C. § 362(c)(4)(A)(ii)* (the "Motion") [Doc. No. 128]. The Motion seeks an order under 11 U.S.C. § 362(c)(1) that no automatic stay is currently in effect. *Motion* at 5. The Motion requests that the Court take Judicial Notice pursuant to FRE 201 of the *Order of Discharge* [Doc. No. 85], and the *Order Granting the Compromise Motion* [Doc. No. 106]. The Motion contends that no automatic stay is in effect because under 11 U.S.C. § 362(c)(3) "Thirty days have elapsed since the filing of the petition . . . and no order has been entered continuing the stay." *Motion* at 3. The Motion further contends that there is no automatic stay in effect because the Trustee sold the Estate's interest in the Property to the Debtor pursuant to the terms of the Settlement Agreement, which were approved by the Court in the *Order Granting the Compromise Motion* [Doc. No. 106].

No opposition to the Motion has been filed as of the date of this tentative ruling.

II. Findings of Fact and Conclusions of Law

The filing of a petition for bankruptcy operates as an automatic stay of the commencement or continuation of any action against a bankruptcy debtor or against the property of a bankruptcy estate. 11 U.S.C. § 362(a). 11 U.S.C. § 362(c) provides, in pertinent part:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under

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10:00 AM

CONT...

Pablo Javier Aspiazu

Chapter 7

subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title [11 USCS §§ 701 et seq.] concerning an individual or a case under chapter 9, 11, 12, or 13 of this title [11 USCS §§ 901 et seq., 1101 et seq., 1201 et seq., or 1301 et seq.], the time a discharge is granted or denied

Congress described the purpose of section 362(c) and the interrelationship of paragraphs (1) and (2):

Subsection (c) of section 362 specifies the duration of the automatic stay. Paragraph (1) terminates a stay of an act against property of the estate, such as by sale, abandonment, or exemption. It does not terminate the stay against property of the debtor if the property leaves the estate and goes to the debtor. Paragraph (2) terminates the stay of any other act on the earliest of the time the case is closed, the time the case is dismissed, or the time a discharge is granted or denied (unless the debtor is a corporation or partnership in a Chapter 7 case.)

S. Rep. No. 989, 95th Cong., 2d Sess. 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5838; H.R. Rep. No. 598, 95th Cong., 2d Sess. 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6299. Thus, pursuant to 11 U.S.C. § 362(c)(2), the stay "terminates automatically . . . when a discharge is granted or denied or when the case is closed or dismissed." *In re Cornist*, 7 B.R. 118, 120 (Bankr. S.D. Cal. 1980). This is because, once the debtor is granted a discharge, "the permanent injunction of 11 U.S.C.S. § 524 replaces the automatic stay of 11 U.S.C.S. § 362 and prevents creditors from ever collecting a discharged debt." *In re Ulrich*, 456 B.R. 345, 347 (Bankr. N.D. Ohio 2011).

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10:00 AM

CONT... Pablo Javier Aspiazu

Chapter 7

Here, the Debtor was granted a discharge on June 26, 2017. *See Order of Discharge* [Doc. No. 85]. Therefore, because the stay terminated by operation of law when the *Order of Discharge* was entered, the stay is not currently in effect.

III. Conclusion

Based on the foregoing, the Motion is GRANTED.

The Movant shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pablo Javier Aspiazu

Represented By
Robert G Uriarte

Trustee(s):

Wesley H Avery (TR)

Represented By
Robert M Aronson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 19, 2018

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11:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

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#100.00 HearingRE: [36] Motion to approve compromise Settlement Agreement Between Henderson Mechanical Systems Inc. and Sheet Metal Workers' Trust Funds

Docket 36

Tentative Ruling:

6/18/2018

For the reasons set forth below, GRANT Motion in part and DENY motion in part.

Pleadings Filed and Reviewed:

- 1) Motion for Order Approving Settlement Agreement Between Henderson Mechanical Systems, Inc. and Sheet Metal Workers' Trust Funds [Doc. No. 36] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 37]
 - b) Declaration of Kevin Tang Establishing Service of the Motion for Order Approving the Settlement Agreement Between Henderson Mechanical Systems, Inc. and the Sheet Metal Workers' Trust Fund and the Related Order Setting Hearing on Debtor's Motion to Approve Settlement Agreement [Doc. No. 40]
- 2) Order Setting Hearing on Debtor's Motion to Approve Settlement Agreement [Doc. No. 38]
- 3) Brief of Creditor Trust Funds in Support of Approval of the Settlement Agreement [Doc. No. 44]
- 4) Brief of Creditor Trust Funds in Support of Approval of the Settlement Agreement [Doc. No. 44]
- 5) [Debtor's] Supplemental Brief in Support of Motion for Order Approving Settlement Agreement Between Henderson Mechanical Systems, Inc. and Sheet Metal Workers' Trust Funds [Doc. No. 46]
- 6) Opposition to Motion for Order Approving Settlement Agreement Between Henderson Mechanical Systems, Inc. and Sheet Metal Workers' Trust Funds [not yet docketed]
- 7) Opposition to the Motion for Order Approving Settlement Agreement Between

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Henderson Mechanical Systems, Inc. and Sheet Metal Workers' Trust Funds
[submitted by the United States Trustee] [Doc. No. 41]

I. Facts and Summary of Pleadings

This hearing on the Debtor's *Motion for Order Approving the Settlement Agreement Between Henderson Mechanical Systems, Inc. and Sheet Metal Workers' Trust Funds* [Doc. No. 36] (the "Motion") has been set on shortened notice, based on declaration testimony submitted by the Debtor's president stating that if the Debtor did not begin performing under the Settlement Agreement by June 20, 2018, the union that supplies the Debtor's labor force (the "Union") would likely initiate a strike that would destroy the Debtor's going-concern value.

The Debtor commenced a voluntary Chapter 11 petition on April 9, 2018. The Debtor is a subcontractor that fabricates and installs heating, ventilating, and air-conditioning systems for general contractors. Pursuant to a collective bargaining agreement ("CBA") with the Union, the Debtor is required to make monthly contributions on behalf of employees represented by the Union to various trust funds (collectively, the "Trust Funds").

As a result of its failure to make the required monthly payments, the Debtor owes the Trust Funds prepetition indebtedness in the amount of \$93,503.27 and post-petition indebtedness in the amount of \$54,126.44. Settlement Agreement at ¶I.B. Under the Settlement Agreement, the Debtor will pay \$112,571.24 to the Trust Funds in fourteen monthly installments of \$8,000, commencing on June 20, 2018, followed by a final fifteenth installment payment of \$571.24. Of the \$112,571.24 amount, \$78,184.79 is being paid on account of pre-petition indebtedness and \$34,386.45 is being paid on account of post-petition indebtedness.

The Debtor states that funds from projects that are nearing completion will be sufficient to make the payments required under the Settlement Agreement. Specifically, the Debtor's president states that the following projects will produce the necessary funds:

- 1) **Kittridge E.S. Project:** The Debtor will be paid \$42,123.00 upon completion of the project. The project is currently 96% complete and will be fully completed within several weeks.
- 2) **Sun Valley Project:** The Debtor is owed \$140,000 in connection with this project. The general contractor, NSA Construction, makes monthly payments based upon performance. The project is currently 86% completed. The Debtor anticipates receiving a payment of approximately \$20,000 in June.

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- 3) **Rowan M.S. Project:** The Debtor is owed \$25,000 in connection with this project. The general contractor, NSA Constructions, makes monthly payments based upon performance. The project is currently 96% completed. The Debtor anticipates receiving a payment of approximately \$10,000 in June.

Supplemental Declaration of James Lee, III [Doc. No. 46] at ¶5.

The Court ordered the Debtor and the Trust Funds to submit supplemental briefing in support of the Motion. The Court ordered the Trust Funds to explain why the Union's threat to initiate a strike did not violate §362(a)(6)'s stay of "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title." The Court ordered the Debtor to cite legal authority in support of its request to make a substantial payments to the Trust Funds ahead of other creditors, and to further explain how such payments would not prejudice other creditors who are not being paid.

The Trust Funds submitted supplemental briefing stating that the automatic stay did not bar the contemplated strike because the Norris-LaGuardia Act, 29 U.S.C. § 101, prohibits federal injunctions or restraining orders against actions taken in connection with a labor dispute. The Trust Funds cite cases holding that strikes arising from labor disputes do not violate the automatic stay. *See Crowe & Associates, Inc. v. Bricklayers and Masons Union Local No. 2 of Detroit, Michigan (Matter of Crowe & Assocs., Inc.)*, 713 F.2d 211, 214 (6th Cir. 1983) (holding that a strike did not violate §362(a)(6) because the Norris-LaGuardia Act bans a federal injunction against acts arising in connection with a labor dispute, and Congress did not intend the Bankruptcy Code to supersede the Norris-LaGuardia Act); *Petrusch v. Teamsters Local 317, Syracuse NY (In re Petrusch)*, 667 F.2d 297, 298 (2d Cir. 1981) (holding that as a result of the Norris LaGuardia Act, a Bankruptcy Court lacked the jurisdiction to enjoin a labor union from picketing the debtor's business).

The Debtor submitted supplemental briefing stating that \$40,658.23 of the prepetition indebtedness to be paid under the Settlement Agreement arises in connection with delinquent contributions to a health plan, and that such delinquent contributions qualify as a super-priority administrative expense. *See In re Certified Air Techs., Inc.*, 300 B.R. 355, 372 (Bankr. C.D. Cal. 2003) (holding that prepetition indebtedness attributable to delinquent contributions to a health plan constituted a "retiree benefit," within the meaning of §1114(a), that was entitled to treatment as an administrative expense pursuant to §1114(e)(2)). The Debtor further asserts that creditors other than the Trust Funds will not be prejudiced as a result of the Settlement Agreement, because the Settlement Agreement prevents the strike, allowing the Debtor to stay in

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business and continue earning money that can be used to pay other creditors.

The Boards of Trustees for the Sheet Metal Workers' National Pension Fund and various other pension and benefit funds (collectively, the "National Funds") opposes the Motion. The National Funds provide pension benefits, apprenticeship training and educational benefits, safety oversight, and other services for employees represented by the Union. The National Funds state that the Debtor owes them \$161,536.81 as a result of its failure to make required monthly contributions. The National Funds state that they would be prejudiced if the Court approves the Settlement Agreement with the Trust Funds, because approval of the Settlement Agreement would make it more difficult for the National Funds to direct Union employees from initiating a strike, thereby reducing the National Funds' bargaining leverage against the Debtor. The National Funds additionally argue that approval of the Settlement Agreement will leave the Debtor with insufficient funds to pay the sums owed the National Funds.

The United States Trustee (the "UST") opposes the Motion. (The UST filed its opposition before the Debtor filed supplemental briefing providing additional information regarding the Settlement Agreement.) The UST asserts that the Debtor has not provided the Court sufficient information about the proposed Settlement Agreement. According to the UST, the Debtor has failed to cite authority permitting it to pay pre-petition debt, and has failed to sufficiently disclose the source of the funds that will be used to make the payments due under the Settlement Agreement.

II. Findings and Conclusions

A. The Automatic Stay Does Not Bar the Contemplated Strike

The Union has threatened to initiate a strike, which will commence on June 20, if the Debtor does not begin performance under the Settlement Agreement by that date. As a result of the Norris-LaGuardia Act's ban on any federal injunction against acts arising in connection with a labor dispute, the contemplated strike does not violate the stay of §362(a)(6). *See Crowe & Associates, Inc. v. Bricklayers and Masons Union Local No. 2 of Detroit, Michigan (Matter of Crowe & Assocs., Inc.)*, 713 F.2d 211, 214 (6th Cir. 1983) (holding that a strike did not violate §362(a)(6) because the Norris-LaGuardia Act bans a federal injunction against acts arising in connection with a labor dispute, and Congress did not intend the Bankruptcy Code to supersede the Norris-LaGuardia Act); *Petrusch v. Teamsters Local 317, Syracuse NY (In re Petrusch)*, 667 F.2d 297, 298 (2d Cir. 1981) (holding that as a result of the Norris LaGuardia Act, a Bankruptcy Court lacked the jurisdiction to enjoin a labor union

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from picketing the debtor's business). Consequently, this Court lacks the authority to enjoin the threatened strike.

B. The Settlement Agreement is Disapproved to the Extent that it Provides for Payment of the Trust Funds' Prepetition Indebtedness Ahead of Other Creditors

To the extent that the Settlement Agreement provides for the Trust Funds to receive payment on account of pre-petition indebtedness ahead of other prepetition creditors, the Court lacks the authority to approve the Settlement Agreement. However, the Court does have the ability to approve settlement payments to the extent that such payments are attributable to (1) post-petition indebtedness or (2) pre-petition indebtedness that qualifies for treatment as an administrative expense claim. For the reasons discussed below, the Debtor is authorized to make settlement payments attributable to post-petition indebtedness. The Debtor has not sufficiently established the portion of the settlement payments attributable to pre-petition indebtedness qualifying for administrative expense treatment; the Debtor may not make such payments absent further order of the Court.

Under the necessity of payment doctrine, some courts have approved payments of pre-petition debt to "critical vendors" or "essential suppliers," on the theory that such vendors and suppliers are essential to the Debtor's reorganization and would cease doing business with the Debtor absent payment of their prepetition debt. With respect to settlement payments attributable to pre-petition indebtedness not qualifying for treatment as an administrative expense claim, the Ninth Circuit has confined the "necessity of payment" doctrine to railroad reorganization cases. *B&W Enterprises, Inc. v. Goodman Oil Co. (Matter of B & W Enterprises, Inc.)*, 713 F.2d 534, 537 (9th Cir. 1983). The Ninth Circuit has held that outside of railroad reorganization cases, the necessity of payment doctrine contravenes the Bankruptcy Code's priority distribution scheme. *B&W Enterprises*, 713 F.2d at 537; *see also Matter of Crowe & Assocs., Inc.*, 713 F.2d 211, 214 (6th Cir. 1983) (stating that the Bankruptcy Court could not authorize the debtor to pay pre-petition debts owed in connection with a labor dispute, even if non-payment of the debt would result in a strike that would shut down the debtor's business).

C. The Debtor May Make Settlement Payments, to the Extent those Payments are Attributable to Post-petition Indebtedness

The Debtor owes the Trust Funds prepetition indebtedness in the amount of \$93,503.27 and post-petition indebtedness in the amount of \$54,126.44. Settlement

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Agreement at ¶I.B. Under the Settlement Agreement, the Debtor will pay \$112,571.24 to the Trust Funds in fourteen monthly installments of \$8,000, commencing on June 20, 2018, followed by a final fifteenth installment payment of \$571.24. Of the \$112,571.24 amount, \$78,184.79 is attributable to pre-petition indebtedness and \$34,386.45 is attributable to post-petition indebtedness.

1. Payments Attributable to Post-Petition Indebtedness

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

Here, the most salient factor is the paramount interest of creditors; the other factors are not relevant given the context in which the Motion arises. The Union has threatened to initiate a strike, which will commence on June 20, if the Debtor does not begin performance under the Settlement Agreement by that date. As set forth above, the contemplated strike does not violate the stay of §362(a)(6), and the Court lacks the ability to enjoin the strike. A strike would impair the Debtor's ability to continue generating income that could be used to pay creditors.

Section 363(b)(1) authorizes the Debtor to use property of the estate outside the ordinary course of business. The Court finds that the settlement payments attributable to post-petition indebtedness are a proper use of estate property outside the ordinary course of business, as such payments will mitigate the ongoing labor dispute. Under the Settlement Agreement, the first payment of \$8,000 is due on June 20, 2018, with subsequent payments of \$8,000 due on the twentieth day of each successive month thereafter. Because \$34,386.45 of the payments to be made under the Settlement Agreement are attributable to post-petition indebtedness, the Debtor may make four

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installment payments, in the aggregate amount of \$32,000, pursuant to §363(b)(1).

2. Payments Attributable to Pre-petition Indebtedness Qualifying as an Administrative Expense Claim

The Debtor argues that a substantial portion of the pre-petition indebtedness qualifies for treatment as an administrative expense claim, and therefore may be paid under the Settlement Agreement without violating the Bankruptcy Code's priority scheme. Specifically, the Debtor asserts that \$40,658.23 of the \$93,503.27 in pre-petition indebtedness arises from obligations to make contributions to an employee health plan.

In *In re Certified Air Techs., Inc.*, 300 B.R. 355, 372 (Bankr. C.D. Cal. 2003), the court held that a creditor's claim for delinquent pre-petition contributions to an employee medical benefit fund qualified as an administrative expense claim, pursuant to §1114(e)(2). Section 1114(e)(2) provides that the Debtor's pre-confirmation payments for retiree benefits are administrative expenses. The *Certified Air* court reasoned that §1114(a) defined "retiree benefits" broadly, such that the phrase encompassed "indirect payments to any person or entity for the purpose of providing or reimbursing payments for medical, surgical, hospital care and other benefits." *Certified Air*, 300 B.R. at 371.

To the extent that payments under the Settlement Agreement are attributable to pre-petition indebtedness that qualifies as an administrative expense under §1114(e)(2), the Debtor is authorized to make such payments. In a similar context, courts have allowed debtors to pay pre-petition wages, based on the fact that claims for pre-petition wages are entitled to priority pursuant to §507(a)(4). A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify 'first day' orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

Collier on Bankruptcy ¶ 507.06[2] (16th ed. 2017).

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The present record does not contain sufficient information to enable the Court to determine the portion of the settlement payments attributable to a §1114(e)(2) administrative expense claim. The Debtor states that it owes \$40,658.23 in delinquent contributions to the employee health plan, but does not furnish any evidence to substantiate this contention. The Trust Funds, which are owed the delinquent contributions, have not filed proofs of claim.

The Debtor may bring, on regular notice, a motion (1) to establish the amount of the settlement payments that qualify as an administrative expense claim and (2) to approve the payment of such amounts. There is no need for such a motion to be heard on a shortened time frame. As set forth above, the first four payments under the Settlement Agreement are attributable to post-petition indebtedness and may be made pursuant to §363(b)(1).

D. The Objections of the National Fund and the UST are Overruled in Part

To the extent the Settlement Agreement provides for payment of post-petition indebtedness, the objections of the National Funds and UST are overruled. As noted, the Debtor's commencement of performance under the Settlement Agreement will mitigate the labor dispute with the Trust Funds. This will allow the Debtor to continue to generate income which can be used to pay creditors.

In the Court's view, a global settlement between the Debtor, the National Fund, and the Trust Funds would inure to the benefit of all parties. Such a settlement would allow the Debtor to continue focusing on reorganization efforts without the threat of imminent disruption from a labor stoppage. It appears from the Debtor's Supplemental Brief that such negotiations may have been initiated and may be on-going. [Doc. 46 at 3, lines 4-9].

In the event that a strike does occur, the Court would most likely require the Debtor to show cause why this case should not be dismissed or converted to Chapter 7. However, a strike would ultimately not be in the interest of any stakeholder, as it would cripple the Debtor's business, preventing the Debtor from earning income that could otherwise be used to cure the delinquent payments to the National Funds and the Trust Funds.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

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2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Hearing

RE: [212] [217] Motion Pursuant to Rule 60(b) to Set Aside Judgment in Favor of Defendant Morad Neman (Hewlett, Douglas)

Docket 212

Tentative Ruling:

6/19/2018

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) JL AM Plus, LLC's Notice of Motion and Rule 60(b) Motion to Set Aside Judgment in Favor of Defendant Morad Neman [Doc. No. 217] (the "Motion")
 - a) JL AM Plus, LLC's Amended Memorandum of Points and Authorities in Support of Rule 60(b) Motion to Set Aside Judgment in Favor of Defendant Morad Neman [Doc. No. 218]
 - b) Declaration of John S. Purcell in Support of JL AM Plus, LLC's Notice of Motion and Rule 60(b) Motion to Set Aside Judgment in Favor of Defendant Morad Neman [Doc. No. 219]
- 2) Opposition to Rule 60(b) Motion to Set Aside Judgment in Favor of Defendant Morad Neman [Doc. No. 229] (the "Opposition")
- 3) JL AM Plus, LLC's Reply Memorandum of Points and Authorities in Support of Rule 60(b) Motion to Set Aside Judgment in Favor of Defendant Morad Neman [Doc. No. 233] (the "Reply")
 - a) JL AM Plus, LLC's Response to Morad Neman's Objections to Declaration of John S. Purcell [Doc. No. 234]

I. Facts and Summary of Pleadings

On August 29, 2016, the Court approved the sale of the estate's interest in this litigation to Defendants Morad Neman ("Mr. Neman") and MBN Real Estate, LLC ("MBN") for \$1 million. Bankr. Doc. No. 130. [Note 1] After Mr. Neman failed to complete the purchase, backup bidder Accessories Mart, LLC purchased the litigation

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for \$905,000 on October 20, 2016. Adv. Doc. No. 57. Accessories Mart subsequently assigned its interest in the litigation to JL AM Plus, LLC ("JLAMP"). On September 2, 2016, the Court entered a preliminary injunction, barring Mr. Neman and MBN Real Estate from transferring or encumbering the assets which are the subject of this litigation. Bankr. Doc. No. 138.

On November 22, 2016, JLAMP filed a *First Amended Complaint for (1) Avoidance and Recovery of Fraudulent Transfers; (2) Avoidance and Recovery of Preferential Transfers; and (3) Unjust Enrichment* (the "Complaint") [Adv. Doc. No. 68]. The Complaint's allegations are as follows:

- 1) Prior to commencing a voluntary Chapter 7 petition, Morad and Yaffa Javedanfar (the "Debtors") owned interests in (A) Boyd L.P. and Sky High LLC and (B) properties located at 310 East Boyd Street, Los Angeles, CA 90013 (the "Boyd Street Property"), 931 East Pico Boulevard, Los Angeles, CA 90021 (the "Pico Blvd. Property"), and 715 East 14th Street, Los Angeles, CA 90021 (the "14th Street Property") (collectively, the "Assets"). In or around December 2012, Debtors transferred their interests in Boyd LP and Sky High LLC to defendants Morad Neman and MBN Real Estate, LLC (collectively, the "Defendants"). On January 11, 2013, Debtors transferred their interests in the Boyd Street Property, the Pico Blvd. Property, and the 14th Street Property to the Defendants.
- 2) At the time of the transfers, Defendants knew of the Debtors' obligations to their creditors and knew that the Debtors were insolvent. The purpose of the transfers was to frustrate the rights of the Debtors' creditors.
- 3) There is a unity of interest between Mr. Neman and MBN, such that treatment of MBN as a distinct entity would permit an abuse of the corporate privilege and produce an inequitable result. Accordingly, Mr. Neman should be deemed to be the alter ego of MBN.

Based on the foregoing allegations, the Complaint seeks the following relief:

- 1) Avoidance of the transfers as constructively fraudulent, pursuant to §§544(b) and 548(a)(1)(B).
- 2) Avoidance of the transfers as preferences, pursuant to §547(b).
- 3) Restitution and disgorgement of the transferred Assets, and an award of punitive damages against the Defendants.

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- 4) Imposition of a constructive trust upon the Assets and immediate turnover of the Assets.

On May 25, 2017, the Court entered final judgment in Mr. Neman's favor. *See* Judgment in Favor of Defendant Morad Neman [Doc. No. 138]; Memorandum of Decision Finding that Morad Neman is Entitled to Summary Judgment in His Favor [Doc. No. 136] (the "Memorandum of Decision"). The Court found that there was no genuine dispute that Mr. Neman was not the alter ego of MBN. Having found that Mr. Neman was not MBN's alter ego, the Court found that Mr. Neman was entitled to judgment in his favor, and that there was no just reason to delay the entry of judgment.

In determining that no genuine dispute existed with respect to the facts showing that Mr. Neman was not MBN's alter ego, the Court noted that the operative Complaint, which had already been amended once, contained only conclusory allegations with respect to JLAMP's alter ego theory:

The Complaint recites the legal formulation for alter ego liability by alleging (1) that there exists "a unity of interest in ownership between each defendant and every other defendant," (2) that each "defendant was a mere shell, instrumentality and conduit through which every other defendant acted," and (3) that each defendant "controlled, dominated, managed and operated every other defendant and intermingled its assets with theirs." Complaint at ¶ 11. The Complaint is entirely lacking in *specific facts* to support these conclusory allegations. There are no specific facts showing a unity of interest between Mr. Neman and MBN: the Complaint does not allege facts showing how Mr. Neman used MBN as a mere shell or instrumentality; it does not allege facts showing how Mr. Neman controlled or dominated MBN; and it does not allege facts showing the extent to which Mr. Neman's assets were comingled with MBN's assets.

Memorandum of Decision at 7.

The Court found that in its opposition to Mr. Neman's motion for summary judgment, JLAMP had failed to identify specific facts sufficient to cure the Complaint's deficiencies, whereas Mr. Neman had identified specific facts sufficient to show an absence of a genuine dispute with respect to JLAMP's alter ego theory:

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Nor does JLAMP supply, in its Opposition, facts with respect to alter ego sufficient to defeat the Motion. JLAMP shows that Mr. Neman is the trustee of the two trusts who own 100% of the membership interests in MBN. But JLAMP offers nothing to establish that Mr. Neman used the trusts to control or dominate MBN in a manner that would support disregarding MBN's separate legal existence. JLAMP shows that Mr. Neman formed MBN shortly before the Debtors transferred the Assets to MBN. This evidence goes to MBN's liability on JLAMP's fraudulent transfer claims, not to whether Mr. Neman should be deemed MBN's alter ego.

By contrast, Mr. Neman has presented facts showing that there is no genuine dispute that Mr. Neman cannot be held liable as MBN's alter ego. Based on the evidence submitted by Mr. Neman, the Court finds that MBN is a limited liability company in good standing that has a bank account and business address and that pays taxes and maintains appropriate books and records. Mr. Neman does not hold himself out as personally liable for MBN's debts, does not treat MNB's assets as his own, and does not commingle MBN's corporate funds with his personal assets. Accordingly, there is no basis for piercing MBN's corporate veil, and Mr. Neman is entitled to judgment in his favor with respect to JLAMP's alter ego allegations.

Id.

Finally, the Court rejected JLAMP's request to defer ruling upon Mr. Neman's motion for summary judgment until JLAMP could conduct additional discovery. The Court found that JLAMP's request was made in bad faith and would cause undue delay:

JLAMP argues that it should be entitled to conduct additional discovery so that it may obtain evidence to shore up the Complaint's alter-ego allegations and file a Second Amended Complaint. The Court declines to grant JLAMP leave to amend the Complaint. Civil Rule 15(a)(2) provides that the "court should freely give leave [to amend] when justice so requires." However, the liberality with which leave to amend is generally granted "is subject to several limitations. Leave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties*,

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Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989).

Here, leave to amend is sought in bad faith. JLAMP failed to allege sufficient facts to support its alter ego allegations in its Complaint—which has already been amended once—and failed to proffer any such facts in its opposition to Mr. Neman’s motion for summary judgment. JLAMP’s position is that it should be entitled to conduct additional discovery in order to obtain the facts sufficient to support its alter ego theory. Discovery is not a fishing expedition in which parties are permitted to hunt for any conceivable set of facts that might support a legal theory supported only by threadbare allegations lacking the required specificity. As the Supreme Court has explained, to “unlock the doors to discovery,” a complaint must allege specific facts allowing the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For its request for leave to amend to have been made in good faith, JLAMP was required to provide to the Court either evidence that Mr. Neman is MBN’s alter ego, or at the very least allege specific facts plausibly supporting alter ego liability.

Leave to amend would also cause undue delay. Having been filed on July 9, 2015, this action has been pending for almost two years. If JLAMP had any facts to support its alter ego theory, it should have alleged those facts by this point. The Complaint has already been amended once, making the Court’s “discretion to deny leave to amend ... particularly broad.” *Ascon*, 866 F.2d at 1160. Amendment at this juncture would cause undue prejudice to Mr. Neman, who has already been required to devote substantial time and expense to this litigation.

With respect to the second prong necessary to establish alter ego liability—that preserving MBN’s corporate veil will produce an inequitable result—JLAMP has failed to carry its burden. MBN, which holds title to the Assets, will remain a defendant in this action even after the dismissal of Mr. Neman. Thus, Mr. Neman’s dismissal will not bar JLAMP from recovering the Assets, should it succeed in proving its allegations.

Id. at 7–8.

On May 8, 2017—prior to the hearing on Mr. Neman’s motion for summary judgment but after all briefing on that motion had been completed—JLAMP replaced

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its prior counsel, Duane Kumagai, with its present counsel, John S. Purcell, Andy S. Kong, and Douglas E. Hewlett of Arent Fox LLP. Adv. Doc. No. 130.

On July 17, 2017, the Court found that Mr. Neman was entitled to attorneys' fees, in the amount of \$74,366.50, as the prevailing party in the adversary proceeding. Adv. Doc. No. 150.

On February 23, 2018, the Court granted two motions to compel filed by JLAMP. Adv. Doc. Nos. 196–97. The Court ordered Mr. Neman to submit to a deposition, in his capacity as MBN's manager, and ordered MBN to supply amended interrogatory responses. The Court ordered MBN to pay JLAMP \$10,000 in attorneys' fees as compensation for the costs of litigating the motions to compel. On March 8, 2018, the Court granted a third motion to compel brought by JLAMP, this time ordering MBN to produce additional documents or to supply amended responses stating that the documents in question did not exist. The Court awarded JLAMP \$6,000 in attorneys' fees as compensation for the cost of litigating the third motion to compel.

JLAMP's Motion to Set Aside the Judgment in Favor of Mr. Neman

JLAMP now moves to set aside the judgment in favor of Mr. Neman, and makes the following arguments and representations in support of the Motion:

JLAMP's discovery against MBN has yielded newly discovered evidence that supports setting aside the judgment in favor of Mr. Neman, pursuant to Civil Rule 60(b)(2). This newly discovered evidenced also establishes that Mr. Neman obtained judgment in his favor through fraud and discovery misconduct, and so the judgment should be set aside pursuant to Civil Rule 60(b)(3).

Mr. Neman obtained judgment in his favor by abusing the discovery process. JLAMP served Mr. Neman with interrogatories in March 2017. Mr. Neman refused to answer any questions about the transfers at issue. For each question about the consideration the Debtors received for the transfers, Mr. Neman objected. When asked to specify the consideration received by the Debtors in exchange for the transfer of their interest in Boyd Street to MBN, Mr. Neman responded: "Defendant objects further to Interrogatory No. 6 on the grounds that it is not limited as to scope and seeks information which has been provided by or on behalf of MBN and is, therefore, already in the custody of JLAM, or its counsel." When asked to specify the consideration received by the Debtors in exchange for the transfer of their interest in Pico Boulevard to MBN, Mr. Neman responded: "Defendant objects further to Interrogatory No. 14 on the grounds that it is not limited as to scope and therefore

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does not seek information which is relevant to this adversary proceeding.” When asked to specify the consideration received by the Debtors in exchange for the transfer of their interest in 14th Street to MBN, Mr. Neman responded: “Defendant objects further to Interrogatory No. 22 on the grounds that it is duplicative of discovery propounded to MBN which is, to the extent information exists, the custodian of relevant documents and data. Consequently, this Interrogatory appears to have been interposed for the sake of imposing an undue and unnecessary burden on Defendant.”

JLAMP noticed Mr. Neman’s deposition for May 16, 2017, but he refused to appear. Mr. Neman then leveraged the impact of his discovery abuse by moving for summary judgment on March 28, 2017, before JLAMP’s prior counsel had the benefit of discovery. Mr. Neman prevailed upon his motion for summary judgment by causing Simon Neman, MBN’s general counsel, to submit a declaration stating in part that (1) MBN and Mr. Neman do not commingle corporate funds; (2) MBN maintains books and records; and (3) Mr. Neman does not represent that he is personally liable for the debts of MBN.

As JLAMP learned after it succeeded in compelling Mr. Neman to submit to a deposition in his capacity as MBN’s manager, all these representations were false. Mr. Neman’s deposition testimony established that Mr. Neman commingles the funds of MBN with the funds of Sky High, Boyd Street, and other entities that he owns or controls:

Question (by JLAMP): --and that was a draw that appears to [be] Yedidia Investments. Is that kind of how those businesses worked, that Yedidia would take draws from MBN?

Answer (by Mr. Neman): No. I have many different LLCs. Sometimes I need money in one LLC. It’s—I’m the shareholders, or whatever. Sometimes I borrow money, I pay back.... It’s not necessarily—doesn’t mean anything. I needed money, maybe MBN I took money. But all I know is, MBN owes a lot of money to the trusts.

Question (by JLAMP): Do you ever have to run that past anybody other than yourself?

Answer (by Mr. Neman): No. When it’s shortage, I try to cover from any LLC. By the way, the money in the LLC comes from the trust, anyway.

Ben Neman Depo. Tr. at 98:10–21 [Doc. No. 219, Ex. 10].

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Mr. Neman's deposition testimony further established the following facts, which demonstrate Mr. Neman's personal liability for the fraudulent transfers at issue in this litigation:

- 1) At the time of the transfer of the Debtors' assets to MBN, the Debtor Morad Javedanfar was deeply in debt and had been unable to pay his bills for several years. Ben Neman Depo. Tr. at 36:4–40:1, 80:6–82:9, 83:3–85:11; Morad Javedanfar Depo. Tr. at 38:13–39:19, 71:23–73:12.
- 2) While the transfer occurred because of an alleged "pre-existing debt," there are no records to indicate that this debt actually existed or that the parties ever communicated about it. Morad Javedanfar Depo. Tr. at 57:11–62:18; Simon Neman Depo. Tr. Vol. II at 145:11-146:13, 148:23-149:12, 153:9-16, 158:17-159:10, 168:3-169:15.
- 3) There was certainly no debt owed to MBN, as MBN was created the day before the transfers and Mr. Neman admitted he did not assign any alleged debt from one entity to another. Further, no documents showing any assignment of debt were produced in discovery.
- 4) While both Mr. Neman and Mr. Javedanfar have referred to a debt of \$950,000, they admit that there are no records showing how this debt arose. Ben Neman Depo. Tr. at 49:17–19; Javedanfar Depo. Tr. at 33:24–34:6, 87:23–88:11. Although Mr. Neman claims that he loaned hundreds of thousands of dollars to Mr. Javedanfar to cover capital contributions Mr. Javedanfar owed to Boyd Street and Sky High, these loans do not appear in the financial records of tax returns for those entities.

When seeking summary judgment, Mr. Neman argued that any actions that he had taken related to the transfers were in his role as MBN's manager, and not in his individual capacity. This representation was false from the outset, because the most serious allegations against Mr. Neman relate to his creating MBN so that he could then arrange for the improper transfer of the Debtors' assets to it. He could hardly have done this in his capacity as MBN's manager since he started this process long before MBN even began. To the contrary, the Debtors' assets were transferred, and MBN was created to facilitate the transfer, as a means to benefit Mr. Neman, Mr. Neman's trusts, and the other companies that Mr. Neman controls.

In obtaining summary judgment, Mr. Neman incorrectly represented that no inequitable result would occur if he were dismissed from the case. Some of JLAMP's causes of action, such as its §547 claim, are easier to prove against insiders.

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Preferential transfers made to insiders can be avoided if they were made within one year prior to the petition, whereas preferential transfers made to non-insiders are avoidable only if they were made within ninety days prior to the petition.

Mr. Neman's Opposition to the Motion

Mr. Neman makes the following arguments and representations in opposition to JLAMP's motion to set aside the judgment in his favor:

First, there is no "newly discovered evidence" within the meaning of Civil Rule 60(b)(2). "In the Ninth Circuit, the party seeking reconsideration based on newly-discovered evidence must show the evidence: (1) is truly newly-discovered; (2) could not have been discovered through due diligence; and (3) is of such a material and controlling nature that it demands a probable change in the outcome." *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 113 (E.D. Cal. 2001). "Evidence is not 'newly discovered' under the Federal Rules if it was in the moving party's possession at the time of trial *or could have been discovered with reasonable diligence.*" *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987) (emphasis added).

Had JLAMP acted diligently in prosecuting this action against Mr. Neman, it could have uncovered the "newly discovered" evidence that it cites in support of its request to set aside the judgment. The Complaint was pending for almost two years before JLAMP served discovery upon Mr. Neman. When Mr. Neman asserted objections to the discovery, JLAMP did not meet and confer with counsel to discuss the objections and did not file a motion to compel the discovery, even after receiving notice of Mr. Neman's motion for summary judgment.

JLAMP's argument that Mr. Neman improperly thwarted discovery by refusing to appear for a deposition noticed for May 16, 2017, lacks merit. JLAMP unilaterally noticed the deposition without first consulting Mr. Neman, or Mr. Neman's counsel, to determine availability. Mr. Neman responded by explaining that he was not available on May 16, but would be made available at a date, time, and location agreed upon by the parties.

Second, JLAMP has failed to bring this Rule 60(b) motion within a reasonable time. The Ninth Circuit has found that "[w]hat constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *See Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir.

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1981). Judgment was entered in Mr. Neman's favor on May 25, 2017. JLAMP did not file this Motion until May 14, 2018, despite the fact that the "newly discovered" evidence has, in light of Mr. Neman's March 23, 2018 deposition, been in JLAMP's possession for more than two months.

Third, in support of its request to set aside the judgment under Rule 60(b)(3), JLAMP has failed to offer clear and convincing evidence that Mr. Neman engaged in fraud, misrepresentation, or other misconduct. Much of JLAMP's briefing focuses on irrelevant arguments not raised on Mr. Neman's motion for summary judgment, including allegedly fraudulent transfers, the creation of MBN, and Mr. Javedanfar's debt and bankruptcy. For example, JLAMP argues that summary judgment in Mr. Neman's favor was improper because Mr. Neman created MBN to benefit himself by facilitating the fraudulent transfer of the Debtors' assets to an entity he controlled. However, the Court has already rejected this argument. In the Memorandum of Decision granting summary judgment in Mr. Neman's favor, the Court stated: "JLAMP shows that Mr. Neman formed MBN shortly before the Debtors transferred the Assets to MBN. This evidence goes to MBN's liability on JLAMP's fraudulent transfer claims, not to whether Mr. Neman should be deemed MBN's alter ego." Memorandum of Decision at 8.

JLAMP argues that Mr. Neman is MBN's alter ego because he commingled MBN's funds. This argument fails, because the testimony JLAMP cites shows only that Mr. Neman commingled MBN's funds with the funds of other entities that he controlled. Nowhere does JLAMP show that Mr. Neman commingled MBN's funds with his own personal funds.

Finally, JLAMP has not demonstrated that an inequitable result would occur if the corporate veil was not pierced. "Alter ego is an extreme remedy, and is sparingly used." *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539 (Cal. 2000). To pierce the veil, JLAMP must show both a unity of interest between MBN and Mr. Neman, and that an inequitable result would occur if the corporate form were respected. *Mesler v. Bragg Mgmt. Co.*, 39 Cal.3d 290, 300 (Cal. 1985). JLAMP states that if the veil is pierced, it will make it easier for JLAMP to prove its case. But making JLAMP's work easier is not the purpose of the alter ego doctrine. *See generally Sonora Diamond*, 83 Cal.App.4th at 539 (stating that "it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced").

JLAMP's Reply to Mr. Neman's Opposition

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JLAMP makes the following arguments and representations in its Reply to Mr. Neman's Opposition:

First, Mr. Neman's contention that JLAMP could have uncovered the newly discovered evidence presented in the Motion had it acted diligently is wrong. Mr. Neman responded to JLAMP's discovery with improper objections and refusals to answer. For example, in response to JLAMP's interrogatories asking about the consideration the Debtors received for the transfer of the properties at issue, Mr. Neman objected that the interrogatories were irrelevant. Before JLAMP had time to file a motion to compel, summary judgment was entered in Mr. Neman's favor.

Second, to set aside the judgment under Rule 60(b)(3), JLAMP need only show that Mr. Neman engaged in misconduct that prevented JLAMP from "fully and fairly presenting [its] case or defense." *Bunch v. United States*, 680 F.2d 1271, 1283 (9th Cir. 1982). Where the case "involves the withholding of information called for by discovery"—as occurred here—JLAMP "need not establish that the result in the case would be altered." *Id.*

II. Findings and Conclusions

Civil Rule 60(b) provides in relevant part:

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

- 2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- 3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party.

Civil Rule 60(b)(2)–(3).

Pursuant to Civil Rule 60(c), a Rule 60(b) motion "must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after entry of the judgment or order or the date of the proceeding." The standard for determining whether a Rule 60(b) motion has been filed timely "requires a case-by-case analysis," which must consider "the interest in finality, the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudiced to

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other parties.”” *Sallie Mae Servicing, LP v. Brian T. Williams (In re Williams)*, 287 B.R. 787, 792–93 (B.A.P. 9th Cir. 2002) (citing *Ashford v. Stewart*, 657 F.2d 1053, 1055 (9th Cir. 1981)).

Here, summary judgment was entered in Mr. Neman’s favor on May 25, 2017. JLAMP brought the instant Motion to set aside the judgment on May 14, 2018, within the one-year limit specified by Civil Rule 60(c). The Court finds that JLAMP brought the Motion with a reasonable time. The Motion is based upon deposition testimony offered by Mr. Neman in his capacity as MBN’s manager. Mr. Neman’s deposition was taken on March 23, 2018. JLAMP was required to file a motion to compel in order to obtain Mr. Neman’s deposition testimony. The Motion is also based upon deposition testimony offered by Morad Javedanfar, Simon Neman, and Saeed Farkhondehpour. Mr. Javedanfar’s deposition was taken on April 10, 2018; Simon Neman’s deposition was taken on April 19, 2018; and Mr. Farkhondehpour’s deposition was taken on April 27, 2018. JLAMP brought the Motion approximately three weeks after the last of these depositions.

Civil Rule 60(b)(2)—Newly Discovered Evidence

To set aside the judgment on the grounds of newly discovered evidence, JLAMP must show that the evidence "(1) is truly newly-discovered; (2) could not have been discovered through due diligence; and (3) is of such a material and controlling nature that it demands a probable change in the outcome." *U.S. v. Westlands Water Dist.*, 134 F.Supp.2d 1111, 113 (E.D. Cal. 2001). "Evidence is not ‘newly discovered’ under the Federal Rules if it was in the moving party’s possession at the time of trial or could have been discovered with reasonable diligence." *Coastal Transfer Co. v. Toyota Motor Sales, U.S.A.*, 833 F.2d 208, 212 (9th Cir. 1987).

By framing the Motion solely in terms of evidence adduced by Mr. Neman’s deposition testimony, JLAMP overlooks the context in which the judgment in Mr. Neman’s favor was entered. JLAMP incorrectly presupposes that Mr. Neman obtained judgment in his favor by stonewalling JLAMP’s discovery, when in fact judgment was entered in Mr. Neman’s favor largely as a result of JLAMP’s failure to allege or show any specific facts substantiating its alter ego theory:

The Complaint recites the legal formulation for alter ego liability by alleging (1) that there exists “a unity of interest in ownership between each defendant and every other defendant,” (2) that each “defendant was a mere shell, instrumentality and conduit through which every other defendant acted,”

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and (3) that each defendant “controlled, dominated, managed and operated every other defendant and intermingled its assets with theirs.” Complaint at ¶ 11. The Complaint is entirely lacking in *specific facts* to support these conclusory allegations. There are no specific facts showing a unity of interest between Mr. Neman and MBN: the Complaint does not allege facts showing how Mr. Neman used MBN as a mere shell or instrumentality; it does not allege facts showing how Mr. Neman controlled or dominated MBN; and it does not allege facts showing the extent to which Mr. Neman’s assets were comingled with MBN’s assets.

Nor does JLAMP supply, in its Opposition, facts with respect to alter ego sufficient to defeat the Motion. JLAMP shows that Mr. Neman is the trustee of the two trusts who own 100% of the membership interests in MBN. But JLAMP offers nothing to establish that Mr. Neman used the trusts to control or dominate MBN in a manner that would support disregarding MBN’s separate legal existence. JLAMP shows that Mr. Neman formed MBN shortly before the Debtors transferred the Assets to MBN. This evidence goes to MBN’s liability on JLAMP’s fraudulent transfer claims, not to whether Mr. Neman should be deemed MBN’s alter ego.

By contrast, Mr. Neman has presented facts showing that there is no genuine dispute that Mr. Neman cannot be held liable as MBN’s alter ego. Based on the evidence submitted by Mr. Neman, the Court finds that MBN is a limited liability company in good standing that has a bank account and business address and that pays taxes and maintains appropriate books and records. Mr. Neman does not hold himself out as personally liable for MBN’s debts, does not treat MNB’s assets as his own, and does not commingle MBN’s corporate funds with his personal assets. Accordingly, there is no basis for piercing MBN’s corporate veil, and Mr. Neman is entitled to judgment in his favor with respect to JLAMP’s alter ego allegations.

Memorandum of Decision at 7.

In addition, at the time it entered judgment in Mr. Neman’s favor, the Court was aware that discovery had not been completed. In fact, the Court expressly denied JLAMP’s request for additional time to conduct discovery. JLAMP’s request was denied because the Complaint, which had already been amended once, still did not contain specific factual allegations sufficient to support JLAMP’s alter ego theory:

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JLAMP argues that it should be entitled to conduct additional discovery so that it may obtain evidence to shore up the Complaint's alter-ego allegations and file a Second Amended Complaint. The Court declines to grant JLAMP leave to amend the Complaint. Civil Rule 15(a)(2) provides that the "court should freely give leave [to amend] when justice so requires." However, the liberality with which leave to amend is generally granted "is subject to several limitations. Leave need not be granted where the amendment of the complaint would cause the opposing party undue prejudice, is sought in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Properties, Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

Here, leave to amend is sought in bad faith. JLAMP failed to allege sufficient facts to support its alter ego allegations in its Complaint—which has already been amended once—and failed to proffer any such facts in its opposition to Mr. Neman's motion for summary judgment. JLAMP's position is that it should be entitled to conduct additional discovery in order to obtain the facts sufficient to support its alter ego theory. Discovery is not a fishing expedition in which parties are permitted to hunt for any conceivable set of facts that might support a legal theory supported only by threadbare allegations lacking the required specificity. As the Supreme Court has explained, to "unlock the doors to discovery," a complaint must allege specific facts allowing the Court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). For its request for leave to amend to have been made in good faith, JLAMP was required to provide to the Court either evidence that Mr. Neman is MBN's alter ego, or at the very least allege specific facts plausibly supporting alter ego liability.

Leave to amend would also cause undue delay. Having been filed on July 9, 2015, this action has been pending for almost two years. If JLAMP had any facts to support its alter ego theory, it should have alleged those facts by this point. The Complaint has already been amended once, making the Court's "discretion to deny leave to amend ... particularly broad." *Ascon*, 866 F.2d at 1160. Amendment at this juncture would cause undue prejudice to Mr. Neman, who has already been required to devote substantial time and expense to this litigation.

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Memorandum of Decision at 7–8.

The deficiencies in the Complaint referenced above were not the fault of JLAMP's current counsel, who substituted into the case shortly before Mr. Neman's motion for summary judgment was adjudicated. However, the Court's analysis under Civil Rule 60(b)(2) cannot turn on the fact that JLAMP's present counsel is not responsible for the circumstances that led to entry of judgment in Mr. Neman's favor. JLAMP's present counsel is bound by the actions—or inactions—of its prior counsel. To hold otherwise would allow parties to engage in gamesmanship by substituting counsel whenever a litigation setback occurred.

Nothing in JLAMP's Motion alters the Court's finding that JLAMP's prior request for leave to amend the Complaint to substantiate the alter ego allegations was properly denied. The fact that JLAMP's discovery has yielded the specific factual allegations regarding its alter ego theory that should have been alleged in the Complaint from the outset does not change this result. As the Court explained in the *Memorandum of Decision*, "[d]iscovery is not a fishing expedition in which parties are permitted to hunt for any conceivable set of facts that might support a legal theory supported only by threadbare allegations lacking the required specificity." Memorandum of Decision at 7.

Even if the Court were to overlook the Complaint's deficiencies, thereby disregarding the Supreme Court's directive that a Complaint must allege specific facts to "unlock the doors to discovery," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), JLAMP's newly discovered evidence does not support disregarding the corporate form. "Alter ego is an extreme remedy" that is "sparingly used" and may be invoked only if the movant shows the following:

First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. Among the factors to be considered in applying the doctrine are commingling of funds and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other. Other factors which have been described in the case law include inadequate capitalization, disregard of corporate formalities, lack of segregation of corporate records,

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and identical directors and officers. No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied.

Sonora Diamond Corp. v. Superior Court, 83 Cal. App. 4th 523, 538–39, 99 Cal. Rptr. 2d 824, 836 (2000) (internal citations omitted).

Here, Mr. Neman’s deposition testimony shows that MBN engaged in sloppy record-keeping and that Mr. Neman may have, at various times, caused MBN to lend money to other entities he controlled. The testimony does not show definitively that Mr. Neman caused MBN to lend money to such entities, only the possibility that such lending might have occurred; Mr. Neman could not remember details of specific transactions. Mr. Neman’s testimony does not establish that MBN is the alter ego of Mr. Neman. At the very most, the testimony could be offered to support the contention that MBN is the alter ego of the other entities to which it loaned funds—although such a contention would have to be bolstered by additional evidence in order to justify imposition of the extreme remedy of alter ego.

JLAMP argues that its new evidence supports its most serious allegation against Mr. Neman—that Mr. Neman created MBN so that he could arrange for the improper transfer of the Debtor’s assets to it. However, the Court rejected this very argument when entering judgment in favor of Mr. Neman:

JLAMP shows that Mr. Neman formed MBN shortly before the Debtors transferred the Assets to MBN. This evidence goes to MBN’s liability on JLAMP’s fraudulent transfer claims, not to whether Mr. Neman should be deemed MBN’s alter ego.

Memorandum of Decision at 7.

Civil Rule 60(b)(3)—Fraud, Misrepresentation, or Misconduct

To set aside the judgment under Civil Rule 60(b)(3), JLAMP must:

- (1) prove by clear and convincing evidence that the verdict was obtained through fraud, misrepresentation, or other misconduct.
- (2) establish that the conduct complained of prevented the losing party from fully and fairly presenting his case or defense. Although when the case involves the withholding of information called for by discovery, the party need not establish that the result in the case would be altered.

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Jones v. Aero/Chem Corp., 921 F.2d 875, 878–79 (9th Cir. 1990).

Once again, JLAMP's arguments under Civil Rule 60(b)(3) are based upon the false premise that Mr. Neman obtained judgment in his favor through discovery misconduct. The reality, as set forth above, is that the Court entered judgment in Mr. Neman's favor as a result of JLAMP's failure to allege or show facts substantiating its alter ego theory. JLAMP was not stymied by any misconduct by Mr. Neman; it was stymied by its own failure to sufficiently allege the facts necessary to support its alter ego theory in its Complaint.

JLAMP asserts that it lacked the facts necessary to properly oppose Mr. Neman's motion for summary judgment only because Mr. Neman did not cooperate during discovery. Had JLAMP's Complaint properly alleged the specific facts necessary to support its alter ego theory, this contention might have merit. But, as the Court ruled in the *Memorandum of Decision*, JLAMP cannot use a Complaint entirely devoid of the specific allegations necessary to state a claim as a springboard to unlock the doors to discovery, in the hopes of later uncovering those specific facts which should have been alleged from the outset.

III. Conclusion

Based upon the foregoing, the Motion is DENIED. Mr. Neman shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Evidentiary Rulings

Mr. Neman objects to multiple paragraphs of the declaration submitted by JLAMP's counsel, John S. Purcell, on the grounds that the declaration misstates and

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mischaracterizes the record and contains improper legal argument. To the extent that the Purcell Declaration characterizes deposition testimony or other portions of the record, the Court relies upon the record itself and not upon Mr. Purcell's characterization thereof to adjudicate the Motion. Since it does not rely upon these aspects of Mr. Purcell's declaration, the Court does not rule upon Mr. Nemans' evidentiary objections thereto. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections."). Further, to the extent Mr. Purcell's declaration contains legal argument, the Court does not construe the declaration as evidence.

Note 1

Unless otherwise indicated, all "Bankr. Doc." citations are to the main bankruptcy case, Case No. 2:13-bk-27702-ER; all "Adv. Doc." citations are to Adv. No. 2:15-ap-01363-ER.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn
Yuriko M Shikai

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
John S Purcell

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Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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#2.00 APPLICANT: Other Expenses: International Sureties, LTD.

Hearing re [34] and [35] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/19/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Joshua Lee Cohen

Represented By
Don Emil Brand

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:17-15461 Joshua Lee Cohen

Chapter 7

#3.00 APPLICANT: Accountant for Trustee - Menchaca & Company LLP

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/19/2018

Tentative:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,618.50

Expenses: \$18.85

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Joshua Lee Cohen

Represented By
Don Emil Brand

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:17-15461 Joshua Lee Cohen

Chapter 7

#4.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing re [34] and [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/19/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,937.80

Total Expenses: \$157.95

Other (Int'l Sureties, LTD): amounts previously paid on an interim basis are deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Joshua Lee Cohen

Represented By
Don Emil Brand

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:18-10926 Walker Family Trust

Chapter 7

Adv#: 2:18-01021 Walker Family Trust et al v. Thrower et al

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01021. Notice of Removal by Kenneth Adler, Trustee Walker Family Trust - Nature of Suit: (14 (Recovery of money/property - other)) ,(91 (Declaratory judgment)) ,(01 (Determination of removed claim or cause)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Milano, Sonny)

fr. 3-13-18

Docket 1

***** VACATED *** REASON: REMANDED TO STATE COURT 5/1/18**

Tentative Ruling:

3/12/2018

Tentative Ruling:

Plaintiff has failed to file a Unilateral Status Report in response to the Court's Order to Comply. Pursuant to the Order to Comply, Plaintiff is sanctioned in the amount of \$250.00.

By separate order, the Court will require Plaintiff to appear and show cause why this probate action should not be remanded to the Los Angeles Superior Court.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Walker Family Trust

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Walker Family Trust

Chapter 7

Defendant(s):

Nicole Renee Thrower Pro Se

Gregory William Walker Pro Se

Plaintiff(s):

Walker Family Trust Represented By
Joseph C Rosenblit

Kenneth Adler, Trustee Represented By
Joseph C Rosenblit

Trustee(s):

Rosendo Gonzalez (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:18-13224 Keiosha Danielle Walton

Chapter 7

**#6.00 Show Cause Hearing
RE: [15] Order Requiring Debtor To Appear And Show Cause Why Case
Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing
Fee In Installments.**

Docket 1

***** VACATED *** REASON: DISMISSED 6-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Keiosha Danielle Walton	Pro Se
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Trustee(s):

Rosendo Gonzalez (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#7.00 Hearing
RE: [207] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 207

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 6-1-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno
Alexandre I Cornelius
Jeffrey Lee Costell

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:17-13943 Unity Courier Service, Inc.

Chapter 11

#8.00 Post Confirmation status conference re
RE: [228] Motion for order confirming chapter 11 plan Motion for Order
Confirming Debtor's First Amended Plan of Reorganization Dated December 13,
2017 as Modified

fr. 2-21-18

Docket 228

Tentative Ruling:

6/19/2018

No appearances are required. This is a post-confirmation status conference. No further status conference will be required unless for good cause requested by the parties or otherwise ordered by the Court.

Party Information

Debtor(s):

Unity Courier Service, Inc.

Represented By
Ira Benjamin Katz
David W. Meadows

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#9.00 Hearing
RE: [90] Motion for order confirming chapter 11 plan

Docket 90

***** VACATED *** REASON: PLAN CONFIRMED AT 6/6/18
HEARING.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:18-12147 Avelina Conde Castillo

Chapter 11

#10.00 HearingRE: [23] Motion to disgorge attorney's fees under 11 U.S.C. section 329 by U.S. Trustee . (united states trustee (hy))

Docket 23

Tentative Ruling:

6/19/2018

For the reasons set forth below, the UST's Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) United States Trustee's Notice of Motion and Motion for an Order Disgorging Attorney Compensation Pursuant to 11 U.S.C. § 329 (the "Motion") [Doc. No. 23]
 - a) Request for Judicial Notice in Support of the Motion ("RJN") [Doc. No. 24]
- 2) Opposition to the Motion (the "Opposition") [Doc. No. 29]
 - a) Declaration of Krystina T. Tran (the "Tran Decl.") [Doc. No. 29]
 - b) Declaration of Avelina Conde Castillo (the "Castillo Decl.") [Doc. No. 29]
- 3) Reply to the Opposition (the "Reply") [Doc. No. 32]
 - a) Request for Judicial Notice in Support of the Reply (the "Reply RJN") [Doc. No. 33]

I. Facts and Summary of Pleadings

Avelina Conde Castillo (the "Debtor") filed a voluntary Chapter 11 petition on February 27, 2018 (the "Petition") [Doc. No. 1]. The Debtor was represented by Krystina T. Tran ("Debtor's Counsel") throughout the pendency of the Debtor's case. On March 29, 2018, the United States Trustee ("UST") filed the "Motion to Dismiss or Convert under 11 U.S.C. § 1112(b) to Convert or Dismiss Case with an Order Directing Payment of Quarterly Fees and for Judgment Thereon" (the "Dismissal

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Avelina Conde Castillo

Chapter 11

Motion") [Doc. No. 13]. On May 17, 2018, the Court entered the "Order Granting the [Dismissal Motion] and Dismissing Case with 180-day Bar with Judgment for Payment of Quarterly Fees" (the "Dismissal Order") [Doc. No. 21]. The "Disclosure of Compensation of Attorney for Debtor(s)" [Doc. No. 1] indicates that Debtor's Counsel charged, and received from the Debtor, \$5,000.00 for legal services (the "Retainer"). The Debtor's "Statement of Financial Affairs" [Doc. No. 1] indicates that the Debtor paid Debtor's counsel \$5,000.00 on December 11, 2017, *id.* at ¶ 16.

The Motion

On May 17, 2018, the UST filed the "United States Trustee's Notice of Motion and Motion for an Order Disgorging Attorney Compensation Pursuant to 11 U.S.C. § 329" (the "Motion") [Doc. No. 23]. The Motion seeks disgorgement of the \$5,000.00 Retainer paid by the Debtor to Debtor's Counsel. The Motion contends that Debtor's Counsel failed to obtain an order authorizing employment pursuant to § 327(a), and, therefore, the Retainer and fees received should be disgorged under § 329, and pursuant to the Court's inherent authority under § 105(a). Furthermore, the UST contends that disgorgement is warranted under § 329(b), because the compensation paid to Debtor's counsel exceeded the reasonable value of the services provided. Specifically, the UST contends that Debtor's Counsel failed to provide competent legal services, which failure resulted in the dismissal of the Debtor's case.

The Opposition

On June 7, 2018, the Debtor filed the "Opposition to the Motion" (the "Opposition") [Doc. No. 29]. The Opposition contends that disgorgement of the Retainer is not warranted because the Retainer was for "pre-bankruptcy legal work," which included pre-bankruptcy counseling and seeking alternative options to foreclosure on the Debtor's residence. Opposition at 1–2; "Declaration of Avelina Conde Castillo in Support of the Opposition" ("Castillo Decl.") [Doc. No. 29] at ¶¶ 7–9. Furthermore, the Opposition states that the Debtor paid the Retainer in December 2017—more than two months before the date the Petition was filed—and that § 327 is silent with respect to compensation for pre-bankruptcy work. *Id.*

The Opposition further contends that the dismissal of the Debtor's case was the result of the Debtor's inability to complete all the tasks required of her, and not due to ineffective representation by the Debtor's Counsel. *See* Castillo Decl. at ¶¶ 12–18.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Avelina Conde Castillo

Chapter 11

Ultimately, "the Debtor was too overwhelmed with the requirements and costs of a chapter 11, and felt she could not successfully move forward with the case," and the Debtor voluntarily decided to let the UST dismiss the case. Opposition at 5.

The Reply

On June 12, 2018, the UST filed the "Reply to the Opposition" (the "Reply") [Doc. No. 32]. The Reply argues that Debtor's Counsel's failure to seek authority from the Court to represent the Debtor requires disgorgement of fees received from the Debtor, whether pre-petition or post-petition. The UST argues that § 329 "allows return of any fees paid to an attorney in connection with a bankruptcy within a year before the date of filing", which, in the proper circumstances, includes fees paid for pre-petition services. Additionally, the Reply states that Debtor's Counsel has a pattern of failing to obtain an order authorizing employment, and that Debtor's Counsel has never filed an employment application in any of her prior Chapter 11 cases. Reply at 4-5; *see also* "Request for Judicial Notice in Support of the Reply" (the "Reply RJN") [Doc. No. 33]. Lastly, the Reply states that Debtor's Counsel failed to attend the meeting of creditors, and failed to submit UST compliance, among other things.

II. Findings of Fact and Conclusions of Law

The Bankruptcy Code and the Local Rules require counsel to seek authority from the court to represent a debtor in possession during a Chapter 11 case and to be compensated from the estate. *See* 11 U.S.C. § 327(a); FRBP 2014; LBR 2016-1. "Court approval of the employment of counsel for a debtor in possession is *sine qua non* to counsel getting paid. Failure to receive court approval for the employment of a professional in accordance with § 327 and Rule 2014 precludes the payment of fees." *In re Shirley*, 134 B.R. 940, 943 (B.A.P. 9th Cir. 1992) (footnote omitted); *see also Atkins v. Wain, Samuel & Co. (In re Atkins)*, 69 F.3d 970, 973 (9th Cir. 1995) ("In bankruptcy proceedings, professionals who perform services for a debtor in possession cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order.").

11 U.S.C. § 329(a) requires any attorney representing a debtor to file "a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition" Section 329(b)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Avelina Conde Castillo

Chapter 11

provides that "[i]f such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive, to the entity that made such payment." FRBP 2017 (a), which implements § 329(a), further provides:

On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly *and in contemplation of the filing of a petition under the Code . . .* to an attorney for services rendered or to be rendered is excessive.

The burden is on the applicant to show the reasonableness of the fees. *In re Williams*, 357 B.R. 434,439 (B.A.P. 6th Cir. 2007) (emphasis added). "A bankruptcy court may sometimes exercise discretion to make an award for attorneys fees not authorized in advance, but only in exceptional circumstances where the attorney provides a satisfactory explanation for failure to obtain approval in advance and demonstrates that the service significantly benefitted the estate." *Law Offices of Ivan W. Halperin v. Occidental Fin. Group (In re Occidental Fin. Group)*, 40 F.3d 1059, 1062 (9th Cir. 1994).

Here, the Court finds that Debtor's Counsel has failed to demonstrate the reasonableness of the \$5,000.00 Retainer paid to Debtor's Counsel pre-petition. First, it is undisputed that Debtor's Counsel did not obtain Court approval of her fees in connection with this case, and the Court is not persuaded by the argument of Debtor's Counsel that pre-petition fees do not require approval under § 327, or that such fees are exempt from disgorgement under § 329. Furthermore, the Court finds that Debtor's Counsel has not provided a "satisfactory explanation" for the failure to obtain approval under § 327, or demonstrated how the service provided by Debtor's Counsel significantly benefitted the estate. *See In re Occidental Fin. Group*, 40 F.3d at 1062. As set forth in the "Disclosure of Compensation" [Doc. No. 1], Debtor's Counsel certified that the Retainer included preparation of the petition and schedules, representation of the Debtor at the meeting of creditors, and negotiations with secured creditors, among other things; however, Debtor's Counsel failed to attend the initial meeting of creditors and failed to submit UST compliance, which are services that are ordinarily expected of counsel in a Chapter 11 case. Considering the failure of Debtor's Counsel in this regard, and considering that the Debtor's case was dismissed

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Avelina Conde Castillo

Chapter 11

on May 17, 2018, which is less than three months from the date the Petition was filed, the \$5,000.00 Retainer paid to Debtor's Counsel exceeds the reasonable value of services provided to the Debtor.

III. Conclusion

Based on the foregoing, the UST's Motion is GRANTED in its entirety.

The UST shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Avelina Conde Castillo

Represented By
Krystina T Tran

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#11.00 Hearing
RE: [42] Motion to Dismiss Chapter 11 Case; Memorandum of Points and Authorities; Declaration of David Wong; Declaration of Teri Pham; and Declaration of William Small (Pham, Teri)

Docket 38

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED 5-31-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#12.00 Hearing
RE: [24] Motion for Default Judgment Under LBR 7055-01

fr: 10-18-17; 5-22-18

Docket 24

Tentative Ruling:

6/19/2018

For the reasons set forth below, the Motion for Default Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Motion for Default Judgment Under LBR 7055-1 [Doc. No. 34] (the "Motion")
 - a) Notice of Motion for Default Judgment [Doc. No. 35]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

Shasa USA LLC (the "Debtor") commenced a voluntary Chapter 7 petition on February 4, 2015 (the "Petition Date"). Prior to the Petition Date, the Debtor was a retailer in the women's "fast fashion" clothing industry, and competed with other fashion retailers such as Forever 21, H&M, Wet Seal, and Deb Shops. The Debtor updated the clothing and fashion accessories for sale at its retail stores on a monthly basis. The clothing and accessories sold by the Debtor were intended to be used a few times and then thrown away because the clothing was no longer fashionable. Consumers would return to the Debtor's stores to buy the current monthly fashion. Clothing and accessories sold by the Debtor were priced in the typical range of \$5.00 to \$15.00.

In the 90-day period prior to the Petition Date, the Debtor did not have sufficient funds to pay all its debts, and fell behind on its payments to creditors. During this time period, many of the Debtor's creditors contacted the Debtor and demanded that their bills be paid.

On January 30, 2017, the Chapter 7 Trustee (the "Trustee") commenced this

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

preference action against McGinn USA, Inc., d/b/a Plastic Island (the "Defendant"), seeking to avoid transfers in the total amount of \$340,865.28 that the Debtor made to the Defendant during the ninety day period prior to the Petition Date. The Clerk of the Court entered Defendant's default on March 21, 2017. The Trustee seeks entry of default judgment against the Defendant. A prior hearing on the Motion was conducted on October 18, 2017, but was continued because the Defendant commenced a voluntary Chapter 7 petition, Case No. 2:17-bk-21078-BR. The Defendant's Chapter 7 petition was closed on December 19, 2017. No opposition to the Motion is on file.

II. Findings and Conclusions

The hearing on this Motion was continued to enable the Trustee to correct a service defect. The Trustee has properly served the Motion and no Opposition is on file.

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992).

Section 547(b) permits the Trustee to avoid "any transfer of an interest of the debtor in property" if the transfer was:

- 1) to or for the benefit of a creditor;
- 2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- 3) made while the debtor was insolvent;
- 4) made—
 - a) on or within 90 days before the date of the filing of the petition; or
 - b) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- 5) that enables such creditor to receive more than such creditor would receive if—
 - a) the case were a case under chapter 7 of this title;
 - b) the transfer had not been made; and
 - c) such creditor received payment of such debt to the extent provided by the provisions of this title.

For purposes of §547(b), a "transfer" means:

- a) the creation of a lien;
- b) the retention of title as a security interest;

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT...

Shasa USA LLC

Chapter 7

- c) the foreclosure of a debtor's equity of redemption; or
- d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - i) property; or
 - ii) an interest in property.

§101(54).

It is the Trustee's burden to establish all the elements of §547(b) by a preponderance of the evidence. §547(g); *Hall-Mark Electronics Corp. v. Sims (In re Lee)*, 179 B.R. 149, 155 (B.A.P. 9th Cir. 1995) *aff'd*, 108 F.3d 239 (9th Cir. 1997). Section 547(c) sets forth certain defenses to transfer liability. The Defendant has the burden of establishing that the §547(c) defenses apply, again under the preponderance of the evidence standard. §547(g).

The Trustee has alleged facts sufficient to establish that the Defendant received transfers avoidable under §547(b). The declaration attached to the Motion for Default Judgment support the Trustee's entitlement to the damages requested against the Defendant. The Trustee engaged the services of an accountant and forensic data firm to reconstruct the Debtor's business records. The Trustee has submitted invoices and/or reconstructed business records of the Debtor showing that the Defendant received preferential payments, in the amount of \$340,865.28, during the 90-day period prior to the Petition Date.

The Court will enter default judgment, as requested by the Trustee, against the Defendant. The Trustee shall submit a conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#13.00 Hearing
RE: [31] Motion for Default Judgment Motion for Default Judgment Under LBR
7055-1 [with Proof of Service] Default Judgment Motion due by 05/18/2018.
(Werth, Steven)

fr: 5-22-18

Docket 31

Tentative Ruling:

6/19/2018

See Cal. No. 12, above, incorporated in full by reference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01077 Goodrich v. McGinn USA, Inc., a California corporation, d/b/a

#14.00 HearingRE: [34] Motion for Default Judgment Under LBR 7055-01

Docket 34

Tentative Ruling:

6/19/2018

See Cal. No. 12, above, incorporated in full by reference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

McGinn USA, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

10:00 AM

2:12-13698 David Phillip Rudich

Chapter 11

#15.00

POST CONFIRMATION status conference re [121] FIRST AMENDED
Confirmation of chapter 11 plan

f. 7-25-12; 9-12-12; . 12-11-12; 2-27-13; 7-17-13; 8-21-13; 2-18-14; 5-7-14; 8-6-14; 2-17-15; 2-19-15; 2-16-16; 2-7-17; 6-13-17; 12-12-17; **6-6-18**

Docket 0

Tentative Ruling:

6/18/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **June 11, 2019 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

David Phillip Rudich

Represented By
Robert H Bisno
Alexandre I Cornelius
Jeffrey Lee Costell

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, June 20, 2018

Hearing Room 1568

11:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#100.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For
Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17; 3-13-18; 3-14-18

Docket 14

Tentative Ruling:

6/19/2018

For the reasons set forth below, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including September 30, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. Furthermore, having received no objection or further stipulation, the Court extends the terms of the Third IRS Stipulation through and including September 30, 2018. A hearing on whether the Debtor may use cash collateral subsequent to September 30, 2018 will take place on September 12, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by August 22, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by August 29, 2018. Any reply may be filed and served by September 5, 2018.

Pleadings Filed and Reviewed:

- 1) Supplemental to Motion for Authority to Use Cash Collateral (the "Motion") [Doc. No. 122]
 - a) Notice of Motion and Motion for Authority to Use Cash Collateral [Doc. No. 14]
- 2) Order Approving Fourth Request for Interim Use of Cash Collateral and Adequate Protection [Doc. No. 119]
- 3) Third Stipulation Regarding Interim Use of Cash Collateral and Adequate Protection [between the Debtor and Citizens Business Bank] (the "Bank Stipulation") [Doc. No. 85]
- 4) Second Stipulation Between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection [Doc. No. 100]

**United States Bankruptcy Court
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Los Angeles
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11:00 AM

CONT... Base Architecture Planning & Engr Inc.

Chapter 11

5) No opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Base Architecture Planning & Engr Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on July 14, 2017. The Debtor is an urban design, architecture, planning, and civil engineering firm located in Los Angeles. The Debtor specializes in designing and constructing airport facilities, transit projects, municipal and civic facilities, schools, and commercial offices. The Debtor has 22 active contracts with different property owners and government agencies, which it expects to assume. The immediate cause of the petition was the entry of a judgment against the Debtor in the amount of \$70,000 on May 25, 2017.

On May 17, 2018, the Debtor filed the "Supplemental to Motion for Authority to Use Cash Collateral" (the "Motion") [Doc. No. 122]. The Debtor seeks authorization to use cash collateral in accordance with: (1) the stipulation executed between the Debtor and Citizens Business Bank (the "Bank Stipulation") [Doc. No. 85]; and (2) the stipulation executed between the Debtor and the Internal Revenue Service (the "First IRS Stipulation") [Doc. No. 26]. The Debtor states that it owes Citizens Business Bank (the "Bank") \$212,120.15 as of the petition date; that the Debtor owes the IRS \$500,000; that the indebtedness of the Bank is senior to the indebtedness of the IRS; that both the Bank and the IRS hold blanket liens on all the Debtor's assets; and that the Bank holds a personal guaranty against the Debtor's primary shareholder, Michael H. Anderson, as well as liens against two real properties. The Debtor seeks to extend the two stipulations through and including September 30, 2018.

The material terms of the Bank Stipulation are as follows:

- 1) The Debtor acknowledges and agrees (a) that it is liable to the Bank in the amount of \$212,120.15; (b) that the Bank's indebtedness is secured by a valid, perfected security interest on substantially all assets of the Debtor; (c) and that the Bank's indebtedness constitutes an allowed claim under the Bankruptcy Code.
- 2) Solely during the operative period of the Bank Stipulation, the Debtor waives the rights (a) to surcharge the Bank's collateral pursuant to §506(c) or (b) to incur financing or indebtedness from any party other than the Bank that includes the granting by the Debtor of liens, claims, or interests in favor of such other party that are senior to or *pari passu* with the liens,

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CONT...

Base Architecture Planning & Engr Inc.

Chapter 11

claims, and interests in favor of the Bank.

- 3) The Debtor will make monthly adequate protection payments to the Bank in the amount of \$5,000.00, commencing on November 1, 2017. As further adequate protection, the Bank will receive a replacement lien on the rents, proceeds, and profits of its collateral, with such replacement lien having the same validity, extent, and priority as the Bank's prepetition lien. In addition, if the foregoing protection is insufficient to satisfy in full the Bank's claim, the Bank will be granted a superpriority administrative claim pursuant to §507(b).
- 4) The Bank Stipulation authorizes the Debtor to use cash collateral through April 30, 2018.

The material terms of the First IRS Stipulation, which were incorporated by the Second IRS Stipulation, are as follows:

- 1) The Debtor will make monthly adequate protection payments to the United States in the amount of \$500.00, retroactive to the petition date, with payments to commence within seven calendar days after the Court approves the IRS Stipulation.
- 2) As further adequate protection, the IRS will receive a replacement lien on the Debtor's post-petition accounts receivable and on all other property acquired by the Debtor subsequent to the petition, with such replacement lien having the same validity, extent, and priority as the IRS' pre-petition lien. To the extent that the foregoing protection proves insufficient, the IRS will be granted a superpriority administrative claim pursuant to §507 (b).
- 3) The Debtor must remain current on its post-petition tax obligations, including its obligation to timely make federal payroll tax deposits and estimated income tax payments.

The "Third Stipulation between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection" (the "Third IRS Stipulation") [Doc. No. 98] was filed on February 7, 2018. The Third IRS Stipulation incorporates the material terms of the First IRS Stipulation, and stipulates that the Debtor may continue to use cash collateral in accordance with the terms of the First IRS Stipulation until March 31, 2018.

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CONT... Base Architecture Planning & Engr Inc.

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The Debtor seeks to extend the terms of each of the Bank Stipulation and the Third IRS Stipulation through and including September 30, 2018.

Pursuant to the Court's "Order Approving Fourth Request for Interim Use of Cash Collateral and Adequate Protection" entered on May 11, 2018 [Doc. No. 119], the deadline for filing an objection to the Motion was May 23, 2018. No objection to the Debtor's continued use of cash collateral has been filed as of the date of this tentative ruling.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court finds the terms of the Bank Stipulation, including the Debtor's acknowledgment of the validity of the Bank's indebtedness and its acknowledgment that the Bank holds an allowed claim under the Bankruptcy Code, to be acceptable. The terms of the Third IRS Stipulation are also acceptable. The Court, therefore, authorizes the continued use of cash collateral provided that the Debtor continues to comply with the terms of both Stipulations, including making the adequate protection payments required under the Bank Stipulation and the First IRS Stipulation.

Conclusion

In conclusion, for the reasons set forth above, the Court GRANTS the Debtor's Motion. The Debtor is authorized to use cash collateral through and including

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CONT... Base Architecture Planning & Engr Inc.

Chapter 11

September 30, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank. Furthermore, having received no objection or further stipulation, the Court extends the terms of the Third IRS Stipulation through and including September 30, 2018. A hearing on whether the Debtor may use cash collateral subsequent to September 30, 2018 will take place on September 12, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by August 22, 2018. Objections, if any, to the Debtor's continued use of cash collateral must be filed and served by August 29, 2018. Any reply may be filed and served by September 5, 2018.

The Debtor shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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Wednesday, June 20, 2018

Hearing Room 1568

11:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#101.00 Status Hearing
RE: [91] Disclosure Statement Describing Chapter 11 Plan of Reorganization,
with Proof of Service

fr: 2-21-18; 3-14-18

Docket 91

Tentative Ruling:

6/18/2018

No appearances required. This is a status hearing on the Debtor's Motion for Approval of the Disclosure Statement [Doc. No. 91]. The status hearing is CONTINUED to September 19, 2018 at 11:00 a.m. to allow for resolution of the declaratory relief action re: IRS claim subordination. The Debtor shall file a status report by no later than 14-days before the Continued Hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
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Wednesday, June 20, 2018

Hearing Room 1568

11:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

#102.00 HearingRE: [40] Motion to Assume Lease or Executory Contract Debtor's Notice of Motion and Motion for Order Approving Stipulation Entered Into Between Debtor and Its Landlord, 99 N. La Cienega, L.P., a Delaware Limited Partnership, Authorizing Debtor's Assumption of Its Unexpired Lease of Real Property Located at 99 N. La Cienega Blvd., Suite 102, Beverly Hills, Ca., 90211; Memo of P&A's In Support of Motion; Declaration of Simin Hashemizadeh, Debtor's President; with Exhibits A, B, and C, and Proof of Service

Docket 40

Tentative Ruling:

6/19/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Motion for Order Approving Stipulation Entered Into Between Debtor and Its Landlord, 99 N. La Cienega, L.P., a Delaware Limited Partnership, Authorizing Debtor's Assumption of Its Unexpired Lease of Real Property Located at 99 N. La Cienega Blvd., Suite 102, Beverly Hills, Ca., 90211 (the "Motion") [Doc. No. 40]
- 2) No Opposition filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Beverly Hills South Pacific Surgery Center, Inc., the debtor and debtor in possession (the "Debtor"), filed a voluntary Chapter 11 petition on March 15, 2018 (the "Petition") [Doc. No. 1]. On June 28, 2017, the Debtor filed the "Motion for an Order Extending Deadline to Assume, Assume and Assign, or Reject Nonresidential Real Property Leases" [Doc. No. 88]. The Petition was precipitated by an imminent trial and related cash flow shortage.

The Motion

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CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

The Motion seeks authorization for the Debtor to assume the non-residential lease of the certain real property located at 99 N. La Cienega Boulevard, Suite 102, Beverly Hills, CA (the "Property"). Previously, 99 N. La Cienega, L.P. (the "Lessor") entered into a lease of the Property with Gary Dermendjian, M.D., Simin Hashemizadeh (the "Lease"). The Debtor was and is not a party to the Lease; however, the Debtor, with the permission of the Lessor and Mr. Dermendjian and Mr. Hashemizadeh, possesses the premises where the Debtor conducts its business, and makes the lease payments according to the terms of the Lease. To enable assumption of the Lease under § 365, the parties have entered into the following two documents: (1) the "Assumption and Consent Agreement" [Doc. No. 40, Ex. B]; and (2) the "Stipulation Approving Assumption of the Lease of [the Property]" [Doc. No. 40, Ex. A]. The Motion states that the Lease is "current," and is the most appropriate place for the Debtor to operate and generate income, as it has since 2009. The Motion further states that the Lease is necessary to the Debtor's operation and the Debtor's continued operation is in the best interest of the Debtor and all of its creditors.

II. Findings of Fact and Conclusions of Law

"[T]he trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A motion to assume or reject is a summary proceeding, 'intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.'" 3-365 Collier on Bankruptcy ¶ 365.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2017) (quoting *Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)). Under § 365, the Court may authorize the assumption or rejection of an unexpired lease by the trustee if the trustee's rationale for maintaining the contract is supported by sound business judgment and not premised on "bad faith, whim or caprice." *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 669–70 (9th Cir. 2007); *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046–1047 (4th Cir. 1985). In reviewing a trustee's decision to assume or reject a lease, the bankruptcy court "need engage in only a cursory review of" the decision. *Pomona Valley*, 476 F.3d at 669 (internal citations omitted). "Thus, in evaluating the [trustee's decision], the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

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CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Applying the business judgment rule, the Court approves the Debtor's decision to assume the Lease. The Lease is necessary to the Debtor's operation, and the Court finds that the Debtor's decision to assume the Lease is a prudent exercise of the Debtor's business judgment.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

**United States Bankruptcy Court
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Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#1.00 HearingRE: [1029] Motion to Approve Compromise Under Rule 9019 Motion to Approve the Settlement Agreement Among the Chapter 7 Trustee, Sarath and Hemanthi Gunatilake, and First American Title Company Pursuant to Federal Rules of Bankruptcy Procedure 9019; Memorandum of Points and Authorities; and Declarations of Jeffrey I. Golden and Beth E. Gaschen in Support (with Proof of Service) (Gaschen, Beth)

Docket 1029

Tentative Ruling:

6/20/2018

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Motion to Approve the Settlement Agreement Among the Chapter 7 Trustee, Sarath and Hemanthi Gunatilake, and First American Title Company Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 1029] (the "Motion")
 - a) Notice of Hearing on Motion to Approve the Settlement Agreement Among the Chapter 7 Trustee, Sarath and Hemanthi Gunatilake, and First American Title Company Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 1030]
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks approval of a compromise with First American Title Company ("First American"). First American acted as the escrow agent in connection with a sale approved by the Court on November 2, 2015. Doc. No. 858. The property that was sold was subject to a disputed lien held by Andrew Holdings, Inc. (the "Disputed Lien"). Pursuant to the Sale Order, the property was sole free and clear of the Disputed Lien, with the Disputed Lien attaching to the sale proceeds. The Escrow Instructions transmitted to First American stated that any indebtedness allegedly secured by the Disputed Lien should not be paid at closing, but instead, that the sum of \$333,440.38 should be retained by First American on account

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Chapter 7

of the Disputed Lien. Notwithstanding express instructions to the contrary, First American disbursed \$333,440.00 to the holder of the Disputed Lien.

Upon discovering that First American had paid off the Disputed Lien, the Trustee demanded that First American return the \$333,440.38 paid on account of the Disputed Lien to the Trustee. First American returned the funds to the Trustee, but informed the Trustee that it was asserting a claim against the funds, on the theory that First American became subrogated to the rights of the Disputed Lienholder upon paying off the Disputed Lien.

The Trustee now moves for approval of a Settlement Agreement reached with First American. The Trustee will return to First American \$50,000 of the \$333,440.38 that the Trustee is currently holding on account of the Disputed Lien. Consistent with the terms of a prior Settlement Agreement between the Trustee, on the one hand, and Sarath and Hemanthi Gunatilake, on the other hand, that the Court approved on December 1, 2014, the Trustee will pay \$141,720 to the Gunatilakes. The estate will retain \$141,720 of the funds.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The disputes

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CONT... Jayampath P Dharmasuriya Chapter 7

being resolved by the settlement are factually complex and highly contested. Once the Trustee and the Gunatilakes discovered that the funds had been disbursed to the Disputed Lienholder, the two confronted First American with the error. First American initially responded by arguing that the Trustee and the estate had no valid interest in the property that had just been sold, and therefore no valid interest in the funds that had been wrongfully disbursed. First American agreed to return the funds to the Trustee only after the Trustee had prepared and threatened to file an adversary complaint. Upon returning the funds, First American switched tactics and began arguing that it was subrogated to the rights of the Disputed Lienholder.

The Court finds that resolution of these issues would be time-consuming and costly. The Court would have to determine the validity of the Disputed Lien and then would have to determine whether First American is subrogated to the rights of the Disputed Lienholder.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. The possibility that additional litigation might yield a result nominally more favorable to the estate cannot be ruled out. Yet any such result obtained through litigation would be a pyrrhic victory from the perspective of the estate and creditors, because the additional administrative costs associated with the litigation would on net leave the estate worse off.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Settlement Agreement allows the estate to retain \$141,720 of the funds attributable to the Disputed Liens. No creditors have objected to approval of the Settlement Agreement. As noted above, litigation of this matter would almost certainly leave creditors and the estate worse off in view of the increased administrative costs.

III. Conclusion

Based upon the foregoing, the Settlement Agreement is APPROVED and the Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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10:00 AM

2:14-26032 Pierce Henry O'Donnell

Chapter 7

#2.00 APPLICANT: Accountant for Trustee: SLBIGGS, A division of SingerLewak

Hearing re [206] and [207] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative Ruling:

Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis, if any, are now deemed final).

Fees: \$4,139.00 (Total Fees: \$49,796.00)

Expenses: \$144.09 (Total Expenses \$678.20)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pierce Henry O'Donnell

Represented By
Peter T Steinberg

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

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2:14-26032 Pierce Henry O'Donnell

Chapter 7

#3.00 Other: LAW OFFICES OF DIANE C. WEIL

Hearing re [206] and [207] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Pierce Henry O'Donnell

Represented By
Peter T Steinberg

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

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2:14-26032 Pierce Henry O'Donnell

Chapter 7

#4.00 APPLICANT: Trustee: BRAD D. KRASNOFF

Hearing re [206] and [207] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows (amounts previously paid on an interim basis, if any, are now deemed final):

Total Fees: \$89,104.17 (total fees: \$89,104.17)

Total Expenses: \$79.95

Other (Law Offices of Diane C. Weil): amounts previously paid on an interim basis are deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Pierce Henry O'Donnell

Represented By
Peter T Steinberg

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

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2:14-26032 Pierce Henry O'Donnell

Chapter 7

#5.00 APPLICANT: Attorney for Trustee: DANNING, GILL DIAMOND & KOLLITZ LLP

Hearing re [206] and [207] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative:

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis, if any, are now deemed final).

Fees: \$35,855.50 (Total fees: \$59,756.00)

Expenses: \$365.83 (Total expenses \$661.32)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pierce Henry O'Donnell

Represented By
Peter T Steinberg

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

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10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

#6.00 APPLICANT: Other: FRANCHISE TAX BOARD BANKRUPTCY SECTION MS

Hearing re [66] and [67] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 10 below, incorporated by reference.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

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2:16-19567 West Coast Physiatry Inc.

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#7.00 APPLICANT: Other: DONT T FIFE

Hearing re [66] and [67] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 10 below, incorporated by reference.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

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Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

#8.00 APPLICANT: Other: CLERK OF THE COURT

Hearing re [66] and [67] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 10 below, incorporated by reference.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

#9.00 APPLICANT: Attorney: LEVENE NEALE BENDER YOO & BRILL

Hearing re [66] and [67] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$16,000.00

Expenses: \$846.93

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

#10.00 APPLICANT: Trustee: EDWARD M WOLKOWITZ

Hearing re [66] and [67] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,478.51

Total Expenses: \$60.67

U.S. Bankruptcy Court: \$350.00

Franchise Tax Board: (1) \$821.92; and (2) \$29.28

Other (Donald T. Fife): amounts previously paid on an interim basis, if any, are now deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... West Coast Psychiatry Inc.

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#11.00 Hearing
RE: [65] Motion for Default Judgment National Payment Center (Potier, Amanda) WARNING: Matter is not on calendar for 6-5-18. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018

Docket 65

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... **Chasen Kyle Stanley**
Navient Solutions, LLC

Represented By
Robert S Lampl

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#12.00 Hearing

RE: [64] Motion for Default Judgment Federal Loan Services (Potier, Amanda)
WARNING: Matter is not on calendar for 6-5-18. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018

Docket 64

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

Navient Solutions, LLC

Represented By
Robert S Lampl

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

Associated Recovery Systems

Pro Se

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#13.00 Hearing
RE: [63] Motion for Default Judgment Education Finance Partners (Potier, Amanda) WARNING: Matter is not on calendar for 6-5-18. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018

Docket 63

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... **Chasen Kyle Stanley**
Navient Solutions, LLC

Represented By
Robert S Lampl

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#14.00 Hearing
RE: [62] Motion for Default Judgment Associated Recovery Systems (Potier, Amanda) WARNING: Matter is not on calendar for 6-5-18.. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018 (Evangelista, Maria).

Docket 62

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... Chasen Kyle Stanley
Navient Solutions, LLC

Represented By
Robert S Lampl

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#15.00 Hearing
RE: [61] Motion for Default Judgment Asset Recovery Solutions LLC (Potier, Amanda) WARNING: Matter is not on calendar for 6-5-18. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018

Docket 61

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... Chasen Kyle Stanley
Navient Solutions, LLC

Represented By
Robert S Lampl

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#16.00 Hearing
RE: [60] Motion for Default Judgment for ACS Loan Science (Potier, Amanda)
WARNING: Matter is not on calendar for 6-5-18. Attorney to re-notice for 6-21-18 AT 10:00 A.M. See docket entry #66 for corrective entry; Modified on 5/30/2018

Docket 60

***** VACATED *** REASON: PER 6-5-18 HEARING HELD**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

DOES 1 through 4, et al

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... **Chasen Kyle Stanley**
Navient Solutions, LLC

Represented By
Robert S Lampl

Chapter 7

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

#17.00 APPLICANT: Charges: United States Bankruptcy Court

Hearing re [64] and [65] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 20 below, incorporated by reference.

Party Information

Debtor(s):

Irene L Ulloa

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Angie S Lee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

#18.00 APPLICANT: Accountant for Trustee: HAHN FIFE & COMPANY LLP

Hearing re [64] and [65] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

6/20/2018

See Cal. No. 20 below, incorporated by reference.

Party Information

Debtor(s):

Irene L Ulloa

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Angie S Lee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

#19.00 APPLICANT: Attorney for Trustee: SHERIDAN & RUND PC

Hearing re [64] and [65] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$14,338.50

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Irene L Ulloa

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Angie S Lee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

#20.00 APPLICANT: Trustee: JASON M. RUND

Hearing re [64] and [65] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

Tentative:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$5,075.00

Total Expenses: \$426.63

Hahn & Fife Company LLP: \$1,000.00

U.S. Bankruptcy Court: \$350.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522

Party Information

Debtor(s):

Irene L Ulloa

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Angie S Lee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:11-30331 Kam Yuen

Chapter 11

#21.00 HearingRE: [532] Motion For Final Decree and Order Closing Case. MTN to Discharge and MTN for Final Decree

Docket 532

Tentative Ruling:

6/20/2018

For the reasons set forth below, the Motion to Reopen and the Motion for Discharge are both GRANTED in their entirety.

Pleadings Filed and Reviewed:

- 1) Post-Confirmation Debtor's Motion to Reopen His Individual Chapter 11 Case [Doc. No. 531] (the "Motion to Reopen")
 - a) Notice of Post-Confirmation Debtor's Motion to Reopen His Individual Chapter 11 Case [Doc. No. 535]
- 2) Post-Confirmation Debtor's Motion for Discharge of His Individual Chapter 11 Case and for Final Decree [Doc. No. 532] (the "Motion for Discharge")
 - a) Notice of Post-Confirmation Debtor's Motion for Discharge of His Individual Chapter 11 Case and for Final Decree [Doc. No. 536]
- 3) Limited Opposition of the United States Trustee to Post-Confirmation Debtor's Motion for Discharge of His Individual Chapter 11 Case and for Final Decree [Doc. No. 537]
- 4) Declaration of Post-Confirmation Debtor in Response to U.S. Trustee's Limited Objection Regarding Payment of Trustee Fees During Reopening of Case [Doc. No. 538]

I. Facts and Summary of Pleadings

On March 13, 2013, the Court confirmed the Debtor's *Fourth Amended Chapter 11 Plan of Reorganization* (the "Plan"). See Order Confirming Debtors' 4th Amended Chapter 11 Plan of Reorganization [Doc. No. 457]. The Plan provided for the Debtor to make payments to creditors over a 60-month period. On March 19, 2014, the case was closed so that the Debtor would not have to continue paying fees to the United States Trustee (the "UST") during the 60-month payment period.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... Kam Yuen

Chapter 11

The Debtor moves to reopen the case and moves for entry of a discharge and a final decree. The Debtor states that all payments have been made in accordance with the Plan. The UST filed a limited opposition. The UST does not oppose the entry of a discharge or final decree, but requests that entry of a discharge and final decree be conditioned upon the Debtor's payment of UST fees for the current quarter. To ensure such payment, the UST requests the opportunity to sign off on the proposed orders providing for the entry of discharge and the entry of a final decree. In response to the UST's limited objection, the Debtor submitted a declaration stating that the Debtor mailed a check for \$325 to the UST on June 11, 2018, to cover UST fees for the current quarter.

II. Findings and Conclusions

The Motion to Reopen the case is GRANTED. The case will be reopened for the sole purpose of entering the Debtor's discharge and entering the final decree.

Pursuant to the confirmed Plan, the Debtor is entitled to a discharge upon the completion of all payments contemplated by the Plan. The declaration testimony submitted with the Motion for Discharge establishes that the Debtor has made all payments required under the Plan, except that the Debtor was unable to make certain *de minimis* payments because the creditors to whom the payments were owed had either ceased doing business or refused to accept the funds tendered by the Debtor. With respect to these *de minimis* payments, the Court finds that the Debtor made a good-faith attempt to comply with the Plan's provisions. Accordingly, the Debtor is entitled to entry of a discharge as provided for in the Plan.

The Plan provides for the reduction of the amounts of certain impaired secured claims upon the completion of all Plan payments. As the Debtor has performed under the Plan, the promissory notes pertaining to the secured impaired classes shall be amended as provided for in the Plan.

Entry of a final decree is appropriate. Pursuant to §350(a) and Bankruptcy Rule 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT...

Kam Yuen

Chapter 11

assumed the business of the management of the property dealt with by the plan;

(5) whether payments under the plan have commenced; and

(6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

Here, the estate has been fully administered because the Debtor has made all payments required under the Plan.

Based upon the foregoing, the Motion to Reopen and the Motion for Discharge are both granted in their entirety. The Debtor shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing. To ensure that the UST has received all required fees, the orders shall be endorsed as to form by the UST pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kam Yuen

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:11-30331 Kam Yuen

Chapter 11

#22.00 HearingRE: [531] Motion to Reopen Chapter 11 Case . John)

Docket 531

Tentative Ruling:

See Cal. No. 21, above, incorporated in full by reference.

Party Information

Debtor(s):

Kam Yuen

Represented By
John H Bauer

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#23.00 HearingRE: [195] Motion to Approve Compromise Under Rule 9019 of Claim #4 by Rainbow International of Van Nuys, with proof of service

Docket 195

Tentative Ruling:

6/20/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion for Order Approving Settlement of Claim #4 by Rainbow International of Van Nuys, for \$7,500 Pursuant to FRBP 9019 and Authorizing Distribution from Court Registry [Doc. No. 195] (the "Motion")
- 2) No opposition is on file

I. Facts and Summary of Pleadings

A. Background

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). *See* Order Authorizing the Sale of the Estate's Right, Title, and Interest in Real Property Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Sale Order"). The Sale Order required the Debtor to deposit the net sales proceeds of the Residence into the Court's registry. Sale Order at ¶5.

On November 16, 2017, the Court authorized the Debtor to pay from the sales proceeds of the Residence (1) his homestead exemption in the amount of \$175,000; (2) the actual and customary ordinary closing costs; and (3) real estate brokerage commissions in the amount of \$169,750. *See* Doc. No. 82. On December 5, 2017, the Debtor deposited \$3,014,642.94 into the Court's registry from the sale of the

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT... John Fuchs

Chapter 11

Residence. *See* Doc. No. 92.

On December 20, 2017, the Court approved settlement agreements between the Debtor and secured creditors Logan Mortgage, Inc. ("Logan"), JSC Pacific LLC ("JSC Pacific"), and the Dawn Miller O.D. Retirement Trust (the "Miller Trust"). Pursuant to the settlement agreements, the Court authorized the Debtor to pay from the funds on deposit in the Court's registry (1) \$619,941.79 to Logan, (2) \$74,535.00 to JSC Pacific, and (3) \$619,941.79 to the Miller Trust. The settlement agreements resolved the secured claims of Logan, JSC Pacific, and the Miller Trust. On December 20, 2017, the Court entered an order authorizing the Clerk of the Court to disburse from the Court's registry funds in the aggregate amount of \$919,905.65, for the purpose of paying Logan, JSC Pacific, and the Miller Trust. *See* Doc. No. 107.

On May 18, 2018, the Court approved the Disclosure Statement submitted in support of the Plan of Reorganization (the "Plan"). *See* Doc. No. 192. A plan confirmation hearing is set for July 11, 2018, at 10:00 a.m.

B. Claim No. 4, Asserted by Rainbow International of Van Nuys

On July 14, 2017, Rainbow International of Van Nuys ("Rainbow") filed Proof of Claim 4-1 ("Claim 4"), asserting an unsecured claim in the amount of \$16,149.96, based upon water remediation and repair services that Rainbow performed after a flood occurred at the Residence. On February 14, 2018, the Court conducted a hearing on the Debtor's objection to Claim 4 (the "Claim Objection"). The Court found that the Debtor's Claim Objection involved disputed issue of material fact that had to be resolved at a trial at which live witness testimony would be taken. The Court set trial for the week of August 27, 2018, and referred the matter to the Mediation Panel.

On May 17, 2018, the parties participated in mediation before Craig C. Lang, Esq. and settled the Claim Objection. The Debtor now moves for approval of the settlement reached at mediation. The settlement provides that Rainbow will hold an allowed unsecured claim in the amount of \$7,500, and that Rainbow's claim will be paid in full from the proceeds on deposit in the Court's Registry upon confirmation of the Debtor's Plan.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, June 21, 2018

Hearing Room 1568

10:00 AM

CONT...

John Fuchs

Chapter 11

the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The settlement reduces Rainbow's claim from \$16,149.96 to \$7,500—a reduction of \$8,649.96. Further, no creditors have objected to approval of the settlement.

Difficulties to Be Encountered in the Matter of Collection

This factor does not apply since the payment under the Settlement Agreement will be made from funds currently being held in the Court's registry, once the Plan has been confirmed.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The litigation is fact-intensive and would be time consuming to try, especially in view of the comparatively small amount at stake.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. Even if additional litigation could succeed in further reducing the amount of the claim, the victory would be pyrrhic because the costs of the additional litigation would more than offset any additional recovery.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED and the Settlement Agreement is approved. Upon confirmation of the Debtor's Plan, the Court will enter

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CONT... John Fuchs

Chapter 11

an order authorizing the Debtor to disburse the settlement payment from the Court's registry.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#24.00 Hearing re [95] *First Amended Joint Disclosure Statement* Filed by Debtor
Rideshare Port Management

Docket 0

*** VACATED *** REASON: CONTINUED 7-5-18 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

United States Bankruptcy Court
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10:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#25.00 Hearing re [115] *First Amended Joint Disclosure Statement* Filed by Debtor Red Booth, Inc

Docket 0

*** VACATED *** REASON: CONITNUED 7-5-18 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

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2:17-22975 Red Booth, Inc.

Chapter 11

#26.00 *Hearing RE: [69] Debtors' Motion for Order Authorizing and Approving (A) the Adequacy of the Joint Disclosure Statement Describing Plan of Reorganization Proposed Jointly by Debtors; (B) the Form, Scope, and Nature of Solicitation, Balloting. Tabulation and Notices with Respect Thereto; and (C) Related Confirmation Deadlines and Notices (Frey, Sandford)*

fr. 4-5-18

Docket 69

***** VACATED *** REASON: AMENDED DISCLOSURE STATEMENT
FILED 5-11-18**

Tentative Ruling:

4/4/2018

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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2:17-22975 Red Booth, Inc.

Chapter 11

#26.10 Hearing
RE: [120] Motion to Continue Hearing On (related documents 61 Emergency motion) the Adequacy of the First Amended Joint Disclosure Statement Proposed by the Debtor and Rideshare Port Management, LLC

Docket 120

***** VACATED *** REASON: ORDER GRANTED 6-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#27.00 FINAL Hearing
RE: [90] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Carlos Lizardo . (Bitton, Ophir)

fr. 6-4-18

Docket 90

***** VACATED *** REASON: CONTINUED 7-5-18 AT 11:00 A.M.**

Tentative Ruling:

5/31/2018

See Cal. No. 3 above, incorporated by reference.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

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10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#28.00 FINAL Hearing

RE: [91] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Ronaldo Ramos and Vince Olivar . (Bitton, Ophir)

fr. 6-4-18

Docket 91

***** VACATED *** REASON: CONTINUED 7-5-18 AT 11:00 A.M.**

Tentative Ruling:

5/31/2018

The hearing on the Motion is CONTINUED to a final hearing on June 21, 2018 at 10:00 a.m., to be heard concurrently with the Debtor's Motion to Approve the First Amended Joint Disclosure Statement [Doc. Nos. 94, 95, & 98].

The Court has set hard deadlines by which the Debtor and Red Booth must obtain approval of the First Amended Joint Disclosure Statement, and confirm the First Amended Joint Plan. In its ruling extending the preliminary injunction, the Court recognized that "Issuance of a § 105(a) preliminary injunction is a powerful remedy that the Court does not employ lightly," and, therefore, the Court stated that the preliminary injunction was extended "to afford the Debtor the protection of a preliminary injunction for the brief period of time necessary for the Debtor to obtain timely confirmation and approval of the First Amended Plan." Adv. Doc. No. 41.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Rideshare Port Management, LLC

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Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

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10:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#29.00 Hearing
RE: [34] Motion to Amend (related document(s)1 Complaint) Trustees Notice of Motion and Motion for Leave to Amend Complaint Pursuant to FRBP 7015 with proof of service

Docket 34

***** VACATED *** REASON: CONTINUED TO 6-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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CONT...

Timothy M Rosen

Sonia Singh

Chapter 7

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Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#30.00 Hearing
RE: [652] Application for Compensation Final Application Of Payne Financial Forensics, Former Restructuring Advisor For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation; Declaration Of Lori L. Payne for Payne Financial Forensics, Other Professional, Period: 5/31/2014 to 3/14/2018, Fee: \$20,662.57, Expenses: \$58.00.

Docket 652

***** VACATED *** REASON: CONTINUED TO 6-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#31.00 Hearing

RE: [651] Application for Compensation Final Application Of Kneave Riggall, Esq., Former Special Tax Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation; Declaration Of Kneave Riggall for Kneave Riggall, Special Counsel, Period: 5/31/2014 to 4/30/2017, Fee: \$90,002.50, Expenses: \$2,152.76. (Reeder, David)

Docket 651

***** VACATED *** REASON: CONTINUED TO 6-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D Resnik

Roksana D. Moradi-Brovia

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10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#32.00 Hearing
RE: [650] Application for Compensation Final Fee Application Of Reeder Law Corporation, Former General Insolvency Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation For The Period May 31, 2012 Through And Including April 30, 2015; Declaration Of David M. Reeder for Reeder Law Corporation, Other Professional, Period: 5/31/2012 to 4/30/2015, Fee: \$325,967.00, Expenses: \$10,034.92. (Reeder, David)

Docket 650

***** VACATED *** REASON: CONTINUED TO 6-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D Resnik

Roksana D. Moradi-Brovia

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10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#33.00 Hearing
RE: [648] Application for Compensation Final Application Of Valensi Rose, PLC, Former General Insolvency Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Payment Of Fees And Costs For The Period May 1, 2015 Through And Including April 13, 2018; Declaration Of David M. Reeder for Valensi Rose, PLC, Other Professional, Period: 5/1/2015 to 4/13/2018, Fee: \$474,479.50, Expenses: \$9,138.70. (Reeder, David)

Docket 648

***** VACATED *** REASON: CONTINUED TO 6-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:18-01100 Equity Saver Construction, Inc., a California Corp v. Fuentes et al

#100.00

Status Hearing

RE: [1] Adversary case 2:18-ap-01100. Notice of Removal of State Court Action filed by Equity Saver Construction, Inc.

FR. 6-5-18

Docket 0

Tentative Ruling:

6/20/2018:

For the reasons set forth below, Equity's Motion to Remand is GRANTED, and the UD Action is remanded to the State Court.

Pleadings Filed and Reviewed:

- 1) Motion of Plaintiff, Equity Saver Construction, Inc., for Order Remanding Unlawful Detainer Action to State Court [Doc. No. 6] (the "Motion to Remand")
- 2) Opposition to Motion to Remand [Doc. No. 11]
- 3) Reply to Defendants' Opposition to Plaintiff's Motion to Remand Unlawful Detainer Action to Superior Court [Doc. No. 15]

I. Facts and Summary of Pleadings

Before the Court is the motion of Equity Saver Construction, Inc. ("Equity") to remand to the Los Angeles Superior Court (the "State Court") the action *Equity Saver Construction, Inc. v. Aida Fuentes and Rudy Fuentes* (the "UD Action"). Defendants Rudy and Aida Fuentes removed the UD Action to the Bankruptcy Court on April 13, 2018. [Note 1] To provide the necessary context for the issues raised by the Motion to Remand, the Court sets forth a detailed description of previous decisions and orders entered in Rudy and Aida's bankruptcy cases in Section I.A., "Prior Findings." [Note 2]

A. Prior Findings

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In 2002, Aida Fuentes ("Aida") [Note 3] owned property located at 16335 East Elgenia Street, Covina, CA (the "Property") as her sole and separate property. In July 2006, Aida married Rudy Fuentes. On September 12, 2011, Aida recorded a grant deed conveying all of her right, title, and interest in the Property to Rudy as his sole and separate property.

Aida commenced a voluntary Chapter 7 petition on January 18, 2013. David M. Goodrich was appointed as the Trustee. [Note 4] On March 12, 2014, the Trustee commenced an adversary proceeding against Rudy and Aida, seeking to avoid the September 2011 transfer of the Property as actually and constructively fraudulent. *See Goodrich v. Fuentes, et al.*, Adv. No. 2:14-ap-01159-ER. On April 30, 2015, the Court entered judgment in favor of the Trustee and against Rudy, and avoided the September 2011 transfer. *See Order: (1) Granting Motion for Summary Judgment Against Defendant Rudy E. Fuentes on Third, Sixth, and Tenth Claims for Relief in Trustee's Complaint, (2) Dismissing with Prejudice First, Second, Fourth, Fifth, Seventh, Eighth and Ninth Claims for Relief Against Defendant Rudy E. Fuentes in Trustee's Complaint; and (3) Dismissing Without Prejudice Tenth Claim for Relief Against Defendant Aida Fuentes in Trustee's Complaint [Doc. No. 61, Adv. No. 2:14-ap-01159-ER] (the "Judgment").*

With respect to the Trustee's claim seeking turnover of the Property as against Rudy, the Court ordered that the Trustee was entitled to final judgment in his favor, but further ordered that turnover "shall be subject to Rudy's homestead exemption in the Property and the Trustee's acquisition of an order authorizing a sale of the Property." *See Judgment at ¶3.* The Judgment that avoided the September 2011 transfer is now final and non-appealable. As a result of the Judgment, Rudy has only a possessory interest in the Property.

On September 8, 2014, Rudy commenced a separate voluntary Chapter 7 petition, and claimed a \$175,000 homestead exemption in the Property. Sam S. Leslie was appointed as the Trustee in Rudy's case. On December 8, 2015, Trustee Goodrich moved to disallow Rudy's homestead exemption (the "Disallowance Motion"). On February 19, 2015, the Court denied the Trustee's Disallowance Motion, finding that Rudy was entitled to an exemption of \$175,000 based on his possessory interest in the Property. *See Order Denying Motion of David Goodrich for Order: (1) Disallowing Homestead Exemption in Fraudulently Transferred Real Property; or (2) in the Alternative Extending Time to Object to Debtor's Homestead Exemption [Doc. No. 56, Case No. 2:14-bk-27148-ER].*

The Trustee appealed the Court's denial of the Disallowance Motion to the

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District Court, which affirmed the Bankruptcy Court's decision. The Trustee appealed the District Court's affirmance to the Ninth Circuit. On April 17, 2017, the Ninth Circuit issued a Memorandum of Decision affirming the District Court's ruling. However, the Ninth Circuit clarified that although Rudy was entitled to a homestead exemption, that exemption was limited to his possessory interest in the Property:

In order to qualify as a "homestead" under the automatic homestead exemption, certain residency requirements must be satisfied. Cal. Civ. Proc. Code § 704.710(c). If the residency requirements are satisfied, a judgment debtor can claim a homestead exemption in the interest he or she has in the property, "regardless of whether the judgment debtor's interest is a fee, leasehold, or lesser interest." Cal. Civ. Proc. Code § 704.820 Law Revision Commission Comments to 1982 Addition; *see also Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014) ("[T]he [California] automatic homestead exemption applies to any interest in the property if the debtor satisfies the continuous residency requirement.").

The parties do not dispute that [Rudy] Fuentes has satisfied these residency requirements. In addition, [Rudy] Fuentes holds a possessory interest in the Property, which is an interest in real property that California law recognizes. *See, e.g.,* Cal. Rev. & Tax. Code § 107; Cal. Code Regs. tit. 18, § 20. Because [Rudy] Fuentes has satisfied the residency requirements, he can claim a homestead exemption in his bankruptcy for the possessory interest that he holds in the Property. However, this possessory interest can be sold by his creditors unless "no bid is received at a sale of [the possessory interest] pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property" Cal. Civ. Proc. Code § 704.800(a).

Further, [Rudy] Fuentes's possessory interest is still subject to all other provisions of California and federal law, which may "extinguish[] . . . [his] equitable possessory interests in the real property at issue." *See Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1128 (9th Cir. 2016).

Memorandum of Decision ("Ninth Circuit Memorandum") at 3–5 [Doc. No. 22, Case No. 15-56618].

In a footnote, the Ninth Circuit explained that "[Rudy] Fuentes is not guaranteed to receive any particular amount of money if any other interest (besides his possessory

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interest) in the Property is sold." *Id.* at 5. The Ninth Circuit made no statements with respect to the amount of money, if any, that Rudy was entitled to receive on account of his homestead exemption.

Aida claimed a homestead exemption in the Property in the amount of \$175,000. On June 23, 2017, the Court granted the Trustee's motion to disallow Aida's homestead exemption. The Court found that, pursuant to §522(g), Aida was not entitled to a homestead exemption:

Section 522(g) provides:

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

- (1) (A) such transfer was not a voluntary transfer of such property by the debtor; and
(B) the debtor did not conceal such property; or
- (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

"Section 522(g) ... limits the ability of a debtor to claim an exemption where the trustee has recovered property for the benefit of the estate." *Hitt v. Glass (In re Glass)*, 164 B.R. 759, 761 (9th Cir. BAP 1994). Its purpose "is to prevent a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed." *Id.* at 764.

There is no dispute that Aida voluntarily transferred the Property to Rudy prior to the petition. The Trustee obtained a judgment avoiding the transfer as fraudulent and recovering the Property. Because Aida voluntarily transferred property that the Trustee recovered, she is not entitled to a homestead exemption under §522(g). It is not necessary for the Court to find that Aida concealed the transfer; the mere fact that she voluntarily transferred property that the Trustee subsequently recovered is sufficient to defeat her right to a homestead exemption.

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Final Ruling Granting Trustee's Motions to Disallow Aida's Homestead Exemption and to Employ a Real Estate Broker to Market the Property [Doc. No. 54, Case No. 2:13-bk-11518-ER] at 7-8.

Over Aida's objection, the Court granted the Trustee's application to employ a real estate broker to market the Property. The Court rejected Aida's contention that there was no equity in the Property to be administered for the benefit of creditors:

Aida's opposition ... is premised upon the inaccurate assumption that Rudy is entitled to payment of his \$175,000 homestead exemption from the proceeds of the Property's sale. Aida's opposition ignores the language of the Ninth Circuit's Memorandum of Decision affirming the allowance of Rudy's homestead exemption. The Ninth Circuit held that Rudy is entitled to a homestead exemption, but only to the extent of his possessory interest in the Property. The Ninth Circuit further noted that Rudy is not guaranteed to receive any money on account of his homestead exemption if an interest in the Property other than his possessory interest is sold.

The Trustee is not seeking to sell Rudy's possessory interest in the Property. The Trustee will either sell the Property subject to Rudy's possessory interest, or will take action to extinguish Rudy's possessory interest prior to the sale. Rudy holds no other interest in the Property aside from his possessory interest. Rudy's homestead exemption cannot attach to the proceeds stemming from the sale of interests in the Property that he does not hold. Because Rudy's homestead exemption cannot attach to the sale proceeds, there is equity in the Property for distribution to unsecured creditors, and there is no merit to Aida's contention that the Trustee is pursuing the sale of the Property in bad faith.

This result is compelled by the language of the statute and the decision of the Ninth Circuit. The statute makes clear that a debtor's homestead exemption is limited to the debtor's interest in the property. *See, e.g.*, Cal. Civ. Proc. Code §704.740 (providing that "the *interest* of a natural person in a dwelling may not sold under this division to enforce a money judgment except pursuant to a court order ..."); *id.* at §704.820 (providing that where a judgment debtor holds less than a fee simple interest in the property, only "the *interest* of the judgment debtor in the dwelling and not the dwelling shall be sold," and further providing that where there is more than one judgment debtor, "each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own *interest*").

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The Ninth Circuit's Memorandum further established that Rudy's homestead exemption applies only to his possessory interest in the Property. The court explained that Rudy "can claim a homestead exemption in his bankruptcy for the possessory interest that he holds in the Property." Memorandum at 4. The court further stated that Rudy "is not guaranteed to receive any particularly amount of money if any other interest (besides his possessory interest) in the Property is sold." *Id.* at 5.

The proposition that a debtor's homestead exemption can apply only to the debtor's interest in property is corroborated by the logic of other cases interpreting California's homestead statute. For example, in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991), the Ninth Circuit was confronted with a situation in which the debtor held only a one-half interest in property. For purposes of determining whether the debtor's homestead exemption could defeat the Trustee's sale of the property, the court compared the value of the exemption to the value of the debtor's one-half interest. The court did not use the value of the entire property to conduct the equity calculation. The court's approach is consistent with the principle that the homestead exemption applies only to the debtor's interest in the property. If the debtor's homestead exemption could apply to interests in the property that the debtor did not hold, the *Reed* court would have been required to perform the equity calculation using the value of the entire property, not just the value of the debtor's one-half interest. The limitation of a homestead exemption to the debtor's interest was also made clear in *Elliot v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014). In that case, the court said that the "homestead exemption applies to any *interest* in the property." *Id.* at 196 (emphasis altered).

Id. at 5–7.

On September 13, 2017, the Court conducted hearings on the Trustee's motion seeking to compel Aida to turnover the Property [Doc. No. 67, Case No. 2:13-bk-11518-ER] (the "Turnover Motion") and the Trustee's motion for an order authorizing the sale of the Property free and clear of liens and encumbrances [Doc. No. 64, Case No. 2:13-bk-11518-ER] (the "First Sale Motion"). The Court denied the Turnover Motion without prejudice:

Because both Aida and Rudy live in the Property with their children, any

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turnover order issued by this Court with respect to Aida only would be impossible to enforce. Therefore, the Court will deny the Turnover Motion without prejudice. The Sale Motion will also be denied without prejudice, given that closing of the sale is contingent upon the Trustee's ability to deliver the Property to the Buyers in vacant condition.

In light of the unenforceability of a turnover order issued only with respect to Aida, the possessory rights of both Aida and Rudy in the Property must be litigated simultaneously. If settlement cannot be achieved and the Trustee commences future proceedings to obtain possession of the Property, the hearing as to Aida's right to continued possession must take place concurrently with the hearing as to Rudy's right to continued possession.

Order Denying Without Prejudice Chapter 7 Trustee's Turnover Motion [Case No. 2:13-bk-11518-ER, Doc. No. 86] (the "Turnover Denial Order") at 2.

The Court denied the First Sale Motion without prejudice since the closing of the sale was contingent upon the Trustee's ability to deliver the Property to the buyers in vacant condition. *See* Order Denying Without Prejudice Chapter 7 Trustee's Sale Motion [Doc. No. 85, Case No. 2:13-bk-11518-ER].

Having found that the rights of both Aida and Rudy in the Property must be litigated simultaneously as a result of the unenforceability of a turnover order issued only with respect to Aida, the Court issued an order reopening Rudy's bankruptcy case to permit adjudication of Aida and Rudy's possessory rights to the Property to occur. *See* Order Reopening Case [Doc. No. 79, Case No. 2:14-bk-27148-ER]. On September 28, 2017, the Court denied the Trustee's motion for reconsideration of the Court's order reopening Rudy's bankruptcy case. The Court explained that "[d]etermination of whether the Trustee can extinguish Rudy's possessory interest requires interpretation of the Judgment and application of the unique facts of Aida and Rudy's cases." *See* Order Denying Chapter 7 Trustee's Motion for Reconsideration [Doc. No. 93, Case No. 2:13-bk-11518-ER].

On September 18, 2017, Rudy filed an *Adversary Complaint For: (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief* [Doc. No. 1, Case No. 2:17-ap-01475-ER] (the "Original Valuation Complaint") in his reopened bankruptcy case. The Trustee moved to dismiss the Original Complaint, for failure to state a claim, based on the fact that the Original Complaint named "David M. Goodrich" as a defendant in his individual capacity rather than in his capacity as the

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Chapter 7 Trustee of the estate of Aida Fuentes. The Court granted the Motion to Dismiss but gave Rudy leave to amend. The Court explained:

Given the contentious nature of this litigation, the Court finds that the caption of the Complaint must be amended to make it absolutely clear that David M. Goodrich is being sued in his capacity as a Chapter 7 Trustee, not in his individual capacity. Upon reading the Complaint, it is clear that Rudy did not intend to sue David M. Goodrich in his individual capacity; nonetheless, the Complaint's caption is misleading and therefore creates ambiguity.

Ruling Granting Motion to Dismiss with Leave to Amend [Doc. No. 17, Case No. 2:17-ap-01475-ER] at 7.

On November 21, 2017, Rudy filed a *First Amended Complaint* [Doc. No. 16, Case No. 2:17-ap-01475-ER] (the "Valuation Complaint"). The Valuation Complaint alleged that Rudy's possessory interest in the Property had a value of no less than \$175,000; that Rudy held an equitable interest in the Property as a result of community payments on the Property's mortgage; and that the Trustee's attempts to sell the Property without paying Rudy any amount on account of his homestead exemption constituted a taking of Rudy's property without just compensation. Based on these allegations, the Valuation Complaint sought (1) a declaration that Rudy's possessory interest has a value of \$175,000; (2) a declaration that Rudy holds an equitable interest in the Property by virtue of community payments on the Property's mortgage; (3) a declaration that any termination of Rudy's possessory and equitable interests in the Property must provide for payment of or adequate protection of those interests; and (4) an injunction preventing the Trustee from selling the Property without paying Rudy \$175,000 on account of his homestead exemption.

On January 31, 2018, the Court conducted a hearing on the Trustee's second motion to sell the Property. *See* Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payment of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding that Purchaser is Good Faith Purchaser Under 11 U.S.C. §363(m) [Doc. No. 95, Case No. 2:13-bk-11518-ER] (the "Second Sale Motion"). Unlike the First Sale Motion, the Second Sale Motion did not require the Trustee to deliver the Property to the buyer in vacant condition. Over Rudy's opposition, the Court approved the sale of the Property to Equity for \$360,000. *See* Order Granting Motion of Trustee for Order: (1) Authorizing Sale of Real Property

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On February 15, 2018, the Court denied Rudy’s emergency motion for a stay pending appeal of the Sale Order. *See* Order Denying “Emergency Motion for Stay Pending Appeal of Order Granting Motion Authorizing Sale of Real Property Free and Clear of Encumbrances” [Doc. No. 120, Case No. 2:13-bk-11518-ER] and Memorandum of Decision Denying “Emergency Motion for Stay Pending Appeal of Order Granting Motion Authorizing Sale of Real Property Free and Clear of Encumbrances” [Doc. No. 119, Case No. 2:13-bk-11518-ER]. On May 29, 2018, the District Court dismissed Rudy’s appeal of the Sale Order. The District Court found that the appeal was statutorily moot pursuant to §363(m). *See* Doc. No. 133, Case No. 2:13-bk-11518-ER (reproducing Doc. No. 13, Case No. 2:18-cv-01241-CAS).

Concurrently with the Sale Order, the Court issued an order dismissing the Valuation Complaint. *See* Order Dismissing Complaint [Doc. No. 39, Adv. No. 2:17-ap-01475-ER] and Memorandum of Decision (1) Granting Trustee’s Sale Motion and (2) Dismissing Adversary Proceeding [Doc. No. 40, Adv. No. 2:17-ap-01475-ER] (the “Memorandum Dismissing Valuation Complaint”). The Court found that, as a result of the sale of the Property, it lacked jurisdiction over the claims presented in the Valuation Complaint. The Court explained that its prior finding that issues pertaining to Rudy and Aida’s possessory interest in the Property needed to be adjudicated before the Bankruptcy Court, as opposed to the State Court, no longer applied given the Court’s decision to grant the Second Sale Motion:

It was against the backdrop of the First Sale Motion that the Court determined that it was necessary that Rudy’s bankruptcy case be reopened so that the Court could adjudicate issues regarding Rudy’s possessory interest and his homestead exemption in that possessory interest. Adjudication of those issues was necessary because the First Sale Motion required the Trustee to deliver the Property to the purchasers in vacant condition, free of Rudy’s possessory interest.

The Second Sale Motion completely changes the landscape. The Second Sale Motion does not require the Trustee to deliver the Property to the

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purchaser free of Rudy's possessory interest. As discussed previously, the Ninth Circuit has found that Rudy is not entitled to payment on account of his homestead exemption in his possessory interest unless that possessory interest is sold to pay his creditors. **[Note 5]** The Ninth Circuit's finding follows from a straightforward application of California law, which governs the treatment of Rudy's homestead exemption because California has opted out of the federal exemption scheme. *See* Cal. Code Civ. Proc. §703.130; *Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 192 (B.A.P. 9th Cir. 2014). The automatic homestead exemption at issue here "is not an absolute right to retain the homestead itself," but is instead "merely a debtor's right to retain a certain sum of money when the court orders sale of a homestead in order to enforce a monetary judgment." *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1321 (9th Cir. 1991); *see also* Cal. Civ. Proc. Code §704.800(a) (providing that a homestead can be sold if a "bid is received at a sale of [the] homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property"). Here, Rudy holds only a possessory interest in the Property, and his homestead exemption applies only to that possessory interest. Rudy's right to be paid on account of his homestead exemption in the possessory interest is not triggered because the possessory interest is not being sold.

Because the Trustee is not seeking to sell Rudy's possessory interest and is not seeking to terminate that interest, the Court lacks "related to" jurisdiction to determine the value, if any, of Rudy's possessory interest or his homestead exemption in that possessory interest. Rudy has received a discharge and his estate has been fully administered. Issues pertaining to Rudy's possessory interest no longer affect the handling or administration of Rudy's bankruptcy case in any way.

There is no other jurisdictional basis for the Court to consider Rudy's claims regarding his possessory interest or his homestead exemption therein. The Court lacks "arising under" jurisdiction because Rudy's claims arise under state law, not under title 11. **[Note 6]** The Court lacks "arising in" jurisdiction because the claims are not an administrative proceeding of the type that has no existence outside of bankruptcy.

Rudy argues that the Court has jurisdiction over the remaining claims because adjudication of those claims will require interpretation of orders issued by this Court, the District Court, and the Ninth Circuit. Rudy is

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mistaken. State courts are often called upon to adjudicate issues requiring interpretation of orders issued by federal courts; the fact that such interpretation may be required does not automatically give rise to federal jurisdiction.

Civil Rule 12(h)(3) provides: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Based upon its determination that it lacks jurisdiction, the Court *sua sponte* dismisses the Complaint's remaining claims. Rudy's argument that it is improper for the Court to dismiss the remaining claims *sua sponte* lacks merit. "Subject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts *on their own initiative* even at the highest level." *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (emphasis added).

Memorandum Dismissing Valuation Complaint at 15–16.

B. Equity's Motion to Remand, Rudy and Aida's Opposition, and Equity's Reply

On March 28, 2018, Equity commenced in the State Court an unlawful detainer action (the "UD Action") against Rudy and Aida with respect to the Property. On April 13, 2018, Rudy and Aida removed the UD Action to the Bankruptcy Court. Equity now moves to remand the UD Action to the State Court.

1. Summary of Equity's Motion to Remand

Equity makes the following arguments in support of its Motion to Remand:

The UD Action must be remanded, pursuant to 28 U.S.C. 1447(c), because the Court lacks subject matter jurisdiction. As the Court recognized in the *Memorandum Dismissing Valuation Complaint*, issues pertaining to Rudy's possessory interest no longer affect the handling or administration of Rudy's bankruptcy case in any way. The Court lacks "related to" jurisdiction to adjudicate issues relating to Aida's continued occupancy of the Property. The Property is no longer property of Aida's estate since it was sold by the Trustee. The sale of the Property included the sale of Aida's possessory interest, because the Trustee of Aida's estate sold all of his right, title, and interest in the Property.

There is no "arising under" jurisdiction because Rudy's possessory interest in the

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Property arises under state law, not under title 11. Finally, there is no “arising in” jurisdiction because the claims asserted in the UD Action are not administrative proceedings of the type that have no existence outside of bankruptcy.

Given the Court’s findings regarding its lack of jurisdiction set forth in the *Memorandum Dismissing Valuation Complaint*, the removal of the UD Action to the Bankruptcy Court was frivolous and done in bad faith for the improper purpose of harassing Equity and delaying the UD Action. Although Equity does not seek issuance of contempt sanctions against Rudy and Aida’s counsel because it does not want to be tied up in litigation for an extended period, the Court should *sua sponte* issue an order requiring Rudy and Aida’s counsel, Robert Uriarte, to show cause why he should not be sanctioned, referred to the Bankruptcy Court’s Disciplinary Panel, disciplined under the procedures set forth in General Order 96-5, and/or reported to the California State Bar for violating California Rule of Professional Conduct 3-110.

2. Summary of Rudy and Aida’s Opposition

Rudy and Aida make the following arguments in Opposition to the Motion to Remand:

The Bankruptcy Court has jurisdiction for multiple reasons. First, the UD Action is a collateral attack on multiple orders affirming Rudy’s right to possession of the Property. Second, the UD Action is an attempt to recover a pre-discharge claim against Rudy, in violation of the discharge injunction. Equity is the successor-in-interest to David M. Goodrich, who was a creditor of Rudy’s in his capacity as the Trustee of Aida’s estate. Equity’s claim against Rudy’s possessory interest in the Property is the exact claim that the Trustee pursued, lost, and had discharged in the course of Rudy’s bankruptcy case.

Third, Rudy is entitled to have a federal court enter declaratory judgment regarding the scope of his confirmed homestead exemption, and the UD Action relates to the scope of Rudy’s homestead exemption. Fourth, this action relates to the appeal of the Sale Order, as well as to Rudy’s claim against the proceeds of the sale of the Property. The sale proceeds reside in a bankruptcy estate that is currently being administered by the Bankruptcy Court.

3. Summary of Equity’s Reply

Equity makes the following arguments in Reply to Rudy and Aida’s Opposition:

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There is no merit to Rudy and Aida's contention that the UD Action is a collateral attack on orders entered by the Bankruptcy Court, the District Court, and the Ninth Circuit. To support the allegation of collateral attack, Rudy and Aida cite the Court's September 13, 2017 statement that it was necessary that issues relating to Rudy's possessory interest and homestead exemption be adjudicated before the Bankruptcy Court. However, on February 2, 2018, the Bankruptcy Court explained that its prior statement no longer applied as a result of the sale of the Property.

Second, Rudy and Aida argue that the UD Action violates Rudy's discharge injunction. The discharge injunction prohibits collection of all debts that arose before the date of the order for relief. Equity came into the picture long after the case was filed and is therefore not pursuing a claim that would have been discharged. Rudy and Aida's argument that Equity is the successor-in-interest to Trustee Goodrich makes no sense. Equity is Trustee Goodrich's successor-in-interest as the owner of the Property. To the extent Equity could be considered a creditor of Rudy under a successor-in-interest theory, Equity would only be a creditor with respect to the postpetition rental value of the Property. Such a claim is pre-discharge but not pre-petition and is therefore not subject to the discharge injunction.

Third, Rudy and Aida argue that the UD Action somehow relates to Rudy's declaratory judgment claim regarding the scope of Rudy's homestead exemption. This argument mischaracterizes the UD Action. Equity seeks possession of the Property which it purchased from Aida's bankruptcy estate. If successful, the UD Action would extinguish Rudy and Aida's possessory interest in the Property. Equity may also seek a judgment for the rental value of the Property during the time it has been unlawfully occupied by Aida and Rudy. But that is the extent of the UD Action.

Fourth, Aida and Rudy argue that the UD Action relates to the appeal of the Sale Order. However, the Sale Order was not entered in Rudy's case; it was entered in Aida's case. Further, the District Court has dismissed the Sale Order on mootness grounds.

II. Findings and Conclusions

All findings set forth in Section I.A., "Prior Proceedings," above, are adopted as the findings of the Court. For the reasons set forth below, the Court finds that it lacks subject-jurisdiction over the UD Action, and remands the UD Action to the State Court pursuant to 28 U.S.C. §1447(c).

As a preliminary matter, the Court notes that Aida and Rudy have not consented to

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the entry of final orders or judgments by the Bankruptcy Court. The absence of consent does not prevent the Court from remanding the UD Action to the State Court based upon a lack of subject-matter jurisdiction. Pursuant to 28 U.S.C. §1447(d), an order remanding a case to the State Court from which it originated based upon a lack of subject-matter jurisdiction is not reviewable, and is therefore not a final order. *See Things Remembered, Inc. v. Petrarca*, 516 U.S. 124, 127 (1995) (“As long as a district court’s remand is based on a timely raised defect in removal procedure or on *lack of subject-matter jurisdiction*—the grounds for remand recognized by § 1447(c)—a court of appeals lacks jurisdiction to entertain an appeal of the remand order under § 1447(d).”); *see also Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711–12 (1996).

Under the collateral order doctrine, an order remanding an action can qualify as a final order in certain limited circumstances. The collateral order doctrine is a “narrow exception” that “should stay that way and never be allowed to swallow the general rule that a party is entitled to a single appeal.” *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 868 (1994). Applying the collateral order doctrine, the Ninth Circuit has held that an abstention-based remand order is a reviewable final order. *See, e.g., Garamendi v. Allstate Ins. Co.*, 47 F.3d 350, 352 (9th Cir. 1995), *aff’d sub nom. Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706 (1996). However, abstention is not one of the grounds for remand expressly set forth in §1447(c), a fact specifically noted by the *Garamendi* court. *See Garamendi*, 47 F.3d at 352. The Court is aware of no authority setting forth any exceptions to the rule that a remand order based upon lack of subject matter jurisdiction is not final. Further, the Supreme Court has stated in both *Things Remembered*, 516 U.S. at 127, and *Quackenbush*, 517 U.S. at 711, that remand orders based upon lack of subject matter jurisdiction are non-reviewable and therefore not final.

Having found that Aida and Rudy’s objections to the entry of a final order by the Bankruptcy Court do not prevent the Court from remanding this action, the Court turns to the question of whether remand is required. The Court notes that Rudy and Aida repeatedly cite the finding made by the Court on September 13, 2017, that it was necessary for the possessory rights of Rudy and Aida in the Property to be litigated simultaneously before the Bankruptcy Court. Rudy and Aida completely ignore the Court’s subsequent finding, set forth in the *Memorandum Dismissing Valuation Complaint* and quoted above (see Section I.A., “Prior Proceedings”), that as a result of the Sale Order, adjudication of Rudy and Aida’s possessory rights to the Property before the Bankruptcy Court was no longer necessary, and that Bankruptcy Court lacked jurisdiction to adjudicate issues pertaining to Rudy’s homestead exemption in

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his possessory interest in the Property. These out-of-context quotations are bad-faith attempt to clutter the record and create further unnecessary confusion.

There is no merit to Rudy and Aida's contention that the UD Action constitutes a collateral attack on orders entered by the Bankruptcy Court, the District Court, and the Ninth Circuit. Rudy and Aida's predilection for obfuscating the record has obscured the reality that the ruling entered by the Ninth Circuit was actually quite simple, and can be stated in a single phrase: Rudy holds a homestead exemption in his possessory interest in the Property. As explained below, where, as here, Rudy's bankruptcy case has been fully administered, California law governs the scope of Rudy's homestead exemption in his possessory interest, and the federal courts have no jurisdiction to adjudicate issues pertaining thereto.

The Bankruptcy Court has jurisdiction over "all cases under title 11." 28 U.S.C. § 1334(a). "Generally, in the bankruptcy context, the word 'case' is a term of art which refers to 'that which is commenced by the filing of a petition; it is the "whole ball of wax," the chapter 7, 9, 11, 12 or 13 case.'" *Blevins Elec., Inc. v. First Am. Nat'l Bank (In re Blevins Elec., Inc.)*, 185 B.R. 250, 253 (Bankr. E.D. Tenn. 1995).

The Bankruptcy Court also has jurisdiction over "all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §1334(b). The three types of jurisdiction conferred under 28 U.S.C. §1334(b) are known as "arising under," "arising in," and "related to" jurisdiction. "Arising under" jurisdiction exists if "the cause of action is created by title 11." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 909 (B.A.P. 9th Cir. 1999). "Arising in" jurisdiction applies to "those administrative proceedings that, while not based on any right created by title 11, nevertheless have no existence outside bankruptcy." *Id.* "Related to" jurisdiction exists if "the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.... An action is related to bankruptcy if the action could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." *Fietz v. Great Western Savings (In re Fietz)*, 852 F.2d 455, 457 (9th Cir. 1988) (internal citations omitted).

Title 28 U.S.C. §1447(c) provides that "[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." Here, the Court lacks subject matter jurisdiction, making remand mandatory.

First, the Court lacks "related to" jurisdiction. Rudy has received a discharge and his estate has been fully administered. Therefore, the outcome of the UD Action could

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not have any conceivable effect upon Rudy's estate.

Second, the Court lacks "arising in" jurisdiction. The UD Action involves issues arising entirely under state law, not issues arising in connection with title 11.

Third, the Court lacks "arising under" jurisdiction. As noted, the UD Action arises under state law. It is not the type of administrative proceeding that has no existence outside of bankruptcy.

Rudy and Aida incorrectly maintain that the UD Action is a collateral attack upon orders entered by the Bankruptcy Court, the District Court, and the Ninth Circuit. Rudy supports this position by quoting, out of context, the Court's September 17, 2017 finding that issues regarding Rudy's possessory interest, and his homestead exemption therein, needed to be adjudicated before the Bankruptcy Court. As set forth above, the Court's September 17 finding is no longer applicable. The reasons that the September 17 finding no longer applies have been set forth in detail in the *Memorandum Dismissing Valuation Complaint*, excerpted above, and will not be repeated here.

As noted above, orders entered by this Court and the Ninth Circuit stand for the simple proposition that Rudy holds a homestead exemption in his possessory interest in the Property. Through the UD Action, Equity asserts that it has the ability to terminate Rudy's possessory interest because Equity, not Rudy or Aida, holds title to the Property. There is nothing about the UD Action that amounts to a collateral attack upon orders entered either by this Court, the District Court, or the Ninth Circuit.

Along similar lines, Rudy and Aida argue that the Bankruptcy Court has jurisdiction because adjudication of the UD Action will require interpretation of orders entered by the Bankruptcy Court. Rudy and Aida are mistaken. As the Court has previously explained:

State courts are often called upon to adjudicate issues requiring interpretation of orders issued by federal courts; the fact that such interpretation may be required does not automatically give rise to federal jurisdiction.

Memorandum Dismissing Valuation Complaint at 15–16.

As set forth above, there is no reason why the State Court cannot interpret the simple proposition embodied in the orders of this Court and the Ninth Circuit—namely, that Rudy's homestead exemption is confined to his possessory interest in the Property. As a court of limited jurisdiction, this Court must aggressively enforce limitations on federal jurisdiction. As the Supreme Court has held, "[s]ubject-matter

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limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999).

Rudy and Aida next argue that the UD Action violates Rudy's discharge injunction because it constitutes an attempt to collect upon a claim that was discharged. This argument lacks merit. The UD Action is an attempt to terminate Rudy's possessory interest in the Property. Rudy holds a homestead exemption in that possessory interest. The value of Rudy's homestead exemption is limited to the value, if any, of Rudy's possessory interest in the Property. If the possessory interest is sold to pay Rudy's creditors, Rudy would be entitled to receive a certain sum of money, on account of his homestead exemption, in connection with the sale. *See Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1321 (9th Cir. 1991) (stating that the automatic homestead exemption "is not an absolute right to retain the homestead itself," but is instead "merely a debtor's right to retain a certain sum of money when the court orders sale of a homestead in order to enforce a monetary judgment"). But if the possessory interest is not sold, Rudy is not entitled to any payment in connection with his homestead exemption. Where, as here, Rudy and Aida do not hold title to the Property and have not shown that they have any right to lawful possession thereof, Rudy and Aida have failed to show how Equity's attempt to terminate Rudy and Aida's possessory interest is an attempt to collect a debt that is prohibited by the discharge injunction.

Rudy and Aida argue that the UD Action relates to Rudy's declaratory judgment claim regarding the scope of Rudy's homestead exemption. Rudy and Aida assert that the declaratory judgment claim arises in the UD Action. The declaratory judgment claim to which Rudy and Aida refer is unclear. The UD Action was brought by Equity and seeks only possession of the Property and damages on account of the Property's rental value. Rudy and Aida have not supplied any pleadings filed in connection with the UD Action which assert a claim for declaratory judgment. Rudy did assert a claim for declaratory judgment in the Valuation Complaint, but the Valuation Complaint was dismissed on February 2, 2018, and Rudy has not appealed the dismissal.

Finally, there is no merit to Rudy and Aida's contention that the Court somehow has jurisdiction merely as a result of the appeal of the Sale Order. First, on May 29, 2018, the District Court dismissed the appeal of the Sale Order, reasoning that the appeal was statutorily moot pursuant to §363(m). Even if Rudy appeals the District Court's dismissal to the Ninth Circuit, such an appeal would not provide the

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Bankruptcy Court jurisdiction over the unrelated claims asserted in the UD Action.

Based upon the foregoing, the Motion to Remand is GRANTED. The Court will enter an order remanding the UD Action to the State Court. At this juncture, the Court declines Equity's invitation to require Rudy and Aida's counsel, Robert Uriarte, to show cause why he should not be sanctioned or subject to discipline.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Notice of Removal [Doc. No. 1, Adv. No. 2:18-ap-01100] is ambiguous as to whether Aida and Rudy intended to remove the UD Action to the Bankruptcy Court or the District Court. The court named on the lead heading on the Notice of Removal is the "United States Bankruptcy Court for the Central District of California—Los Angeles Division." However, the Notice of Removal's introductory paragraphs are addressed "to the Honorable U.S. District Court." The case caption on the Notice of Removal is also ambiguous, setting forth the case numbers for Rudy's bankruptcy case (Case No. 2:14-bk-27148-ER), Aida's bankruptcy case (Case No. 2:13-bk-11518-ER), and Rudy's appeal to the District Court of the Bankruptcy Court's order approving the sale of the Property (Case No. 2:18-cv-01241).

Notwithstanding the ambiguities set forth above, the Court finds that the UD Action has been removed to the Bankruptcy Court, not the District Court. First, the Notice of Removal was electronically filed in Rudy's bankruptcy case on April 9, 2018. *See* Doc. No. 85, Case No. 2:14-bk-27148-ER. As a result of a filing error, the Clerk of the Court instructed Rudy and Aida to re-file the Notice of Removal. *See* Doc. No. 86, Case No. 2:14-bk-27148-ER. On April 13, 2018, Rudy and Aida electronically filed the Notice of Removal in Rudy's bankruptcy case a second time. *See* Doc. No. 87, Case No. 2:14-bk-27148-ER. Second, in opposing the Motion to Remand, Rudy and Aida did not assert that they had intended to remove the UD Action to the District Court. Third, pursuant to 28 U.S.C. §157(a), the District Court

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for the Central District of California has referred all proceedings arising under, arising in, or related to cases arising under Title 11 to the Bankruptcy Judges of the Bankruptcy Court for the Central District of California. *See* General Order No. 13-05. Although the Court does not find that the UD Action arises in, arises under, or is related to Rudy and Aida's bankruptcy cases, Rudy and Aida take the position that the UD Action is related to their bankruptcy cases. For all these reasons, the Court finds that Rudy and Aida intended to remove the UD Action to the Bankruptcy Court, not to the District Court.

Bankruptcy Rule 9027(c) provides that removal takes effect once the removing party files a copy of the Notice of Removal in the court in which the action originated. Here, Rudy and Aida were required to file the Notice of Removal with the State Court. Because Rudy and Aida failed to comply with Local Bankruptcy Rule 9027-1 (d), which requires the removing party to file with the Bankruptcy Court copies of all documents on the State Court's docket, the Court cannot determine whether Rudy and Aida filed the Notice of Removal with the State Court as required by Bankruptcy Rule 9027(c).

Ascertaining if and when Aida and Rudy filed the Notice of Removal with the State Court would only create further delay, thereby rewarding Aida and Rudy's slipshod approach toward complying with basic procedural requirements. Therefore, the Court will deem the Notice of Removal to have been filed with the State Court as of April 9, 2018, the date the Notice of Removal was filed with the Bankruptcy Court. Any future attempt by Aida and Rudy to leverage a problem of their own making by attacking the validity of the removal would constitute egregious procedural gamesmanship that would almost certainly subject Rudy, Aida, and their counsel to sanctions.

Note 2

The lengthy summary set forth in Section I.A., "Prior Proceedings," is provided to ensure a complete record. However, the discussion in Section I.A. is largely irrelevant to the issue that the State Court will be required to adjudicate upon remand—namely, Equity's ability to terminate Rudy's possessory interest in the Property. With respect to issues pertaining to Rudy's possessory interest, Section II, "Findings and Conclusions," and Section I.B., "Equity's Motion to Remand, Rudy and Aida's Opposition, and Equity's Reply," will be of greater assistance to the State Court.

Note 3

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

CONT... Rudy Eberto Fuentes

Chapter 7

Given names are used to distinguish Aida Fuentes from her spouse, Rudy Fuentes. No disrespect is intended.

Note 4

Sam S. Leslie was appointed as the Chapter 7 Trustee for the bankruptcy estate of Rudy Fuentes. Trustee Leslie has had only minimal involvement in the litigation addressed in this Memorandum of Decision. Unless otherwise indicated, all references to the "Trustee" are to David M. Goodrich, the Trustee of Aida Fuentes' bankruptcy estate.

Note 5

See Ninth Circuit Memorandum at p. 5, n. 1.

Note 6

Where a debtor claims a homestead exemption and the Trustee seeks to sell the property subject to that exemption or objects to the homestead exemption, such issues are considered by the Bankruptcy Court. For the reasons discussed above, Rudy's claims regarding his homestead exemption do not arise in this context and therefore are not subject to federal jurisdiction. The Trustee is not seeking to sell Rudy's possessory interest (which is the property subject to his homestead exemption), and the Trustee's objections to the allow ability of Rudy's homestead exemption have already been adjudicated. California state law defines the scope of Rudy's possessory interest as well as the treatment of his homestead exemption in that possessory interest. These issues fall within the jurisdiction of the state court.

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Aida Fuentes

Represented By
Robert G Uriarte

Does 1-111, inclusive

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

CONT... Rudy Eberto Fuentes

Chapter 7

Robert G Uriarte

Plaintiff(s):

Equity Saver Construction, Inc., a

Represented By
George Lee Liddle
Layne L Liddle

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:18-01100 Equity Saver Construction, Inc., a California Corp v. Fuentes et al

#101.00 HearingRE: [6] Motion for Remand Of Unlawful Detainer Action To Superior Court Of California, with proof of Service

Docket 6

Tentative Ruling:

6/20/2018:

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Aida Fuentes

Represented By
Robert G Uriarte

Does 1-111, inclusive

Represented By
Robert G Uriarte

Plaintiff(s):

Equity Saver Construction, Inc., a

Represented By
George Lee Liddle
Layne L Liddle
Carol G Unruh

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

CONT... Rudy Eberto Fuentes

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

2:16-23432 Philip Jensen Ernest and Judith Kay Ernest

Chapter 7

#102.00 APPLICANT: Trustee - David M. Goodrich

Hearing re [28] and [29] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/20/2018

Tentative:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,305.09

Total Expenses: \$141.12

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Philip Jensen Ernest

Represented By
Nicholas W Gebelt

Joint Debtor(s):

Judith Kay Ernest

Represented By
Nicholas W Gebelt

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, June 21, 2018

Hearing Room 1568

11:00 AM

CONT... Philip Jensen Ernest and Judith Kay Ernest

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01475. Complaint by Rudy E. Fuentes against David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes. (Fee Not Required). for (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Uriarte, Robert)

Docket 1

***** VACATED *** REASON: DISMISSED 2-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Pro Se

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01419 Gonzalez, Chapter 7 Trustee v. Investment Grade Loans, Inc.

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01419. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Investment Grade Loans, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 12/18/17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Investment Grade Loans, Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Pro Se

Henry A. Hakopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01423 Gonzalez, Chapter 7 Trustee v. Azatian

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01423. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Andranik Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 11-29-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Andranik Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#8.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 8-27-18 AT 9:00 AM..**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Vineland Sunshine Properties, LLC,

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#9.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: CONTINUED 9-24-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01427 Gonzalez, Chapter 7 Trustee v. Haik Global Services, Inc., a California

#10.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01427. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Haik Global Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-27-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Haik Global Services, Inc., a

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01428 Gonzalez, Chapter 7 Trustee v. Global Investment Properties, Inc., a

#11.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01428. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Global Investment Properties, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-27-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Global Investment Properties, Inc., a

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01431 Gonzalez, Chapter 7 Trustee v. The Board of Trustees of the California State

#12.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01431. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against The Board of Trustees of the California State University. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 2-16-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

The Board of Trustees of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01433 Gonzalez, Chapter 7 Trustee v. Gharibian

#13.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01433. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Haroutioun Gharibian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Haroutioun Gharibian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01435 Gonzalez, Chapter 7 Trustee v. Azatyan

#14.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01435. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Ervand Azatyan. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: DISMISSED 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Ervand Azatyan

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01436 Gonzalez, Chapter 7 Trustee v. Azatian

#15.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01436. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Azat Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Azat Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01437 Gonzalez, Chapter 7 Trustee v. EHC, LLC, a California Limited Liability

#16.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01437. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against EHC, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 1-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

EHC, LLC, a California Limited

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01439 Gonzalez, Chapter 7 Trustee v. Arakelyan

#17.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01439. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hovanes Arakelyan. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

Docket 1

***** VACATED *** REASON: VOLUNTARY DISMISSAL FILED ON 11-28-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hovanes Arakelyan

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01426 TIMOTHY J. YOO, Chapter 7 Trustee v. ACE FUNDING SOURCE, LLC

#18.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01426. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ACE FUNDING SOURCE, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ACE FUNDING SOURCE, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01429 TIMOTHY J. YOO, Chapter 7 Trustee v. ALLIANCE MARKETING

#19.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01429. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ALLIANCE MARKETING PARTNERS. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 2-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ALLIANCE MARKETING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01430 TIMOTHY J. YOO, Chapter 7 Trustee v. EIN CAPITAL

#20.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01430. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against EIN CAPITAL. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

EIN CAPITAL

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01432 TIMOTHY J. YOO, Chapter 7 Trustee v. STARTERVINE

#21.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01432. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against STARTERVINE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 3-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

STARTERVINE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#22.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 8-27-18 T 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01438 TIMOTHY J. YOO, Chapter 7 Trustee v. B TWO DIRECT, LLC

#23.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01438. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against B TWO DIRECT, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DISMISSED 3-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

B TWO DIRECT, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01440 TIMOTHY J. YOO, Chapter 7 Trustee v. COMPANY RESPONDER INC

#24.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01440. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against COMPANY RESPONDER INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

COMPANY RESPONDER INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01441 TIMOTHY J. YOO, Chapter 7 Trustee v. FLEX MARKETING GROUP

#25.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01441. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against FLEX MARKETING GROUP. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

FLEX MARKETING GROUP

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA

#26.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 8-27-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01445 TIMOTHY J. YOO, Chapter 7 Trustee v. GREEN CAPITAL FUNDING

#27.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01445. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GREEN CAPITAL FUNDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GREEN CAPITAL FUNDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01446 TIMOTHY J. YOO, Chapter 7 Trustee v. INBOX MEDIA LLC

#28.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01446. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INBOX MEDIA LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547 (b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INBOX MEDIA LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01447 TIMOTHY J. YOO, Chapter 7 Trustee v. INTERLINCX MEDIA

#29.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01447. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against INTERLINCX MEDIA CORPORATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

INTERLINCX MEDIA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01448 TIMOTHY J. YOO, Chapter 7 Trustee v. IOVATION

#30.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01448. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against IOVATION. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

IOVATION

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01449 TIMOTHY J. YOO, Chapter 7 Trustee v. LEADSMARKET

#31.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01449. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against LEADSMARKET. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550 (a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 12-11-17

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

LEADSMARKET

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01450 TIMOTHY J. YOO, Chapter 7 Trustee v. POWERUP LENDING

#32.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01450. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against POWERUP LENDING. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 5-4-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

POWERUP LENDING

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#33.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: CONTINUED 10-29-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#34.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01453 TIMOTHY J. YOO, Chapter 7 Trustee v. W4 LLC

#35.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01453. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against W4 LLC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-11-17**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

W4 LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#36.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d), (e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 6-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Pro Se

Renato Ferrer

Pro Se

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

Antony Thekkek

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

CONT... Felicidad Ferrer

Hamid R Rafatjoo

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-14457 Theresa Christine Wahl

Chapter 7

Adv#: 2:17-01367 Lemus v. Wahl et al

#37.00 Trial Date Set RE: [23] Amended Complaint by Ramin R Younessi on behalf of Juan Antonio Lemus against all defendants. (RE: related document(s)1 Complaint by Juan Antonio Lemus against Theresa Christine Wahl. willful and malicious injury))

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 6-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Theresa Christine Wahl

Represented By
Nicholas M Wajda

Defendant(s):

Theresa Wahl

Represented By
Sheila Esmaili
Sanaz S Bereliani

Does 1 Through 20, Inclusive

Pro Se

Plaintiff(s):

Juan Antonio Lemus

Represented By
Ramin R Younessi
Sheila Esmaili

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-15178 Chasen Kyle Stanley

Chapter 7

Adv#: 2:17-01357 Stanley v. Education Finance Partners et al

#38.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01357. Complaint by Chasen Kyle Stanley against Education Finance Partners, ACS Loan Science, Asset Recovery Solutions, LLC, DEPARTMENT OF EDUCATION, Navient, Federal Loan Services, National Payment Center, Sallie Mae, Associated Recovery Systems. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Potier, Amanda)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 6-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Defendant(s):

Education Finance Partners

Pro Se

ACS Loan Science

Pro Se

Asset Recovery Solutions, LLC

Pro Se

Navient

Pro Se

Federal Loan Services

Pro Se

National Payment Center

Pro Se

Sallie Mae

Pro Se

Associated Recovery Systems

Pro Se

US Department of Education

Represented By
Elan S Levey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

CONT... Chasen Kyle Stanley

Chapter 7

DOES 1 through 4, et al

Pro Se

Navient Solutions, LLC

Represented By
Robert S Lampl

Plaintiff(s):

Chasen Kyle Stanley

Represented By
Amanda J Potier

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01470 Swan Fence Incorporated v. Robbins

#39.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01470. Complaint by Swan Fence Incorporated against Brad Hilton Robbins. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Wainer, Maurice)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 6-14-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

Brad Hilton Robbins

Pro Se

Plaintiff(s):

Swan Fence Incorporated

Represented By
Maurice Wainer

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01473 Construction Laborers Trust Funds For Southern Cal v. ROBBINS

#40.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01473. Complaint by Construction Laborers Trust Funds for So Calif against BRADLEY HILTON ROBBINS. false pretenses, false representation, actual fraud), (67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Hamasaki, Marsha)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 1-18-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

BRADLEY HILTON ROBBINS

Represented By
Sergio J Siderman

Plaintiff(s):

Construction Laborers Trust Funds

Represented By
Marsha M Hamasaki
J. David Sackman

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:17-17685 Irene L Ulloa

Chapter 7

Adv#: 2:17-01476 Rund Chapter 7 Trustee v. Ulloa

#41.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01476. Complaint by Jason Rund Chapter 7 Trustee against Lawrence Martin Ulloa. (Charge To Estate). with proof of service Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))) (Lee, Angie)

Docket 1

***** VACATED *** REASON: DISMISSED 3-22-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Irene L Ulloa

Pro Se

Defendant(s):

Lawrence Martin Ulloa

Pro Se

Plaintiff(s):

Jason Rund Chapter 7 Trustee

Represented By
Angie S Lee

Trustee(s):

Jason M Rund (TR)

Represented By
Angie S Lee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#42.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)), (91 (Declaratory judgment)) (Richards, Jeremy)

Docket 1

***** VACATED *** REASON: CONTINUED 9-24-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Pro Se

Lantern Brands, Inc., a California

Pro Se

TT Investment Los Angeles Fund I,

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:05-40453 Armen Mekikian

Chapter 7

Adv#: 2:06-01192 Dayan et al v. Mekikian et al

#100.00 Hearing re re [44] Appearance and Examination of ARMEN MEKIKIAN, dba LA WEDDING SETS.

fr. 9-13-17; 12-19-17; 2-5-18; 4-2-18

Docket 0

Tentative Ruling:

6/21/2018

Appearances required

Party Information

Debtor(s):

Armen Mekikian

Represented By
Ronald E Michelman

Defendant(s):

Armen Mekikian

Represented By
Ronald E Michelman

Marine Mary Mekikian

Represented By
Ronald E Michelman

Joint Debtor(s):

Marine Mary Mekikian

Pro Se

Plaintiff(s):

Shahin Dayan

Represented By
Nico N Tabibi

Yafa Dayan

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Armen Mekikian

Chapter 7

Nico N Tabibi

Los Angeles Jewelry Production Inc

Represented By
Nico N Tabibi

Trustee(s):

David L Ray (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:05-40453 Armen Mekikian

Chapter 7

Adv#: 2:06-01192 Dayan et al v. Mekikian et al

#101.00 Hearing re [43] Application *and Order for Appearance and Examination of MARINE MARY MEKIKIAN, AKA MARINE MEKIKIAN, AKA MARINE M. MEKIKIAN, AKA MARINE DEMIRCHIAN, AKA MARINE M. DEMIRCHIAN, AKA MARINE MARY DEMIRCHIAN*

fr. 9-13-17; 12-19-17; 4-2-18

Docket 0

Tentative Ruling:

6/21/2018

Hearing required.

Party Information

Debtor(s):

Armen Mekikian

Represented By
Ronald E Michelman

Defendant(s):

Armen Mekikian

Represented By
Ronald E Michelman

Marine Mary Mekikian

Represented By
Ronald E Michelman

Joint Debtor(s):

Marine Mary Mekikian

Pro Se

Plaintiff(s):

Shahin Dayan

Represented By
Nico N Tabibi

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Armen Mekikian

Chapter 7

Yafa Dayan

Represented By
Nico N Tabibi

Los Angeles Jewelry Production Inc

Represented By
Nico N Tabibi

Trustee(s):

David L Ray (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-15332 Yoo Keun Jung

Chapter 7

#102.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Hyundai Elantra, VIN: KMHD35LH0GU303754 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

6/21/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Yoo Keun Jung

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Yoo Keun Jung

Represented By
Young K Chang

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-13769 Varoujan Bedros Sevian

Chapter 7

#103.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Volkswagen Passat .

Docket 13

Tentative Ruling:

6/21/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Varoujan Bedros Sevian

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlager, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Varoujan Bedros Sevian

Represented By
Sevan Gorginian

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-14998 Leomann Sayson Valderrama

Chapter 7

#104.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Hyundai Accent, VIN KMHCT4AE8EU645139 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

6/21/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Leomann Sayson Valderrama

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Leomann Sayson Valderrama

Represented By
Jasmine Firooz

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-13838 Sharon Claire Williams

Chapter 7

#105.00 HearingRE: [9] Notice of motion and motion for relief from stay/relief from turnover with declarations REAL PROPERTY CUSTODIAN RE: 3429 W 41st St, Los Angeles CA 90008 .

Docket 9

Tentative Ruling:

6/21/2018

The Motion is DENIED without prejudice. The Movant seeks relief from the automatic stay to proceed with an unlawful detainer action; however, the Movant did not use the correct mandatory local rules form. The Movant may re-file the Motion using the correct mandatory form: F 4001-1.RFS.UD.Motion ("Notice of Motion and Motion for Relief from the Automatic Stay or for Order Confirming that the Automatic Stay Does Not Apply Under 11 U.S.C. s. 362(I) (with supporting declarations) (Unlawful Detainer)"). The mandatory form is available on the Court's website: http://www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms

Party Information

Debtor(s):

Sharon Claire Williams

Represented By
Kahlil J McAlpin

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-14832 Yong Suk Ro

Chapter 7

#106.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 3183 Wilshire Boulevard #721, Los Angeles CA 90010 Exhibits "A" through "E" and proof of service.

Docket 17

Tentative Ruling:

6/21/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on February 22, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Yong Suk Ro

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Yong Suk Ro

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#107.00 Hearing
RE: [70] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1804, 1806 & 1808 South Chapel Avenue, Alhambra, California 91801 with Proof of Service. (Yabes, Gilbert)

Docket 70

***** VACATED *** REASON: CONTINUED 8-27-18 AT 10:0 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

2:18-13418 Ignacio Landa Velasquez

Chapter 7

#108.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: U 2008 GMC YUKON, VIN NO. 1GKFC130X8R103053 with Exhibits and Proof of Service. (Lees, Megan)

Docket 12

Tentative Ruling:

6/21/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, June 25, 2018

Hearing Room 1568

10:00 AM

CONT... Ignacio Landa Velasquez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Ignacio Landa Velasquez

Represented By
Andrew Nguyen

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 26, 2018

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#1.00 Hearing
RE: [34] Motion to Amend (related document(s)1 Complaint) Trustees Notice of Motion and Motion for Leave to Amend Complaint Pursuant to FRBP 7015 with proof of service

FR: 6-21-18

Docket 34

Tentative Ruling:

6/25/2018

For the reasons set forth below, the Motion is DENIED. The parties are ordered to conduct an additional day of mediation. Such mediation should be conducted against the backdrop of the Court's guidance as set forth in Section II.B., below. The additional mediation must take place on or before **August 31, 2018**. The existing litigation deadlines shall remain in effect. A Status Conference to monitor the status of the mediation shall be conducted on **September 18, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

Pleadings Filed and Reviewed:

- 1) Trustee's Complaint for Avoidance and Recovery of Transfers [Doc. No. 1] (the "Complaint")
- 2) Trustee's Notice of Motion and Motion for Leave to Amend Complaint Pursuant to FRBP 7015 [Doc. No. 34] (the "Motion")
- 3) Opposition to Trustee's Motion for Leave to Amend Complaint Pursuant to FRBP 7015 [Doc. No. 37] (the "Opposition")
- 4) Trustee's Reply to Defendant's Opposition to Motion of Trustee for Leave to Amend Complaint Pursuant to FRBP 7015 [Doc. No. 40] (the "Reply")

I. Facts and Summary of Pleadings

A. Background

On October 3, 2017, the Chapter 7 Trustee (the "Trustee") commenced the instant

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, June 26, 2018

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen

Chapter 7

Complaint for Avoidance and Recovery of Transfers [Doc. No. 1] (the “Complaint”) against the Lancaster Baptist Church (the “Defendant” or the “Church”). The Complaint seeks to avoid and recover, as actually and constructively fraudulent, transfers made by the Debtors to the Church in the amount of \$222,646.42.

On October 4, 2017, the Court entered a scheduling order which set February 16, 2018 as the deadline to amend pleadings and/or join other parties. *See* Doc. No. 4 (the “Initial Scheduling Order”). On January 22, 2018, after conducting a Status Conference, the Court entered a subsequent Scheduling Order which confirmed the litigation deadlines set by the Initial Scheduling Order—including the February 16, 2018 deadline to amend the pleadings and/or join parties. *See* Doc. No. 21 (the “Scheduling Order”).

On February 1, 2018, the Court entered an order assigning the matter to mediation and appointing David Gould as the mediator. *See* Doc. No. 24 (the “Mediation Order”). On March 12, 2018, the parties executed a stipulation to extend various litigation deadlines. *See* Doc. No. 26 (the “First Scheduling Stipulation”). The extension was sought because the first date upon which all parties were available to attend the mediation was April 12, 2018. On March 15, 2018, the Court approved the First Scheduling Stipulation, and extended upcoming litigation deadlines by approximately sixty days. However, the Court did not extend the deadline to amend the pleadings. *See* Doc. No. 28.

The parties attended mediation on April 12, 2018, but the action did not settle. On April 18, 2018, the Court approved a stipulation extending the Trustee’s deadline to respond to the Defendant’s First Set of Interrogatories by fourteen days, to and including May 9, 2018. *See* Doc. No. 32. On June 20, 2018, the parties executed a stipulation to continue the pretrial and trial dates by sixty days. *See* Doc. No. 41 (the “Second Scheduling Stipulation”). The continuance was sought to accommodate a scheduling conflict of the Trustee’s lead trial counsel as well as scheduling conflicts of both sides pertaining to religious holidays. On June 21, 2018, the Court approved the Second Scheduling Stipulation, and continued the pretrial conference and trial for approximately sixty days. *See* Doc. No. 43. The pretrial conference is currently set for November 13, 2018, and the trial is currently set for the week of November 26, 2018.

B. The Trustee’s Motion for Leave to Amend the Complaint

The Trustee seeks leave to amend the Complaint. As currently pleaded, the Complaint seeks to avoid transfers made by the Debtors to the Church within the seven years preceding the date of the petition (the “Petition Date”), in the total amount

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of \$222,646.42. The proposed First Amended Complaint extends the avoidance period by an additional three years, seeking to avoid transfers made within ten years of the Petition Date. Total transfers sought to be avoided are \$375,820.08 (an increase of approximately \$150,000). The Trustee makes the following arguments in support of the Motion:

Pursuant to Civil Rule 15, leave to amend must be liberally granted. The Supreme Court has set forth four factors that should be considered when evaluating a request for leave to amend: (1) undue delay, (2) bad faith or dilatory motive, (3) futility of amendment, and (4) prejudice to the opposing party. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

First, the Church will not be prejudiced by the proposed First Amended Complaint. Because the Debtors sought bankruptcy protection on November 7, 2016, the Trustee's deadline to commence an avoidance action against the Church is November 7, 2018. The Trustee could simply initiate an entirely new adversary proceeding against the Church, but amending the instant Complaint is more efficient and conserves judicial resources.

Second, the proposed amendment is not futile, because it simply seeks to extend the avoidance period by an additional three years. Third, the amendment is not sought in bad faith. When investigating events surrounding the Debtors' default on a 2007 loan guaranteed by the Small Business Administration (the "SBA Loan"), the Trustee discovered the additional facts supporting the proposed First Amended Complaint. Finally, the Trustee has not unduly delayed filing the First Amended Complaint. After the parties attended mediation on April 12, 2018, the Trustee discovered the additional avoidable transfers made by the Debtors to the Church. On May 3, 2018, the Trustee asked the Church to stipulate to the amendments, but the Church declined. Shortly thereafter, the Trustee brought the instant Motion for leave to amend.

C. The Church's Opposition to the Motion

The Church opposes the Motion, and makes the following arguments and representations in support of its Opposition:

By seeking leave to amend pursuant to Civil Rule 15, the Trustee is seeking to circumvent Civil Rule 16's more stringent requirements for modifying a Scheduling Order. Because the Court has entered the Scheduling Order setting forth the litigation deadlines governing this action, Civil Rule 16, not Civil Rule 15, determines whether

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leave to amend should be granted.

Civil Rule 16 provides that a Scheduling Order “shall not be modified except upon a showing of good cause and by leave of the district judge” Civil Rule 16(b) (4). If good cause is shown, the party seeking leave to amend must still show that leave to amend is proper under Civil Rule 15. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608–9 (9th Cir. 1992).. The primary consideration when determining good cause is the diligence of the party seeking leave to amend. “[I]f the party was not diligent, the inquiry should end.” *Johnson*, 975 F.2d at 608–9.

Here, the Trustee has not shown diligence. The Court entered the Initial Scheduling Order on October 4, 2017, which provided that the deadline to amend the pleadings was February 16, 2018. The Court’s subsequent Scheduling Order, entered on January 22, 2018, reiterated the February 16 deadline. On March 9, 2018, after the deadline to amend the pleadings had elapsed, the parties agreed to extend the deadlines set forth in the Scheduling Order, but did not agree to extend the deadline to amend the pleadings.

The Trustee claims that the proposed amendments are based upon newly discovered facts. However, since August 30, 2017, the Trustee has been in possession of a list of the Debtors’ transfers to the Church going back to 2000. The facts concerning the SBA Loan have been a matter of public record since at least May 2010. Had the Trustee acted diligently, he could have easily discovered these facts prior to the deadline for amending the pleadings.

Even if the Trustee can show good cause for leave to amend, he is still not entitled to amend the Complaint, because the Church will be prejudiced by amendment, and amendment would be futile. With respect to prejudice, the Church, as a religious entity, does not have the ability to place even \$223,000 of donations in an account for any time, much less ten years, while it waits to determine whether the donor will seek bankruptcy protection and subject the Church to an avoidance action. By the proposed amendments, the Trustee is now seeking to avoid an additional \$150,000 in transfers.

Amendment would be futile. As a result of amendments to the Bankruptcy Code made by the Religious Liberty and Charitable Donation Protection Act of 1998 (the “RLCDPA”), the Debtors’ transfers are protected from avoidance. The RLCDPA added §548(a)(2)(A) to the Bankruptcy Code, which provides that charitable donations that are less than 15% of the Debtors’ gross annual income during the year in which the transfer is made may not be avoided. Section 548(a)(2)(B), also added by the RLCDPA, provides that even those transfers in excess of the 15% safe-harbor are protected from avoidance, if the transfers are “consistent with the practices of the

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debtor in making charitable contributions.” Here, amendment would be futile, because the transfers at issue either fall within the 15% safe-harbor, or were consistent with the Debtors’ practices in making charitable contributions.

The RLCDDPA’s provisions also prevent the Trustee from avoiding the transfers using non-bankruptcy law under §544(b)(1). Section 544(b)(2) provides that the avoidance powers granted by §544(b)(1) do not apply to transfers that are “charitable contributions” within the meaning of §548(a)(2).

D. The Trustee’s Reply to the Church’s Opposition

The Trustee makes the following arguments and representations in Reply to the Church’s Opposition:

First, there is no merit to the Church’s contention that the Trustee has not acted diligently in seeking leave to amend the Complaint. The Ninth Circuit decisions finding a lack of diligence by the party seeking leave to amend involve situations in which the party sought to raise new legal theories and/or add new parties to the action. Here, the Trustee does not seek to add new parties or raise new legal theories; the Trustee seeks only to extend the reach-back period by an additional three years.

Second, the Church will not be prejudiced by the filing of the First Amended Complaint. The Church maintains that it will be prejudiced because it cannot afford to segregate donations for the purpose of protecting itself from potential avoidance actions. But if the Trustee prevailed upon the claims asserted in the Complaint presently on file, the Church would be required to return to the estate approximately \$223,000 in donations it received from the Debtors. The additional \$150,000 in transfers placed in issue by the proposed amendments do not qualify as prejudice within the meaning of Civil Rule 16. Prejudice within the context of Civil Rule 16 refers to the burden imposed by being required to respond to additional discovery or new legal theories. *See Lockheed Martin Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999) (finding amendment would be prejudicial because it would require reopening discovery); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (same). Here, the Church is not prejudiced because the discovery deadline has not elapsed.

Third, the proposed amendments are not futile. The 15% safe-harbor provision of §548(a)(2)(A) fails to protect the majority of the transfers which the Trustee seeks to avoid. The Trustee’s calculations show that 2014 was the only year in which the Debtors’ donations to the Church fell below 15% of the Debtors’ income. Nor are the transfers protected on the ground that the transfers were consistent with the Debtors’

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charitable giving practices. The Debtors' contributions to the Church were not consistent, regardless of whether consistency is assessed by evaluating the face amount of the contributions or the amount of the contributions as a percentage of the Debtors' gross annual income. The aggregate annual amount of contributions varied widely from a low of \$28,876.05 in 2014 to a high of \$81,133.00 in 2006. As a percentage of the Debtors' income, contributions ranged from 14.5% in 2014 to 44.88% in 2006.

II. Findings and Conclusions

A. The Motion is Denied

Because the Court has entered a Scheduling Order, the Trustee's request for leave to amend is governed by both Civil Rules 16 and 15. To obtain leave to amend, the Trustee must first make a showing of good cause under Civil Rule 16. If the Trustee clears this hurdle, the Trustee must then show that amendment is appropriate under Civil Rule 15. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992); *see also* Civil Rule 16(b)(4) (stating that a scheduling order "shall not be modified except upon a showing of good cause and by leave of the district judge").

Civil Rule 16's "good cause" standard "primarily considers the diligence of the party seeking the amendment. The district court may modify the pretrial schedule 'if it cannot reasonably be met despite the diligence of the party seeking the extension.'" *Johnson*, 975 F.2d at 609.

Here, the Trustee has failed to establish that he could not reasonably meet the February 16, 2018 deadline to amend the pleadings. The Trustee has been aware of the February 16, 2018 deadline ever since the Court entered the Initial Scheduling Order on October 4, 2017. The February 16, 2018 deadline was reiterated in the Scheduling Order entered on January 22, 2018. Information pertaining to the Debtors' charitable contributions to the Church, going as far back as the year 2000, has been available to the Trustee since August 30, 2017. *See* August 30, 2017 E-mail from the Trustee's Counsel to the Church's Counsel [Doc. No. 37, Ex. B] (containing a table setting forth the Debtors' donations to the Church from 2000–2016, and showing the contributions as a percentage of the Debtors' income for the years 2006–2016). The Trustee claims that he discovered the facts apprising him of the need to amend the Complaint upon investigating the loan the Debtors received from the SBA. However, information concerning the SBA Loan was disclosed in the Debtors' petition, which was filed on November 7, 2016.

This case is not complex. For many months prior to the deadline to amend the

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pleadings, the Trustee has been in possession of sufficient information to apprise him of the need to thoroughly investigate the Debtors' transfers to the Church. Had the Trustee diligently investigated this information, he could have met the February 16, 2018 deadline to amend the pleadings—or at the very least, the Trustee could have sought leave to amend sooner than four months after that deadline had elapsed.

Absent a showing of diligence, the Trustee cannot clear the “good cause” hurdle imposed by Civil Rule 16, and it is not necessary for the Court to consider whether leave to amend would be futile under Civil Rule 15. However, as set forth below, in the Court's view the Trustee's case suffers from significant uncertainties. To be clear, the Court is not determining that leave to amend would be futile, or making any definitive ruling in connection with the issues discussed in Section B, below. The Court's objective is to draw the parties' attention to the fact that there is little binding Ninth Circuit authority with respect to the issues raised by the Complaint. Consequently, both the Trustee and the Church face substantial risk should they continue to litigate this action. In light of this reality, the Court believes that an additional day of mediation would be productive. The Court is aware that the parties previously were unable to reach a settlement at the mediation reached on April 12. The Court expects that with the benefit of the Court's perspective, additional mediation will be productive. Therefore, the Court will order the parties to conduct an additional day of mediation with Mr. Gould.

B. Issues to be Considered During Further Mediation

The primary issue is whether the Debtors' transfers to the Church are protected from the Trustee's avoidance powers pursuant to §548(a)(2)(B). Based on the record presently available to the Court, the transfers at issue may be summarized as follows (as noted, the following summary, as well as the accompanying discussion, is not intended as a finding of the Court, and is provided instead to facilitate further mediation):

Year	Debtors' Gross Income	Charitable Contribution	Charitable Contribution as a Percentage of Gross Income
2009	\$175,237.00	\$52,309.11	29.85%

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2 0 1 0	\$(29,880.00)	\$34,296.45	Not applicable
2 0 1 1	\$135,805.00	\$28,330.50	20.86%
2 0 1 2	\$162,178.00	\$34,303.60	21.15%
2 0 1 3	\$130,167.00	\$27,398.82	21.05%
2 0 1 4	\$185,336.00	\$26,876.05	14.5%
2 0 1 5	\$190,498.00	\$37,499.00	19.68%
2016	\$162,593.00	\$34,300.00	21.10%

Section 548(a)(2)(A) creates a safe-harbor for contributions that do not exceed 15% of the debtor’s gross annual income. Such transfers are generally not subject to avoidance by the Trustee. Transfers that do not fall within the scope of the §548(a)(2) (A) may not be avoided by the Trustee if those transfers are “consistent with the practices of the debtor in making charitable contributions.”

The Court is not aware of binding Ninth Circuit authority governing the determination of whether charitable contributions are “consistent with the practices of the debtor.” In *Wolkowitz v. Breath of Life Seventh Day Adventist Church (In re Lewis)*, 401 B.R. 431, 446 (Bankr. C.D. Cal. 2009), the court reasoned that consistency should be determined by examining “the amount of the transfer versus

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past transfers, and the percentage of the debtor's income each year that is devoted to charitable contributions." Were this Court to adopt the standard set forth in *Lewis*, a strong argument could be made that the Debtors' charitable contributions were "consistent" within the meaning of §548(a)(2)(B). While there is some variation in the contributions, "the word 'consistent' is a fluid term and not rigid." *Lewis*, 249 B.R. at 447. The arithmetic mean of the contributions, when measured as a percentage of the debtors' income (and excluding the year 2010, in which the debtors had negative income) is 21.70%. The standard deviation of the same data set is only 4.5 percentage points. Consistency within the meaning of §548(a)(2)(B) cannot be defined strictly in statistical terms, but statistical analysis provides a helpful tool—and in this case, the statistical analysis strongly suggests that the contributions could qualify as "consistent" under §548(a)(2)(B).

In the Court's view, consistency is more reliably assessed by examining the contributions as a percentage of the Debtors' gross annual income, rather than by examining the face dollar amount of the contributions. In assessing the consistency of the Debtors' practices with respect to charitable contributions, it is appropriate for the Court to consider the religious context in which such contributions were made. The Debtors' religious tradition encourages observers to use a percentage of annual income as the yardstick for measuring charitable contributions. The Debtors donated to the Lancaster Baptist Church; the term "tithing," as understood by most adherents of this religious tradition, refers to a tenth of one's income. [Note 1]

III. Conclusion

Based upon the foregoing, the Motion is DENIED. The parties are ordered to conduct an additional day of mediation. Such mediation should be conducted against the backdrop of the Court's guidance as set forth in Section II.B., above. The additional mediation must take place on or before **August 31, 2018**. The existing litigation deadlines shall remain in effect. A Status Conference to monitor the status of the mediation shall be conducted on **September 18, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Court takes judicial notice of the views of the Southern Baptist Convention regarding charitable contributions. In a statement issued in 2013, available at <<http://www.sbc.net/resolutions/1234/on-tithing-stewardship-and-the-cooperative-program>>, the Southern Baptist Convention defined "tithing" in terms of a percentage of one's annual income.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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#2.00 Hearing

RE: [648] Application for Compensation Final Application Of Valensi Rose, PLC, Former General Insolvency Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Payment Of Fees And Costs For The Period May 1, 2015 Through And Including April 13, 2018; Declaration Of David M. Reeder for Valensi Rose, PLC, Other Professional, Period: 5/1/2015 to 4/13/2018, Fee: \$474,479.50, Expenses: \$9,138.70. (Reeder, David)

fr: 6-21-18

Docket 648

Tentative Ruling:

6/25/2018

For the reasons set forth below, the Fee Applications are GRANTED as follows:

- (1) the Valensi Application is GRANTED in the total amount of \$118,273.05 (\$119,428.05 less the voluntary reduction of \$1,155.00) for the Subject Period; amounts previously awarded on an interim basis are approved as final.
- (2) The Reeder Application is GRANTED; amounts previously awarded on an interim basis in the total amount of \$336,001.92 are approved as final.
- (3) The Riggall Application is GRANTED; amounts previously awarded on an interim basis in the total amount of \$92,155.00 are approved as final. The Riggall Opposition is OVERRULED.
- (4) The Payne Application is GRANTED in the total amount of \$7,205.07 for the Subject Period; amounts previously awarded on an interim basis are approved as final. The Payne Opposition is OVERRULED.

Pleadings Filed and Reviewed:

- 1) Final Fee Application of Valensi Rose, PLC, Former General Insolvency Counsel

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for Monge Property Investments, Inc., Debtor-in-Possession, for Payment of Fees and Costs for the Period May 1, 2015 Through and Including April 13, 2018 (the "Valensi Application") [Doc. No. 648]

- a) Debtor's Opposition to the [Valensi Application] (the "Valensi Opposition") [Doc. No. 663]
- b) Reply to the [Valensi Opposition] (the "Valensi Reply") [Doc. No. 679]
- 2) Final Fee Application of Reeder Law Corporation, Former General Insolvency Counsel for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2102 Through April 30, 2015 (the "Reeder Application") [Doc. No. 650]
- 3) Final Application of Kneave Riggall, Esq., Former Special Tax Counsel for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2104 Through April 30, 2017 (the "Riggall Application") [Doc. No. 651]
 - a) Debtor's Limited Opposition to the [Riggall Application] (the "Riggall Opposition") [Doc. No. 661]
 - b) Supplemental Declaration of Kneave Riggall in Reply to the Riggall Opposition (the "Riggall Reply") [Doc. No. 677]
- 4) Final Application of Payne Financial Forensics, Former Restructuring Adviser for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2104 Through March 14, 2018 (the "Payne Application") [Doc. No. 652]
 - a) Debtor's Limited Opposition to the [Payne Application] (the "Payne Opposition") [Doc. No. 662]
 - b) Supplemental Declaration of Lori L. Payne in Reply to the Payne Opposition (the "Payne Reply") [Doc. No. 678]

I. Facts and Summary of Pleadings

This is a hearing in connection with the following final fee applications filed on on May 31, 2018 (collectively, the "Fee Applications"):

- (1) the "Final Fee Application of Valensi Rose, PLC, Former General Insolvency

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Counsel for Monge Property Investments, Inc., Debtor-in-Possession, for Payment of Fees and Costs for the Period May 1, 2015 Through April 13, 2018" (the "Valensi Application") [Doc. No. 648];

(2) the "Final Fee Application of Reeder Law Corporation, Former General Insolvency Counsel for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2102 Through April 30, 2015" (the "Reeder Application") [Doc. No. 650];

(3) the "Final Application of Kneave Riggall, Esq., Former Special Tax Counsel for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2104 Through April 30, 2017" (the "Riggall Application") [Doc. No. 651]; and

(4) the "Final Application of Payne Financial Forensics, Former Restructuring Adviser for Monge Property Investments, Inc., Debtor-in-Possession, for Professional Compensation for the Period May 31, 2104 Through March 14, 2018" (the "Payne Application") [Doc. No. 652].

A. Background and Case History

Monge Property Investments, Inc. (the "Debtor"), filed a voluntary Chapter 11 Petition on May 31, 2012 (the "Petition") [Doc. No. 1]. The Debtor is a California corporation in the business of owning and operating real property in Los Angeles County, CA. The Debtor's case was originally heard by Judge Donovan, from the Petition Date through March 13, 2017, at which time the case was reassigned from Judge Donovan to this Court. *See* Doc. No. 536.

Prior to the filing of the Petition, as a consequence of repeated building code violations five of the Debtor's properties (the "REP Properties") were placed into the Rent Escrow Program ("REP") by the Los Angeles Housing Department ("LAHD"), which resulted in the tenants paying rent in the amount of 50% of the contract rate to LAHD. Because the Debtor was receiving only a portion of its rents, the Debtor could not afford to maintain the REP Properties, or make mortgage payments. As a result, and shortly before the Petition Date, the Debtor was facing foreclosure on each of the five REP Properties.

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The events in the Debtor's case for the period from the Petition Date through January 22, 2014, included the following, among other events: (1) prosecution of a motion regarding utility service; (2) filing of the certain motions to use cash collateral; (3) the sale of the property located at 4722 Catalpa Street, Los Angeles, CA, which was approved over the objection of a party in interest; (4) prosecution of a motion against the LAHD for turnover of rents; (5) removal of an action from the California Superior Court regarding entitlement to certain funds related to the pre-bankruptcy foreclosure of the Debtor's property located at 1877 Marney Avenue, Los Angeles, CA; (6) the Debtor was a defendant in the adversary proceeding captioned *Cal-Western Reconveyance Corp. v. Monge Property Investments, Inc., et. al*, Adv. No. 12-ap-01951-TD, which was concluded and closed by an order of the Bankruptcy Court entered on May 8, 2013 [Adv. Doc. No. 31]; (7) the sale of the property located at 3665 S. Normandie Avenue, Los Angeles, CA; (8) litigation of an enforcement action instituted by the City of Los Angeles against the Debtor for alleged violations of the applicable Los Angeles Municipal Housing Code; and (9) the sale of the property located at 140-42 W. 52nd Place, Los Angeles, CA. *See generally* Reeder Application, Exhibit 10.

The Original Plan and Disclosure Statement

The Debtor filed the "Original Plan of Reorganization" [Doc. No. 268] and the "Disclosure Statement Describing [the] Original Plan of Reorganization" [Doc. No. 269] (collectively, the "Original Plan and Disclosure Statement") on January 22, 2014. Shortly thereafter, the Debtor withdrew the Original Plan and Disclosure Statement, and informed the Court that due to unliquidated tax issues, the Debtor needed to complete substantial tax reporting in order for the Original Plan to provide for the treatment of all claims, and for the Original Disclosure Statement to provide adequate information.

Tax Issues

After the filing of the Original Plan and Disclosure Statement, it was discovered that the Debtor had failed to file its California income tax returns since the Debtor's formation in 2003, and that only some Federal tax returns had been filed. Due to the lack of records for the company, resolution of the tax issues was a substantial task that required forensic work in order to determine the tax basis of the Debtor's properties

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for the purposes of calculating depreciation, and for determining capital gains. On February 28, 2018, the Debtor filed the Application to Employ Kneave Riggall, Esq. as Special Tax Counsel [Doc. No. 278], which was approved by the Court on April 9, 2014, *see* "Order Granting Application to Employ Kneave Riggall as Special Tax Counsel" [Doc. No. 286].

The First Amended Plan & Disclosure Statement, and the Stay of Proceedings

The Debtor filed the "First Amended Plan" [Doc. No. 486] and the "First Amended Disclosure Statement" [Doc. No. 486] on April 5, 2016. A hearing on the approval of the First Amended Disclosure Statement was held on May 11, 2016. *See* "Notice of Ruling on Proposed First Amended Plan of Reorganization" [Doc. No. 494]. The Court determined that, among other things, there were significant issues related to the ongoing Probate Matter, and denied approval of the First Amended Disclosure Statement. *Id.* On June 24, 2016, pursuant to the "Order After Hearing on First Amended Disclosure Statement and Plan of Reorganization" [Doc. No. 498], all further plan confirmation activity in the Debtor's case was stayed until the California Probate Code § 850 Petition filed by the Monge Estate was resolved by the Probate Court.

The Second Amended Plan and Disclosure Statement, and the Withdrawal of Debtor's Counsel

On March 15, 2018, the Debtor filed the "Second Amended Plan of Reorganization" (the "Second Amended Plan" [Doc. No. 608], the "Second Amended Disclosure Statement Describing [the] Second Amended Plan" (the "Second Amended Disclosure Statement") [Doc. No. 609], and the "Motion for Order Approving [the] Second Amended Disclosure Statement" [Doc. No. 610]. A hearing on the approval of the Second Amended Disclosure Statement was scheduled to be held on May 17, 2018 at 10:00 a.m. *See* Doc. No. 612.

On March 20, 2018, Valensi filed the "Motion by Valensi Rose, PLC, for An Order Granting it Leave to Withdraw as Counsel for [the Debtor]" (the "Motion to Withdraw") [Doc. No. 613]. On April 4, 2018, the Court held the hearing and granted the Motion to Withdraw. *See* "Order Requiring Ruben Monge, Jr. to Retain New Counsel to Represent [the Debtor]" (the "Withdrawal Order" [Doc. No. 623]. Pursuant to the Court's Order, the Debtor subsequently retained new counsel.

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B. The Valensi Application

The Valensi Application [Doc. No. 648] is the fourth and final fee application filed by Valensi Rose, PLC ("Valensi"), former general insolvency counsel for the Debtor. Valensi seeks payment of professional compensation for the period May 1, 2015 through April 13, 2018 (the "Subject Period"), in the total amount of \$119,428.05, and final approval of all fees and costs incurred in the case, including fees previously awarded on an interim basis. Valensi became counsel for the Debtor after David Reeder, the principal attorney of RLC, affiliated with Valensi on May 1, 2015. The order authorizing the Debtor to employ Valensi as general insolvency counsel was entered on June 11, 2015 [Doc. No. 400]. Prior to this final application, Valensi applied for, and was granted interim compensation on three occasions, for total interim compensation in the amount of \$364,190.16. *See* Valensi Application at 2–3 & Exhibits 1–6.

The Valensi Opposition

On June 7, 2018, the Debtor filed the "Opposition to the [Valensi Application]" (the "Valensi Opposition") [Doc. No. 663]. The Debtor opposes the Valensi Application on the grounds that, (1) the Valensi Application fails to comply with the requirements of Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J), and (2) the fees sought by the Valensi Application are excessive and unreasonable.

Regarding the first argument, the Debtor contends that the Valensi Application fails to comply with LBR 2016-1(a)(1)(J), which requires an application for professional compensation to be accompanied by "A separately filed declaration from the client indicating that the client has reviewed the fee application and has no objection to it" Specifically, the Valensi Opposition states that the "Declaration of David M. Reeder" (the "Reeder Declaration") [Doc. No. 648] attached to the Valensi Application does not state whether Valensi sought to obtain a declaration or approval from the Debtor prior to the filing of the Valensi Application.

Regarding the second argument, the primary dispute raised by the Valensi Opposition relates to the fees in the amount of \$21,935.00 for the work performed by Valensi on the Debtor's Second Amended Plan and Second Amended Disclosure Statement. The Debtor argues that the description of the work performed for this category of fees overlaps with services performed by Payne Financial Forensics that

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were charged to the Debtor in the amount of \$20,720.57. The Debtor further objects to specific fees related to certain time entries by Jessica Evans (\$1,155.00) and David M. Reeder (\$15,950.00), which the Debtor contends are for duplicative services. Regarding the fees requested for services on the Second Amended Plan and Second Amended Disclosure Statement, generally, the Debtor contends that the fees should be disallowed or reduced on the grounds that the Second Amended Plan was patently unconfirmable based on the proposed treatment of the priority claim of the IRS.

The Debtor additionally argues that, considering the short period of time between the date of entry of the Withdrawal Order and the date the Valensi Application was filed, the Debtor was not given sufficient time to review the billing statements attached to the Valensi Application. The Valensi Opposition, therefore, requests that the Court continue the hearing on the Valensi Application to afford the Debtor additional time to review the billing statements.

The Valensi Reply

On June 14, 2018, Valensi filed the "Reply to the [Valensi Opposition]" (the "Valensi Reply") [Doc. No. 679]. The Valensi Reply argues that the Valensi Opposition is not supported by any evidence, but rather, is based only on the idea that the work performed by Valensi during the Subject Period was not complex. Regarding the Valensi Application's compliance with LBR 2016-1, the Valensi Reply states that there has been no contact between Mr. Reeder and the Debtor or its new counsel since the hearing on the Motion to Withdraw. Therefore, the Valensi Reply states, no declaration was obtained from the Debtor regarding the Valensi Application. The Valensi Reply further argues that the services performed related to the Second Amended Plan and Second Amended Disclosure Statement were reasonable and necessary in light of the changed circumstances in the Debtor's case between the preparation and submission of the First Amended Plan and Second Amended Plan, respectively. Insofar as the Debtor objects to certain time entries by Jessica Evans in the amount of \$1,155.00, which the Debtor argues was "clerical" in nature, the Valensi Reply states that Valensi will reduce the amount of final fees sought by \$1,155.00. Lastly, the Valensi Reply details the reasons for the passage of time in the Debtor's case, and explains that the delay was reasonable under the circumstances given the complexity of the underlying issues.

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C. The Reeder Application

The Reeder Application [Doc. No. 650] is the final application of Reeder Law Corporation ("RLC"), former general insolvency counsel for the Debtor. The Reeder Application seeks final approval of fees previously awarded on an interim basis. The order authorizing the Debtor to employ RLC as general bankruptcy counsel was entered on July 18, 2012 [Doc. No. 90]. Prior to this final application, RLC applied for, and was granted interim compensation on five occasions, for total interim compensation in the amount of \$336,001.92 for the period from May 31, 2012 through March 24, 2015. *See* Reeder Application at 2–3 & Exhibits 1–10.

As of the date of this tentative ruling, no opposition to the Reeder Application has been filed.

D. The Riggall Application

The Riggall Application [Doc. No. 651] is the final fee application filed by Kneave Riggall, Esq. ("Riggall"), former special tax counsel for the Debtor. Riggall seeks approval of professional compensation previously awarded on an interim basis in the total amount of \$92,155.26. The order authorizing the Debtor to employ Riggall as special tax counsel was entered on April 9, 2014 [Doc. No. 286]. Prior to this final application, Riggall applied for, and was granted interim compensation on four occasions, for total interim compensation in the amount of \$92,155.26. *See* Riggall Application at 2–3 & Exhibits 1–8.

The Riggall Opposition

On June 7, 2018, the Debtor filed the "Limited Opposition to the [Riggall Application]" (the "Riggall Opposition") [Doc. No. 661]. The Debtor opposes the Riggall Application on the grounds that the Riggall Application fails to comply with the requirements of Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J).

The Riggall Reply

On June 14, 2018, Riggall filed the "Supplemental Declaration of Kneave Riggall in Reply to the [Riggall Opposition]" (the "Supplemental Riggall Declaration") [Doc. No. 677]. The Supplemental Riggall Declaration states that Riggall did not submit a

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declaration by the principal of the Debtor regarding the Riggall Application due to the fact that after Riggall ceased to provide services to the Debtor, Riggall has not had contact with the Debtor. Supplemental Riggall Declaration at ¶ 4. Otherwise, Riggall further states that he believes the Riggall Application complies with the requirements of the Local Bankruptcy Rules. *Id.* at ¶ 5.

E. The Payne Application

The Payne Application [Doc. No. 652] is the third and final fee application filed by Payne Financial Forensics ("Payne"), former restructuring advisor for the Debtor. Payne seeks payment of professional compensation for the period November 1, 2016 through March 14, 2018 (the "Subject Period"), in the total amount of \$7,205.00, and final approval of all fees and costs incurred in the case, including fees previously awarded on an interim basis. The order authorizing the Debtor to employ Payne as restructuring advisor to the Debtor was entered on July 22, 2013 [Doc. No. 230]. Prior to this final application, Payne applied for, and was granted interim compensation on two occasions, for total interim compensation in the amount of \$13,515.57. *See* Payne Application at 2–3 & Exhibits 1–5.

The Payne Opposition

On June 7, 2018, the Debtor filed the "Limited Opposition to the [Payne Application]" (the "Payne Opposition") [Doc. No. 662]. The Debtor opposes the Payne Application on the grounds that the Payne Application fails to comply with the requirements of Local Bankruptcy Rule ("LBR") 2016-1(a)(1)(J).

The Payne Reply

On June 14, 2018, Payne filed the "Supplemental Declaration of Lori L. Payne in Reply to the [Payne Opposition]" (the "Supplemental Payne Declaration") [Doc. No. 678]. The Supplemental Payne Declaration states that Payne did not submit a declaration by the principal of the Debtor regarding the Payne Application due to the fact that after Payne ceased to provide services to the Debtor, Payne has not had contact with the Debtor. Supplemental Payne Declaration at ¶ 4. Otherwise, the Supplemental Payne Declaration further states that she believes the Payne Application complies with the requirements of the Local Bankruptcy Rules. *Id.* at ¶ 5.

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II. Findings of Fact and Conclusions of Law

LBR 2016-1

Local Bankruptcy Rule ("LBR") 2016-1 sets for the requirements for compensation for professional persons. Under LBR 2016-1(J), the application for compensation generally must include "A separately filed declaration from the client indicating that the client has reviewed the fee application and has no objection to it . . ."

Having considered the Debtor's arguments with regards to the failure of the Fee Applications to comply with LBR 2016-1(J), the irregular circumstances under which the Fee Applications were filed, and that the Debtor was given notice of the Fee Applications and had an opportunity to object, the Court finds that the failure of the respective Fee Applications to comply with LBR 2016-1(J) is not, by itself, sufficient cause to disallow the fees requested in the respective Fee Applications. LBR 2016-1 (J) provides the court with some basis to find that a client has reviewed the bills and has no objection to it. Here, of course, objections were filed so the protection that the LBR provides is unnecessary.

Therefore, the Debtor's limited oppositions to the Riggall Application and the Payne Application are **OVERRULED**. To the extent the Debtor objects to the Valensi Application based on the failure to comply with LBR 2016-1(J), *see* Valensi Opposition at 2, the Valensi Opposition is **OVERRULED**.

The Valensi Application

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers:

The nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;

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(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§ 330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

The Debtor's primary objection relates to the fees sought for services performed by Valensi in relation to the Second Amended Plan in the amount of \$21,935.00. The Debtor contends that this portion of the Valensi's fees should be disallowed because, in addition to other arguments, the Second Amended Plan was patently unconfirmable. The Debtor reasons that the Second Amended Plan was patently unconfirmable because the IRS priority claim under § 507(a)(8) was treated in a manner that was inconsistent with § 1129(a)(9)(C)(ii), which provides that priority claims specified in § 507(a)(8) must be paid in full within five years from the Petition date. The Court is not persuaded by this argument. While it is true that under § 1129(a)(9)(C), claims of the kind specified in § 507(a)(8) must generally be paid within five years of the petition date, failure of a plan to provide such treatment does not necessarily mean that the plan is "patently unconfirmable." Importantly, the confirmation requirements of § 1129(a)(9)(C) are limited by the prefatory clause of §

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1129(a)(9) which states "Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim . . ." the plan must provide certain statutorily defined treatment. The Court notes that no hearing was held on either the approval of the Second Amended Disclosure Statement, or confirmation of the Second Amended Plan; thus, the Court does not make any findings with regards to whether the IRS ultimately would agree to the Second Amended Plan's treatment of its claim, or whether the Second Amended Plan met the confirmation requirements of § 1129. That being said, given the extended delays due to the complexity of this case—particularly the stay of proceedings pending the resolution of the Probate Matter pursuant to the "Order After Hearing on First Amended Disclosure Statement and Plan of Reorganization" [Doc. No. 498], which was in effect from approximately May 16, 2016 through November 15, 2017, *see* Doc. No. 592—the Court cannot rule out the possibility that the IRS would have agreed to the Second Amended Plan's treatment of its claim. Even if the IRS did not agree to the plan treatment, it is possible that the Second Amended Plan could have been amended to comply with the confirmation requirements of § 1129(a)(9)(C). Furthermore, the treatment of the IRS priority claim was the same in both the First Amended Plan, *see* Doc. No. 485 at 8, and the Second Amended Plan, *see* Doc. No. 608 at 8, yet the IRS did not file an objection to the approval of either the First or Second Amended Disclosure Statement. In the *limited context* of the Debtor's argument that the Second Amended Plan was patently unconfirmable, and given the consistent treatment of the IRS priority claim in both the First and Second Amended Plan, the Court considers the absence of any objection by the IRS—particularly to the approval of the First Amended Disclosure Statement, on which a full hearing was held—noteworthy. *Cf.* "Objection of Los Angeles Treasurer and Tax Collector to Debtor's First Amended Disclosure Statement" [Doc. No. 491] (arguing that the proposed treatment of the Tax Collector's claim did not comply with the statutory treatment required by § 1129(a)(9)(C)). Under the unusual circumstances of this case, it would not have been possible for the Debtor to comply with § 1129(a)(9)(C) because Judge Donovan had stayed the proceedings. Based on the foregoing, the Court finds that the fees requested for Valensi's services related to the Second Amended Plan and the Second Amended Disclosure Statement "were 'reasonably likely' to benefit the estate at the time the services were rendered." *In re Mednet*, 251 B.R. at 108.

Regarding the Valensi Opposition's argument that specific fees related to certain time entries by Jessica Evans \$1,155.00 are duplicative of certain time entries by David M. Reeder, the Court finds that the voluntary reduction in the amount of

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\$1,155.00 proposed by Valensi in the Reply to the Valensi Opposition is reasonable, and resolves the dispute raised by the Debtor related to this portion of the Valensi Application.

III. Conclusion

Based on the foregoing, the Fee Applications are GRANTED as follows:

- (1) The Valensi Application is GRANTED in the total amount of \$118,273.05 (\$119,428.05 less the voluntary reduction of \$1,155.00) for the Subject Period; amounts previously awarded on an interim basis are approved as final.
- (2) The Reeder Application is GRANTED; amounts previously awarded on an interim basis in the total amount of \$336,001.92 are approved as final.
- (3) The Riggall Application is GRANTED; amounts previously awarded on an interim basis in the total amount of \$92,155.00 are approved as final. The Riggall Opposition is OVERRULED.
- (4) The Payne Application is GRANTED in the total amount of \$7,205.07 for the Subject Period; amounts previously awarded on an interim basis are approved as final. The Payne Opposition is OVERRULED.

The Applicants, respectively, shall lodge conforming orders within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#3.00 Hearing

RE: [650] Application for Compensation Final Fee Application Of Reeder Law Corporation, Former General Insolvency Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation For The Period May 31, 2012 Through And Including April 30, 2015; Declaration Of David M. Reeder for Reeder Law Corporation, Other Professional, Period: 5/31/2012 to 4/30/2015, Fee: \$325,967.00, Expenses: \$10,034.92. (Reeder, David)

fr: 6-21-18

Docket 650

Tentative Ruling:

6/25/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D Resnik

Roksana D. Moradi-Brovia

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#4.00 Hearing

RE: [651] Application for Compensation Final Application Of Kneave Riggall, Esq., Former Special Tax Counsel For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation; Declaration Of Kneave Riggall for Kneave Riggall, Special Counsel, Period: 5/31/2014 to 4/30/2017, Fee: \$90,002.50, Expenses: \$2,152.76. (Reeder, David)

fr: 6-21-18

Docket 651

Tentative Ruling:

6/25/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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2:12-29275 Monge Property Investments, Inc.

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#5.00 Hearing
RE: [652] Application for Compensation Final Application Of Payne Financial Forensics, Former Restructuring Advisor For Monge Property Investments, Inc., Debtor-In-Possession, For Professional Compensation; Declaration Of Lori L. Payne for Payne Financial Forensics, Other Professional, Period: 5/31/2014 to 3/14/2018, Fee: \$20,662.57, Expenses: \$58.00.

fr: 6-21-18

Docket 652

Tentative Ruling:

6/25/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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2:18-17220 iLabPharma, Inc.

Chapter 7

#1.00 Hearing

RE: [10] Emergency Motion of Chapter 7 Trustee for Order Authorizing Trustee to: (1) Sell Two Unencumbered Automobiles to Carmax, Inc.; (2) Pay for Insurance for Automobiles; and (3) Reimburse SulmeyerKupetz, a Professional Corporation, for Amounts it Advances to Tow the Cars to Carmax; Memorandum of Points and Authorities; Declaration of Elissa D. Miller in Support

Docket 10

Tentative Ruling:

6/29/2018:

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Emergency Sale Motion in its entirety.

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Chapter 7 Trustee for Order Authorizing Trustee to: (1) Sell Two Unencumbered Automobiles to CarMax, Inc.; (2) Pay for Insurance for Automobiles; and (3) Reimburse SulmeyerKupetz, a Professional Corporation, for Amounts it Advances to Tow the Cars to CarMax [Doc. No. 10] (the "Emergency Sale Motion")
 - a) Order Setting Hearing on Trustee's Emergency Motion to Sell Two Uninsured Vehicles to CarMax, Inc. [Doc. No. 8] (the "Order")
 - b) Proof of Service Re [Order] and [Emergency Sale Motion] [Doc. No. 12]
 - c) Declaration of Kelli McCamey Regarding Telephonic Notice of [Emergency Sale Motion] [Doc. No. 13]
- 2) No opposition to the Emergency Sale Motion is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks authorization, on an emergency basis, to (1) sell a 2016 Toyota Prius and 2017 Toyota Camry (collectively, the "Vehicles") to CarMax, Inc. ("CarMax") for between \$15,000 and \$25,000; (2) pay for insurance for the Vehicles; and (3) reimburse SulmeyerKupetz, the Trustee's proposed counsel,

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for the amounts it advances to tow the Vehicles to a CarMax facility. *See* Doc. No. 10 (the "Emergency Sale Motion"). The Trustee makes the following arguments and representations in support of the Emergency Sale Motion:

iLabPharma, Inc. (the "Debtor") commenced a voluntary Chapter 7 petition on June 21, 2018. The Debtor operated a retail pharmacy open to the public in Lancaster, California and a wholesale pharmacy in Palmdale, California that serviced nursing homes, hospices, and similar healthcare facilities. The Debtor used the Vehicles to deliver prescriptions to certain of its customers.

On June 26, 2018, the Trustee learned that the Debtor's commercial vehicle policy for the Vehicles lapsed in March 2018. The Trustee immediately placed insurance upon the Vehicles through Trustee Resources Group, which agreed to be paid from the proceeds of the sale. However, the insurance covers only the Vehicles, not any drivers. This means that the Vehicles must be towed, rather than driven, to CarMax in order to be sold. SulmeyerKupetz, the Trustee's proposed counsel, has agreed to advance the towing costs, and seeks reimbursement of the towing costs.

CarMax is a nationwide chain with more than one hundred locations. CarMax purchases cars immediately upon presentation and writes a check on the spot to the seller. The purchase price CarMax pays is based upon recent sales data and websites such as Edmunds.com and KBB.com. CarMax has not informed the Trustee of the exact amount that it will pay for the Vehicles, and will not do so until the Vehicles are delivered to CarMax. The Trustee believes, based upon communications with CarMax and her own independent research, that the purchase price will be between \$15,000 and \$25,000 for both Vehicles.

The Vehicles are currently located in an open parking lot behind the Debtor's premises at 250 Grand Cypress Avenue, Palmdale, California (the "Cypress Avenue Lot"). If the sale to CarMax is not approved, the Trustee will be required to move the Vehicles to a secure location pending sale. There are no funds available in the estate to pay for storage costs pending a future sale. Therefore, the proposed sale to CarMax is in the best interest of the estate and creditors.

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in

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view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288 (B.A.P. 9th Cir. 2005).

The Court finds that under the circumstances, the proposed sale of the Vehicles to CarMax yields optimal value for the estate. CarMax is a reputable national chain that purchases used vehicles for a fair price. Absent an immediate sale to CarMax, it will be necessary for the Trustee to relocate the Vehicles to a secure storage location. The Trustee will be required to pay storage fees pending a future sale. The record does not reflect the amount of storage fees that the Trustee would be required to pay; however, the Court can take judicial notice of the fact that securely storing a vehicle in the Los Angeles area for an extended period of time is costly. While a future competitive auction might yield a higher price than the proposed sale to CarMax, on net the estate would most likely be worse off after taking into account the additional storage costs.

The Court finds that CarMax is a good-faith purchaser entitled to the protections of §363(m). CarMax is not an insider of the Trustee or of the Debtor. Nothing in the record raises the specter of bad faith or calls into question the propriety of the sale.

In order to deliver the vehicles to CarMax, the Trustee will be required to use the services of a towing company, because the insurance which the Trustee was able to obtain for the Vehicles does not cover any driver. The Trustee's proposed counsel has agreed to advance the costs of towing services. The Trustee's request for authorization to reimburse its proposed counsel for the towing charges is granted. The towing charges are a necessary expense to facilitate the sale.

The Trustee has insured the Vehicles through Trustee Resources Group, which has agreed to accept payment from the proceeds of the sale. The Trustee's request to pay to Trustee Resources Group the cost of one month's insurance for the Vehicles, in the approximate amount of \$250, is granted. It was necessary for the Trustee to obtain insurance to protect the Vehicles against theft or damage prior to the completion of the sale to CarMax.

Party Information

Debtor(s):

iLabPharma, Inc.

Represented By
Joshua R Driskell

Trustee(s):

Elissa Miller (TR)

Represented By

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Steven Werth

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Hearing Room 1568

10:00 AM

2:18-11785 Fernando F Vacas

Chapter 7

#1.00 Hearing
RE: [22] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 GMC Terrain Truck, VIN: 2GKALMEK4H6148785 . (Wang, Jennifer)

Docket 22

***** VACATED *** REASON: CONTINUED 7-3-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Fernando F Vacas

Represented By
Shirlee L Bliss

Trustee(s):

Timothy Yoo (TR)

Pro Se

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10:00 AM

2:18-14065 Adam Boujida

Chapter 7

#2.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW 4 Series Convertible 2D 435i . (Allen, Bret)

Docket 13

***** VACATED *** REASON: CONTINUED 7-3-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Adam Boujida

Represented By
Kevin Liu

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-13735 Anahit Akopyan

Chapter 7

#3.00 Hearing
RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW 3 Series Sedan 4D 328I . (Allen, Bret)

Docket 10

***** VACATED *** REASON: CONTINUED 7-3-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Anahit Akopyan

Represented By
Roland H Kedikian

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:18-15266 Sergio Isidoro and Christina Mojarro

Chapter 7

#4.00 Hearing
RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Dodge Grant Caravan, VIN 2C4RDGBG9GR125433 . (Wang, Jennifer)

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***** VACATED *** REASON: CONTINUED 7-3-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Sergio Isidoro

Represented By
Sina Maghsoudi

Joint Debtor(s):

Christina Mojarro

Represented By
Sina Maghsoudi

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:17-21166 Robert Henry Bradshaw

Chapter 7

#1.00 APPLICANT: Accountant - Hahn Fife & Company LLP

Hearing re [42] and [43] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

7/2/2018

See Cal. No. 2 below, incorporated by reference.

Party Information

Debtor(s):

Robert Henry Bradshaw

Represented By
Julie J Villalobos

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:17-21166 Robert Henry Bradshaw

Chapter 7

#2.00 APPLICANT: Trustee - Jason M Rund

Hearing re [42] and [43] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/2/2018

Tentative:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,850.00

Total Expenses: \$311.43

Hahn Fife & Company: \$1,000.00, as set forth in the "Order Granting Application to Employ Hahn Fife & Co" [Doc. No. 37].

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Robert Henry Bradshaw

Represented By
Julie J Villalobos

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-13483 Eva Garcia

Chapter 7

#3.00 Show Cause Hearing
RE: [11] **Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments**

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 7-2-18

Tentative Ruling:

7/2/2018

The Debtor has brought current the delinquent fee installment payments which triggered the issuance of the *Order Requiring the Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments* [Doc. No. 11] (the "Order to Show Cause"). The Court will enter an order discharging the Order to Show Cause. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Eva Garcia

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#4.00 Hearing
RE: [74] Motion For Summary Judgment (Partial) Against California International Bank

Docket 74

***** VACATED *** REASON: CONTINUED 10-3-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Represented By
Kimberly A Posin

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

Sunshine Valley, LLC

Pro Se

California International Bank, N.A.

Pro Se

All Persons Unknown Claiming

Pro Se

DOES 1 through 10, inclusive

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#5.00 Hearing
RE: [9] Motion to Dismiss Adversary Proceeding Notice of Motion and Motion of Defendant The Irving I. Moskowitz Foundation to Dismiss Plaintiff's Adversary Complaint; Memorandum of Points and Authorities in Support Thereof; Exhibits A-B; and Proof of Service

fr: 4-10-18; 4-24-18

Docket 9

***** VACATED *** REASON: DISMISSED 5-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation

Represented By
Louis J Cisz III

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#6.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01028. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center against The Irving I. Moskowitz Foundation. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

fr. 4-17-18

Docket 1

*** VACATED *** REASON: DISMISSED ON 5-21-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-15266 Sergio Isidoro and Christina Mojarro

Chapter 7

#7.00 Hearing

RE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Dodge Grant Caravan, VIN 2C4RDGBG9GR125433 . (Wang, Jennifer)

FR. 7-2-18

Docket 11

Tentative Ruling:

7/2/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT... Sergio Isidoro and Christina Mojarro

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sergio Isidoro

Represented By
Sina Maghsoudi

Joint Debtor(s):

Christina Mojarro

Represented By
Sina Maghsoudi

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-13735 Anahit Akopyan

Chapter 7

#8.00 Hearing
RE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW 3 Series Sedan 4D 328I . (Allen, Bret)

FR. 7-2-18

Docket 10

Tentative Ruling:

7/2/2018

On June 7, 2018, Financial Services Vehicle Trust (the "Creditor") filed the "Motion for Relief from the Automatic Stay" (the "Motion") [Doc. No. 10]. On June 14, 2018, the Creditor filed the "Stipulation to Vacate the Automatic Stay" (the "Stipulation") [Doc. No. 12], in which the Creditor and the Debtor stipulate to resolve the Motion by the Debtor surrendering the subject collateral. On June 15, 2018, the Court entered the "Order Approving the Stipulation" [Doc. No. 14]. Therefore, the Motion is moot.

Party Information

Debtor(s):

Anahit Akopyan

Represented By
Roland H Kedikian

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-14065 Adam Boujida

Chapter 7

#9.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW 4 Series Convertible 2D 435i . (Allen, Bret)

fr. 7-2-18

Docket 13

Tentative Ruling:

7/2/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT...

Adam Boujida

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Adam Boujida

Represented By
Kevin Liu

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-11785 Fernando F Vacas

Chapter 7

#10.00 Hearing

RE: [22] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 GMC Terrain Truck, VIN: 2GKALMEK4H6148785 . (Wang, Jennifer)

Docket 22

Tentative Ruling:

7/2/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established that the fair market value of the subject vehicle is declining and that Debtor is making insufficient payments to protect Movant against this decline. Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT... Fernando F Vacas

Chapter 7

Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Fernando F Vacas

Represented By
Shirlee L Bliss

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-16251 LeQuincey Dandre Lipscomb

Chapter 7

#11.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 801 S. Olive Street #3114, Los Angeles, CA 90014 .

Docket 15

Tentative Ruling:

7/2/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with the applicable procedures. Oppositions, if any, will be considered at the hearing. The Court notes that the Motion states that the hearing is being heard on regular notice when, in fact, the Motion was set on shortened notice. While the Court does not find any defects in service because the Debtor was served by the Movant via personal service consistent with the Court's procedures, the failure by the Movant to check the box designating "SHORTENED NOTICE" could result in confusion regarding, for example, the availability of filing a written response to the Motion.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant caused a Notice to Quit to be served on the Debtor on March 8, 2018. The Movant filed an unlawful detainer action on April 19, 2018. The trial in the unlawful detainer action is set for July 6, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT... LeQuincey Dandre Lipscomb

Chapter 7

because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

LeQuincey Dandre Lipscomb	Pro Se
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

2:18-16123 Eunhee Kim

Chapter 7

#12.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 688 S. Berendo Street #416, Los Angeles, CA 90005 .

Docket 11

Tentative Ruling:

7/2/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with the applicable procedures. Oppositions, if any, will be considered at the hearing. The Court notes that the Motion states that the Motion is being heard on regular notice when, in fact, the Motion was set on shortened notice. **While the Court does not find any defects in service because the Debtor was served by the Movant via personal service consistent with the Court's procedures, the failure by the Movant to check the box designating "SHORTENED NOTICE" could result in confusion regarding, for example, the availability of filing a written response to the Motion.**

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant caused a Notice to Quit to be served on the Debtor on March 6, 2018. The Movant filed an unlawful detainer action on April 11, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 03, 2018

Hearing Room 1568

10:00 AM

CONT... Eunhee Kim Chapter 7

change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing

Party Information

Debtor(s):

Eunhee Kim Pro Se

Trustee(s):

Carolyn A Dye (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 05, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#1.00 HearingRE: [199] Motion to Approve Compromise Under Rule 9019 of Claim #14 by Mikhaeil Rouel Corporation, Inc. dba Service Master Professional Restoration, with proof of service

Docket 199

Tentative Ruling:

7/3/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion for Order Approving Settlement of Claim #14 by Mikhaeil Rouel Corporation, Inc. dba Service Master Professional Restoration, for \$7,500 Pursuant to FRBP 9019 and Authorizing Distribution from Court Registry [Doc. No. 199] (the "Motion")
- 2) No opposition is on file

I. Facts and Summary of Pleadings

A. Background

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). See Order Authorizing the Sale of the Estate's Right, Title, and Interest in Real Property Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Sale Order"). The Sale Order required the Debtor to deposit the net sales proceeds of the Residence into the Court's registry. Sale Order at ¶5.

On November 16, 2017, the Court authorized the Debtor to pay from the sales proceeds of the Residence (1) his homestead exemption in the amount of \$175,000; (2) the actual and customary ordinary closing costs; and (3) real estate brokerage

**United States Bankruptcy Court
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Thursday, July 05, 2018

Hearing Room 1568

10:00 AM

CONT...

John Fuchs

Chapter 11

commissions in the amount of \$169,750. *See* Doc. No. 82. On December 5, 2017, the Debtor deposited \$3,014,642.94 into the Court's registry from the sale of the Residence. *See* Doc. No. 92.

On December 20, 2017, the Court approved settlement agreements between the Debtor and secured creditors Logan Mortgage, Inc. ("Logan"), JSC Pacific LLC ("JSC Pacific"), and the Dawn Miller O.D. Retirement Trust (the "Miller Trust"). Pursuant to the settlement agreements, the Court authorized the Debtor to pay from the funds on deposit in the Court's registry (1) \$619,941.79 to Logan, (2) \$74,535.00 to JSC Pacific, and (3) \$619,941.79 to the Miller Trust. The settlement agreements resolved the secured claims of Logan, JSC Pacific, and the Miller Trust. On December 20, 2017, the Court entered an order authorizing the Clerk of the Court to disburse from the Court's registry funds in the aggregate amount of \$919,905.65, for the purpose of paying Logan, JSC Pacific, and the Miller Trust. *See* Doc. No. 107.

On May 18, 2018, the Court approved the Disclosure Statement submitted in support of the Plan of Reorganization (the "Plan"). *See* Doc. No. 192. A plan confirmation hearing is set for July 11, 2018, at 10:00 a.m.

B. Claim No. 14, Asserted by Mikhaeil Rouel Corporation, Inc. dba Service Master Professional Restoration

On October 19, 2017, Mikhaeil Rouel Corporation, Inc. dba Service Master Professional Restoration ("Service Master") filed Proof of Claim 14-1 ("Claim 14"), asserting an unsecured claim in the amount of \$30,703.56, based upon water remediation work that Service Master performed after a flood occurred at the Residence. On February 14, 2018, the Court conducted a hearing on the Debtor's objection to Claim 4 (the "Claim Objection"). The Court found that the Debtor's Claim Objection involved disputed issue of material fact that had to be resolved at a trial at which live witness testimony would be taken. The Court set trial for the week of August 27, 2018, and referred the matter to the Mediation Panel.

The parties settled this matter prior to the scheduled mediation conference. The Debtor now moves for approval of the settlement. The settlement provides that Service Master will hold an allowed unsecured claim in the amount of \$7,500, and that Service Master's claim will be paid in full from the proceeds on deposit in the Court's Registry upon confirmation of the Debtor's Plan.

II. Findings and Conclusions

Bankruptcy Rule 9019 provides that the Court may approve a compromise or

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, July 05, 2018

Hearing Room 1568

10:00 AM

CONT... John Fuchs

Chapter 11

settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the Settlement Agreement is in the best interests of the estate and creditors.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The settlement reduces Service Master's claim from \$30,703.56 to \$7,500—a reduction of \$23,203.56. Further, no creditors have objected to approval of the settlement.

Difficulties to Be Encountered in the Matter of Collection

This factor does not apply since the payment under the Settlement Agreement will be made from funds currently being held in the Court's registry, once the Plan has been confirmed.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The litigation is fact-intensive and would be time consuming to try, especially in view of the comparatively small amount at stake.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. Even if additional litigation could succeed in further reducing the amount of the claim, the victory would be pyrrhic because the costs of the additional litigation would more than offset any additional recovery.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 05, 2018

Hearing Room 1568

10:00 AM

CONT... John Fuchs

Chapter 11

III. Conclusion

Based upon the foregoing, the Motion is GRANTED and the Settlement Agreement is approved. Upon confirmation of the Debtor's Plan, the Court will enter an order authorizing the Debtor to disburse the settlement payment from the Court's registry.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 05, 2018

Hearing Room 1568

11:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#100.00 Hearing re [95] *First Amended Joint Disclosure Statement* Filed by Debtor
Rideshare Port Management

fr. 6-21-18

Docket 0

***** VACATED *** REASON: CONTINUED 7-5-18 AT 11:00A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:17-22974 Rideshare Port Management, LLC

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#101.00 FINAL Hearing
RE: [90] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Carlos Lizardo . (Bitton, Ophir)

fr. 6-4-18; 6-21-18

Docket 90

Tentative Ruling:

For the reasons set forth herein, the (1) the Lizardo Motion for Relief from Stay, and (2) the Ramos Motion for Relief from Stay are GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from Automatic Stay (Action in Non-Bankruptcy Forum) RE: Ronaldo Ramos and Vince Olivar (the "Ramos Motion") [Doc. No. 91]
- 2) Notice of Motion and Motion for Relief from Automatic Stay (Action in Non-Bankruptcy Forum) RE: Carlos Lizardo (the "Lizardo Motion") [Doc. No. 90]
- 3) Response to the Lizardo Motion [Doc. No. 101]
- 4) Response to the Ramos Motion [Doc. No. 100]
- 5) Debtor's and Debtor in Possession's Notice of Motion and Motion to Extend Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2) (the "Motion to Extend Preliminary Injunction") [Adv. Doc. No. 25]
 - a) Ruling Extending the Preliminary Injunction [Adv. Doc. No. 41]
- 6) Order Granting Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2) (the "Preliminary Injunction Order") [Adv. No. 17]

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CONT... Rideshare Port Management, LLC

Chapter 11

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC (the "Debtor"), filed a voluntary Chapter 11 petition on October 23, 2017, Case No. 2:17-bk-22974-ER (the "Petition") [Bankr. Doc. No. 1]. The Debtor is in the business of providing rideshare van services to passengers, including services to Los Angeles International Airport ("LAX"). The Petition was precipitated by the Debtor having to defend multiple lawsuits—the Debtor has been named as a defendant in at least nine separate lawsuits—which the Defendant can no longer afford. Additionally, the increasing use by consumers of other rideshare services such as Uber has reduced the Debtor's market share, leading to a reduction in gross profits realized. The Debtor's ultimate goal is to reorganize.

Relevant or Related Entities and Individuals

There are four additional entities, and one individual, relevant or related to the Debtor, or the Debtor's business operations, and which are implicated in the discussion herein; therefore, an introduction of the entities and the individual is appropriate.

Rattan Joesa

Rattan Joesa ("Rattan") is the managing member of the Debtor, and holder of 95% of the Debtor's membership interest. Rattan's management of, and attention to, the Debtor is critical to the successful operations of the Debtor. Rattan's management duties require him to dedicate a substantial portion of his time to the Debtor's operations, as well as the operations of Red Vans, Inc. ("Red Vans"), and Red Booth, Inc. ("Red Booth") (Red Vans and Red Booth are discussed in more detail below). Rattan is the primary interface between the Debtor and LAX, and is involved in aspects of the Debtor's daily operations such as overseeing customer routing, dispatching, and pickup. Rattan is also responsible for ensuring that the Debtor—and the other entities which he manages—are in compliance with all relevant airport, local, state, and federal regulations. Rattan's compliance responsibilities require him to be available to attend meetings regarding airport procedures and policies, and to oversee quality of services, regulatory compliance, and implementation of security and safety standards. In sum, Rattan plays a central role in the Debtor's ongoing business operations.

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CONT... Rideshare Port Management, LLC

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Rideshare Airport Mangement, LLC

Rideshare Airport Management, LLC ("Airport Management") is a dba of the Debtor. There was a brief gap-period of registration with the Secretary of State during which the name "Rideshare Port Management, LLC" was registered by a third party. Thus, during the gap-period the Debtor used the alternate name "Rideshare Airport Management, LLC" until the name "Rideshare Port Management, LLC" became available again.

Red Booth, Inc.

Red Booth, Inc. ("Red Booth") is a California corporation headquartered in Los Angeles, and engaged in the business of providing curbside support for Red Vans Management Services, Inc. ("Red Vans"). One hundred percent of the stock interest in Red Booth is held by Self Help Trust. Red Booth filed a voluntary Chapter 11 petition on October 23, 2017, Case No. 2:17-bk-22975-ER, which is now pending before this Court.

Red Vans, Inc.

Red Vans, Inc. ("Red Vans") is a California corporation headquartered in Los Angeles. One hundred percent of the stock interest in Red Vans is held by the Garcha Family Trust. Red Vans is a concessionaire with the non-exclusive right to pick-up reservations and non-reservation passengers and their baggage by approved vehicles in and out of LAX, pursuant to that certain "LAX Non-Exclusive, Full-Service Passenger Stage Corporation Share Ride Concession Agreement" between the City of Los Angeles Department of Airports and Red Vans (the "LAX Agreement"). The LAX Agreement has a term of three years commencing August 1, 2016, and can be extended for up to two consecutive one-year periods. The Debtor states that the LAX Agreement is "absolutely essential to the business operations of Red Vans and *a fortiori* the Debtor and Red Booth."

Prime Time, Inc.

Prime Time, Inc. ("Prime Time") is a California corporation. Prime Time is a member of the Debtor, LLC. Prime Time's only asset is its membership interest in the

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Debtor. Prime Time holds a five percent membership interest in the Debtor, LLC.

The Adversary Proceeding

The Debtor, the Non-Debtor Entities, and Rattan are named as defendants in eight separate civil actions and arbitrations which together comprise the "State Court Actions." See "Declaration of Rattan Joea" ("Joea Decl.") [Adv. Doc. No. 25], at Ex. 1. According to the Debtor, the State Court Actions were initiated by or on behalf of former or disgruntled drivers who claim that they were wrongly classified as independent contractors rather than employees. The 14 plaintiffs in the State Court Actions are currently, or were previously in privity of contract with the Debtor. The Non-Debtor Entities and Rattan are named as defendants based on indirect, derivative liability, and alter ego theories. Thus, the Debtor asserted that it will necessarily be implicated under the principles of collateral estoppel by a finding of liability against either or both the Non-Debtor Entities and/or Rattan.

On November 9, 2017, the Debtor filed the "Complaint by Rideshare Port Management, LLC against Alex Lichterman, [et al.] for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2); [and] Temporary Restraining Order" (the "Adversary Complaint") [Adv. Doc. No. 1], commencing the adversary proceeding. On November 14, 2017, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2)" (the "Preliminary Injunction Motion") [Adv. Doc. No. 10]. On December 13, 2017, the Court entered the Order Granting the Preliminary Injunction Motion (the "Preliminary Injunction Order") [Adv. No. 17]. Pursuant to the Court's Preliminary Injunction Order, the preliminary injunction terminated by its own terms on March 7, 2018. The Court declined to make any finding as to whether the Automatic Stay under § 362(a)(3) applies to Rattan or the Non-Debtor entities.

The Extension of the Preliminary Injunction

On March 1, 2018, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion to Extend Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a)

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and (b)(2)" (the "Motion to Extend Preliminary Injunction") [Adv. Doc. No. 25]. On March 22, 2018, Kaushaal Laxmee, Gary Oganessian, Alex Licterman and Howard Miller (collectively, the "Defendants") filed the Opposition to the Motion to Extend Preliminary Injunction (the "Adversary Opposition") [Adv. Doc. No. 38]. The Adversary Opposition contended that the preliminary injunction should not be extended because: (1) the proposed Joint Plan filed on February 9, 2018 [Rideshare Doc. No. 54], [Red Booth Doc. No. 70], demonstrated that the Debtor has no likelihood of success in reorganization; (2) the Defendants, not the Debtor, will suffer irreparable harm if the injunction was extended; (3) the balance of the equities weighed in favor of the Defendants; and (4) no public interest would be served by the requested extension. On March 29, 2018, the Debtor filed the Reply to the Adversary Opposition (the "Adversary Reply") [Adv. Doc. No. 40]. The Debtor argued that the extension of the preliminary injunction was warranted because, among other reasons, the Debtor and Red Booth intended to file a First Amended Joint Plan and Disclosure Statement that would cure the deficiencies with the initial Joint Plan and Disclosure Statement.

On April 5, 2018, the Court held a hearing on the Motion to Extend the Preliminary Injunction, and after determining that the Preliminary Injunction should be extended, the Court extended the Preliminary Injunction through July 24, 2018. Adv. Doc. No. 41. The Court also set deadlines for the Debtor to file, and to obtain confirmation and approval of, the Amended Joint Plan and Amended Joint Disclosure Statement. *Id.* The preliminary injunction provided for an immediate and temporary stay of any and all acts, actions, claims, and related proceedings against (1) the entities of (a) Red Vans , (b) Prime Time, (c) Airport Management (collectively, the "Non-Debtor Entities"); and (2) the Debtor's managing member, Rattan, to enforce any claims, judgments and/or any rights that the State Court Plaintiffs are asserting, or may seek to assert in connection with the civil actions and arbitrations (the "State Court Actions")¹ [**Note 1**].

The Motions for Relief from Stay

On May 9, 2018, Carlos Lizardo filed the "Notice of Motion and Motion for Relief from Automatic Stay (Action in Non-Bankruptcy Forum) RE: Carlos Lizardo" (the "Lizardo Motion") [Doc. No. 90]. On the same date, Ronaldo Ramos and Vince Olivar filed the "Notice of Motion and Motion for Relief from Automatic Stay (Action in Non-Bankruptcy Forum) RE: Ronaldo Ramos and Vince Olivar" (the

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"Ramos Motion") [Doc. No. 91]. The Lizardo Motion and the Ramos Motion (the "Motions") seek relief from the automatic stay in order to proceed with their respective State Court Actions against the Debtor, the Non-Debtor Entities, and Rattan.² [Note 2]. The Motions contend that the Debtor's bankruptcy was filed in bad faith, and that the claims in the State Court Actions can be most expeditiously resolved in the non-bankruptcy forum.

The Debtor's Responses

On May 21, 2018 the Debtor filed the (1) Response to the Ramos Motion [Doc. No. 100], and (2) Response to the Lizardo Motion [Doc. No. 101] (collectively, the "Responses"). The Responses argue that relief from stay should not be granted because, among other reasons, allowing the State Court Actions to proceed against Rattan or the Non-Debtor Entities will prejudice the joint reorganization efforts of the Debtor and Red Booth.

The Order Continuing the Hearings

The Motions came regularly for hearing on June 4, 2018. The Court continued the hearing on the Motions to a final hearing, to be heard concurrently with the Debtors' Motion to Approve the First Amended Joint Disclosure Statement. *See* Rulings at Doc. Nos. 102 & 103. On June 18, 2018, the Court entered the "Order Re: Stipulation to Continue Hearing on Motion of Debtor for an Order Authorizing and Approving the Adequacy of the Disclosure Statement Describing Plan Of Reorganization and Motion for Relief From Stay. (1) The Motion to Approve Adequacy of the Disclosure Statement is continued to July, 5, 2018, at 11:00 a.m.; (2). The Motion for Relief from Stay is continued to July 5, 2018 at 11:00 a.m." [Doc. No. 108].

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay,

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read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

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Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motions involve state law violations and are within the expertise of the state court. Allowing the Movants to continue the State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motions pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce their remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movants will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

III. Conclusion

In conclusion, the (1) the Lizardo Motion for Relief from Stay, and (2) the Ramos Motion for Relief from Stay are GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property.

The Movants, respectively, shall submit conforming orders within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor, the Non-Debtor Entities, and/or Rattan (for the purposes of this note, collectively referred to as the "State Court Defendants") are named as defendants in the following State Court Actions: (1) *Valo Khalatian v. State Court Defendants*, Los Angeles Superior Court ("LASC"), Case No. BC485917 (dismissed 8/29/14); (2) *Raymond Moradian [on behalf of a class of others similarly situated] v. State Court Defendants*, LASC, Case No. BC496400; (3) *Jose Diaz, et al. v. State Court Defendants*, LASC, Case No. BC529793 (dismissed, binding arbitration 4/19/17); (4) *Carlos Lizardo v. State Court Defendants*, LASC, Case No. BC599951; (5) *Roberto Martinez v. State Court Defendants*, LASC-Torrance, Case No. YC071320; (6) *Kaushaal Laxmee v. State Court Defendants*, LASC, Case No. BC633655; (7) *Hassan Mahmoudi [on behalf of a class of others similarly situated] v. State Court Defendants*, LASC, Case No. BC640240; and (8) *Ronaldo Ramos, et al. v. State Court Defendants*, LASC, Case No. BC 610192.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

**United States Bankruptcy Court
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#102.00 FINAL Hearing

RE: [91] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Ronaldo Ramos and Vince Olivar . (Bitton, Ophir)

fr. 6-4-18; 6-21-18

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Tentative Ruling:

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See Cal. No. 101 above, incorporated by reference.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

**United States Bankruptcy Court
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2:17-22975 Red Booth, Inc.

Chapter 11

#103.00 Hearing re [115] *First Amended Joint Disclosure Statement* Filed by Debtor Red Booth, Inc

FR. 6-21-18

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Tentative Ruling:

7/3/2018

For the reasons set forth below, the Court DENIES the Motion for Approval of the Amended Disclosure Statement with prejudice. The Amended Disclosure Statement does not contain adequate information, and the Court finds, among other things, that the Amended Plan is patently unconfirmable. The preliminary injunction shall terminate on the date of the entry of the order denying the Motion for Approval of the Amended Disclosure Statement. On **August 14, 2018 at 10:00 a.m.** the Debtors shall appear and show cause, if any there be, why the Court should not convert or dismiss the Debtors' cases, respectively (the "OSC"). The OSC will be set by separate order to be entered by the Court. The deadline for the Debtors' to file a written response to the OSC is **July 24, 2018**. The Deadline for written opposition to the Debtors' response is **July 31, 2018**. The Deadline for the Debtors' reply to any filed opposition is **August 7, 2018**.

Pleadings Filed and Reviewed:

- 1) First Amended Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors Rideshare Port Management, LLC and Red Booth, Inc. (the "Amended Disclosure Statement") [Rideshare Doc. No. 95], [Red Booth Doc. No. 115]
- 2) First Amended Plan of Reorganization Proposed Jointly by Debtors Rideshare

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Red Booth, Inc.

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Port Management, LLC and Red Booth, Inc. (the "Amended Plan") [Rideshare Doc. No. 94], [Red Booth Doc. No. 114]

- 3) Opposition to the Amended Disclosure Statement (the "Opposition") [Rideshare Doc. No. 104]
- 4) Debtors' Joint Reply to the Opposition (the "Reply") [Doc. No. 111]

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC (Case No. 2:17-bk-22974-ER) and Red Booth, Inc. (Case No. 2:17-bk-22975-ER) (collectively, the "Debtors"), seek approval of the "First Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors, Rideshare Port Management, LLC and Red Booth, Inc." (the "Amended Disclosure Statement") [Rideshare Doc. No. 95], [Red Booth Doc. No. 115]. The Debtors concurrently filed the "First Amended Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management, LLC and Red Booth, Inc. (the "Amended Plan") [Rideshare Doc. No. 94], [Red Booth Doc. No. 114].¹ **[Note 1].**

Relevant or Related Entities and Individuals

There are four additional entities, and one individual, relevant or related to the Debtor, or the Debtor's business operations, and which are implicated in the discussion herein; therefore, an introduction of the entities and the individual is appropriate.

Rattan Joes

Rattan Joes ("Rattan") is the managing member of the Debtor, and holder of 95% of the Debtor's membership interest. Rattan's management of, and attention to, the Debtor is critical to the successful operations of the Debtor. Rattan's management duties require him to dedicate a substantial portion of his time to the Debtor's operations, as well as the operations of Red Vans, Inc. ("Red Vans"), and Red Booth, Inc. ("Red Booth") (Red Vans and Red Booth are discussed in more detail below). Rattan is the primary interface between the Debtor and LAX, and is involved in aspects of the Debtor's daily operations such as overseeing customer routing, dispatching, and pickup. Rattan is also responsible for ensuring that the Debtor—and the other entities which he manages—are in compliance with all relevant airport, local, state, and federal regulations. Rattan's compliance responsibilities require him to be available to attend meetings regarding airport procedures and policies, and to

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Red Vans, Inc. ("Red Vans") is a California corporation headquartered in Los Angeles. One hundred percent of the stock interest in Red Vans is held by the Garcha Family Trust. Red Vans is a concessionaire with the non-exclusive right to pick-up reservations and non-reservation passengers and their baggage by approved vehicles in and out of LAX, pursuant to that certain "LAX Non-Exclusive, Full-Service Passenger Stage Corporation Share Ride Concession Agreement" between the City of Los Angeles Department of Airports and Red Vans (the "LAX Agreement"). The LAX Agreement has a term of three years commencing August 1, 2016, and can be extended for up to two consecutive one-year periods. The Debtor states that the LAX Agreement is "absolutely essential to the business operations of Red Vans and *a fortiori* the Debtor and Red Booth."

Prime Time, Inc.

**United States Bankruptcy Court
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CONT... Red Booth, Inc.

Chapter 11

Prime Time, Inc. ("Prime Time") is a California corporation. Prime Time is a member of the Debtor, LLC. Prime Time's only asset is its membership interest in the Debtor. Prime Time holds a five percent membership interest in the Debtor, LLC.

The Adversary Proceeding and the Preliminary Injunction

On November 9, 2017, the Debtor filed the "Complaint by Rideshare Port Management, LLC against Alex Lichterman, [et al.] for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2); [and] Temporary Restraining Order" (the "Adversary Complaint") [Adv. Doc. No. 1], commencing this adversary proceeding. On November 14, 2017, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion for Issuance of A Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2)" (the "Preliminary Injunction Motion") [Adv. Doc. No. 10]. On December 13, 2017, the Court entered the Order Granting the Preliminary Injunction Motion (the "Preliminary Injunction Order") [Adv. No. 17]. Pursuant to the Court's Preliminary Injunction Order, the preliminary injunction terminated by its own terms on March 7, 2018. The Court declined to make any finding as to whether the Automatic Stay under § 362(a)(3) applies to Rattan or the Non-Debtor entities.

On March 1, 2018, the Debtor filed the "Debtor's and Debtor in Possession's Notice of Motion and Motion to Extend Preliminary Injunction Pursuant to 11 U.S.C. §§ 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d), and LBR 7065-1(a) and (b)(2)" (the "Extension Motion") [Adv. Doc. No. 25]. The Extension Motion requested an order extending the preliminary injunction to permit the Debtors to file the Joint Amended Plan and Joint Amended Disclosure Statement. The Extension Motion was opposed by Kaushaal Laxmee, Gary Oganessian, Alex Licterman and Howard Miller (collectively, the "Creditors"). *See* Opposition to the Extension Motion [Adv. Doc. No. 38]. The Court held a hearing on the Extension Motion on April 5, 2018. The Court adopted the tentative ruling as the Court's final ruling, and granted the Extension Motion. *See* Adv. Doc. No. 41. Pursuant to the Court's ruling, the preliminary injunction was extended through July 24, 2018. *Id.* The Court additionally set a deadline for the Debtors to obtain confirmation of the Amended Plan, and the Court stated that, given that a preliminary injunction is extraordinary

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relief that the Court does not take lightly, the Court would not be inclined to grant a further extension of the preliminary injunction. *See id.* at 12.

Description of the Amended Plan and Amended Disclosure Statement

The Amended Plan will become effective (the "Effective Date") within 60 days after the date of entry of the Confirmation Order.

The Amended Plan includes "Unclassified Claims" as follows:

- 1) Administrative Priority Claims: these claims include (i) professional fees and costs; and (ii) United States Trustee's fees. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
- 2) Unclassified Priority Claims/Priority Tax Claims: Unsecured Claims of Governmental Units entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date unless the Debtor files an objection to such claim prior to the Effective Date. The Debtors are not aware of any Unclassified Priority Claims at this time.

The Amended Plan's classification scheme for Claims and Interests is as follows:

- 1) Class 1: Secured Tax Claims Against the Rideshare Debtor: this class includes allowed secured tax claims against the Rideshare Debtor. Class 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.
- 2) Class 2: Secured Tax Claims Against the Rideshare Debtor: this class includes allowed secured tax claims against the Rideshare Debtor. Class 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.
- 3) Class 3: Convenience Claims: Class 3 consists of Convenience Claims (as that term is defined in the Amended Plan and Amended Disclosure

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Statement) against the Debtors. Class 3 is impaired under the Plan and entitled to vote on the Plan.

- 4) Class 4: Allowed Claims of the Holders of General Unsecured Claims Against the Rideshare Debtor: Class 4 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 5, 6, and/or 7. The Debtors' estimate of the amount of the Class 4 Claims is \$277,057.00. Holders of Class 4 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 4 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 4 Plan Reserve Account; or (d) liquidation value/final payment.
- 5) Class 5: Allowed Claims of the Holders of General Unsecured Claims Against the Red Booth Debtor: Class 5 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 4, 6, and/or 7. The Debtors' estimate of the amount of the Class 5 Claims is \$31,275.00. Holders of Class 5 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 5 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 5 Plan Reserve Account; or (d) liquidation value/final payment.
- 6) Class 6: Disputed Employment Claims: Class 6 consists of the Disputed Employment Claims. Class 6 is impaired under the Plan and entitled to vote on the Plan. The Holders of Class 6 Claims may select one of two options under the Plan. The Debtors intend to file an action to determine the Disputed Employment Claims by seeking appointment of a representative and certification pursuant to FRBP 7023 and FRCP 23.
- 7) Class 7: Allowed Subordinated Claims for Penalties and All Other Subordinated Allowed Claims: Class 7 consists of allowed subordinated claims for penalties, if any, and all other allowed subordinated claims. Class 7 is impaired under the Plan and entitled to vote on the Plan.

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- 8) Class 8: Interests in the Rideshare Debtor: Class 8 consists of the Interests in the Rideshare Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Rideshare Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.

- 9) Class 9: Interests in the Red Booth Debtor: Class 9 consists of the Interests in the Red Booth Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Red Booth Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.

The Amended Disclosure Statement states that the Amended Plan will be funded by the (i) revenue generated by the Reorganized Debtors; (ii) the "New Value Contribution" by Rattan in the amount of \$51,000.00, *see* Amended Disclosure Statement at 79; and (iii) net recoveries from Rights of Action, if any. The Debtors anticipate that there will be approximately \$305,000 of cash required to fund the Effective Date Payments, and the Debtors will have approximately \$76,000.00 of available cash on the Effective Date. The Amended Disclosure Statement states that the Plan Funders are discussing a partial additional cash infusion by Red Vans—in an unspecified amount—and deferral arrangement with the Debtors' Professionals.

The plan's risk factors, as detailed in the Amended Disclosure Statement, include the risk that the Debtor's projections of its income and expenses between the date of the Amended Disclosure Statement and the date of the proposed distributions may prove to be overly optimistic.

The Opposition

On June 7, 2018, the Creditors filed the Opposition to the Amended Disclosure Statement (the "Opposition") [Rideshare Doc. No. 67]. The Opposition contends that the Amended Disclosure Statement is inadequate in the following respects:

- (1) Neither the Amended Disclosure Statement or Amended Plan provide

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any valuation to support the adequacy of the New Value Contribution, and it is thus impossible to determine whether treatment of insider unsecured claims will violate the absolute priority rule;

- (2) The Amended Disclosure Statement references exhibits which have not been filed;
- (3) The Amended Disclosure Statement separately classifies unsecured "Disputed Employment Claims" from other general unsecured claims, which is impermissible gerrymandering;
- (4) The Amended Plan provides for an impermissible waiver of creditor rights against non-debtor parties;
- (5) The Amended Disclosure Statement states that the Debtors are administratively insolvent and lacks specific information as to how the administrative expenses will be covered; and
- (6) The Amended Disclosure Statement fails to describe the amount of funds being held back for disputed unsecured creditors, and when and how that holdback will occur.

Therefore, the Opposition request that the Court deny approval of the Amended Disclosure Statement.

The Reply

On June 21, 2018, the Debtors filed the Joint Reply to the Opposition (the "Reply") [Doc. No. 111]. The Reply argues that the Amended Disclosure Statement provides adequate information, and that the arguments raised by the Opposition regarding the adequacy of the Amended Disclosure statement are actually confirmation issues. Reply at 4. The Reply further argues that the Amended Plan is not patently unconfirmable. *Id.* at 5. Specifically, the Reply argues that: (1) the proposed classifications in the Amended Plan are appropriate, and are not improperly gerrymandered, *id.* at 5–10; and (2) the Amended Plan does not violate the absolute priority rule on account of the proposed new value contribution of \$51,000 by Rattan Joa in exchange for 51% of the shares in the reorganized debtor, and because the

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remaining 49% of the shares will be issued to the Class 6 Creditors, *id.* at 10–11. The Reply contends that the disclosure regarding the New Value Contribution is adequate, and that the Debtors "should not be required to proof [*sic*] the adequacy [of the new value contribution as] a condition of approval of the Amended Disclosure Statement," because the issue of whether the amount of the New Value Contribution is adequate is an issue for confirmation. *Id.* at 11–12. With respect to the Plan Trust, the Reply states that the terms of the Plan Trust is adequately described in the Amended Plan. *Id.* at 13. Regarding the Opposition's argument that the Amended Plan is patently unconfirmable because there is not adequate means for satisfying Professional Fees, this is a confirmation issue. *Id.* Lastly, the Reply contends that the provision of the Amended Plan providing for the release of Red Vans is appropriate and consistent with applicable law. *Id.* at 14.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125 (a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer;

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(6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Amended Disclosure Statement fails to provide adequate information. Among other deficiencies, the Amended Disclosure Statement: (a) does not provide adequate information regarding the New Value Contribution; (b) provides for interest holders in Class 8 to retain their interests due to the New Value Contribution, but does not provide a valuation offered for those interests, or specify whether the interests have been exposed to the market; (c) does not provide adequate disclosure with regards to how the Debtors intend to pay administrative claims given the lack of funds available to cover the administrative claims; (d) references omitted exhibits which are material to the adequacy of the Amended Disclosure Statement (*e.g.*, the Plan Trust Agreement); and (e) does not adequately detail the amount of funds being withheld for disputed claims, or the timing of such withholding.

This is the Debtors' second attempt at gaining approval of a disclosure statement. The Court denied approval of the "Joint Disclosure Statement Describing Plan of Reorganization" (the "Original Disclosure Statement") [Rideshare Doc. No. 53] on April 5, 2018. *See* Doc. No. 76 (ruling after hearing on April 5, 2018). In its final ruling denying approval of the Original Disclosure Statement, the Court specifically noted that the Debtors "averred that the Debtors [were] negotiating with

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certain of the unsecured creditors, including the Creditors, towards a consensual resolution of their claims," Doc. No. 76 at 8, and that the Amended Disclosure Statement and Amended Plan would address the deficiencies of the Original Disclosure Statement and Plan, *id.* With respect to the Original Disclosure Statement, the following deficiencies, among others, were identified by the court: the Original Disclosure Statement (a) did not provide adequate information regarding the specific identities of the "Plan Funders," the amount of the contemplated New Value Contribution, or state whether the New Value Contribution had been exposed to the market, (b) provided for interest holders in Class 8 to retain their interests due to the New Value Contribution, but did not provide a valuation offered for those interests, (c) did not specify the interest rate that is being used to bring the present value equal to the liquidation value, where applicable, and (d) did not adequately describe the class treatments or detail the anticipated pay outs to respective classes, which made it impossible for voting claimholders to assess whether the treatment of insider unsecured claims will violate the absolute priority rule. *Id.* at 7.

Having reviewed the Amended Disclosure Statement and the Amended Plan, the Court finds that the Amended Disclosure Statement largely mirrors what has already been presented to the Court. The Court finds the Debtors' lack of diligence particularly problematic under the circumstances, given that the Debtors are enjoying the benefit of a preliminary injunction against the non-debtor entities. Importantly, and contrary to the representations made by the Debtors to the Court, there is no difference in the treatment of the unsecured claims, including the Creditors' claims, as between the Original Plan and the Amended Plan. The most notable change is that the Amended Disclosure Statement does disclose the identities of the "Plan Funders," as well as the amount of the New Value Contribution (\$51,000.00). These changes notwithstanding, as set forth in more detail below, the Amended Disclosure Statement does not state whether the New Value Contribution has been exposed to the market, nor does it provide any disclosure regarding the method that was used to value the interests that are to be retained on account of the New Value Contribution. Additionally, the Amended Disclosure Statement fails to adequately describe how the Debtors intend to address the estimated \$305,000.00 in administrative expenses, when the Debtors will only have approximately \$76,000.00 funds on hand to make Effective Date payments. The disclosure related to the withholding of funds for the disputed claims is wholly inadequate, as the Amended Disclosure Statement provides very little detail regarding the amount of the funds to be withheld, or the timing of such withholding. The inadequacy of disclosure related to the withholding of funds for the

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disputed claims is underscored when viewed in conjunction with the above-described deficiencies—particularly the substantial gap between the estimated administrative expenses and the funds on hand to make Effective Date payments.

The Amended Disclosure Statement also fails to include the contemplated "Plan Trust Agreement." The Court is not persuaded by the Debtors' argument that the failure to file the Plan Trust Agreement with the Amended Disclosure Statement "does not impact any disclosure requirements." Reply at 13. To the contrary, the omission of the Plan Trust Agreement is significant given that the Plan Trust is an important component of the Amended Plan; thus, inclusion of the Plan Trust Agreement is relevant to the decision of those claim holders who are presented with the option of participating in the Plan Trust to cast their vote for or against confirmation of the Amended Plan. Furthermore, the failure to file this document is yet further evidence of the Debtors' lack of diligence in pursuing plan confirmation. The Court finds the Debtors' lack of diligence in this regard worthy of emphasis given that the Debtors are benefitting from a preliminary injunction against the non-debtor entities, and the Court has clearly advised the Debtors that the Debtors had only a limited amount of time to obtain confirmation of a plan.

The Amended Plan is Patently Unconfirmable

"[W]here a plan is on its face nonconfirmable, as a matter of law, it is appropriate for the court to deny approval of the disclosure statement describing the nonconfirmable plan." *In re Arnold*, 471 B.R. 578, 586 (Bankr. C.D. Cal. 2012); *see also In re American Capital Equip. LLC*, 688 F.3d 145, 155 (3d. Cir. 2012) ("a bankruptcy court may address the issue of plan confirmation where it is obvious at the disclosure statement stage that a later confirmation hearing would be futile because the plan described by the disclosure statement is patently unconfirmable").

Here, based on the moving and opposing papers, it is likely that Class 6 will vote to reject the Amended Plan, and the Debtors will attempt a cram down pursuant to § 1129(b). Thus, among other requirements, the Amended Plan must comply with the absolute priority rule.

Two conditions exist for a cram down under § 1129(b). First, all the requirements of § 1129(a) must be met, with the exception of the plan's acceptance by each impaired class of claims or interests. *See* § 1129(a)(8). Second, the objection of

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an impaired creditor class may be overridden only if "the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan." § 1129(b)(1). As to a dissenting class of unsecured creditors, the plan may be found to be "fair and equitable" only if the allowed value of the claim is to be paid in full, § 1129(b)(2)(B)(i), or, in the alternative, if "the holder of any claim or interest that is junior to the claims of such [impaired unsecured] class will not receive or retain under the plan on account of such junior claim or interest any property," § 1129(b)(2)(B)(ii). To comply with the new value doctrine, former equity owners are required to offer value that is "1) new, 2) substantial, 3) money or money's worth, 4) necessary for a successful reorganization and 5) reasonably equivalent to the value or interest received." *In re Bonner Mall Partnership*, 2 F.3d 899, 908 (9th Cir. 1993). In *Bank of America Nat. Trust and Sav. Ass'n v. 203 North LaSalle Street Partnership*, 526 U.S. 434 (1999), the Supreme Court held that "plans providing junior interest holders with exclusive opportunities free from competition and without benefit of market valuation fall within the prohibition of § 1129(b)(2)(B)(ii)," *id.* at 458. Thus, to satisfy the so-called new value exception, the interests must be exposed to the market.

Here, the New Value Contribution does not comply with the new value doctrine because the Debtors did not expose the interests to the market. Given the lack of exposure of the New Value Contribution to the market, and the absence of any valuation for the controlling interest in the Rideshare Debtor, the Amended Plan does not comply with § 1129(b). Additionally, insofar as the Debtors contend that the objections raised by the Opposition are issues that should be addressed in the context of plan confirmation, if the Debtors were not enjoying the benefits of the preliminary injunction against non-debtor entities, the Court might be more amenable to the Debtors' argument that certain of the deficiencies discussed herein are confirmation issues, not disclosure statement issues. Because the preliminary injunction prevents dissenting non-debtor entities from pursuing their state law remedies, the Court cannot overlook the Plan's multiple deficiencies. Not all of these deficiencies compel a conclusion that the Plan is patently unconfirmable. But taken together, they demonstrate the Debtors' lack of diligence in pursuing plan confirmation.

The Preliminary Injunction is Terminated

The Court set July 24, 2018 as the deadline for the Debtors to obtain confirmation of a plan, and the preliminary injunction is set to terminate on the same

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date. The Court further stated that it would not be inclined to grant a further extension of the preliminary injunction. A preliminary injunction against non-debtors is an extraordinary remedy that is reserved for "unusual circumstances." *See In re Zale Corp.*, 62 F.3d 746, 761 (5th Cir. 1995); *Patton v. Bearden*, 8 F.3d 343, 349 (6th Cir. 1993); *Teachers Ins. & Annuity Ass'n v. Butler*, 803 F.2d 61, 65 (2d. Cir. 1986). Such circumstances include: "1) when the nondebtor and the debtor enjoy such an identity of interests that the suit against the nondebtor is essentially a suit against the debtor, and 2) when the third-party action will have an adverse impact on the debtor's ability to accomplish reorganization." *In re Zale Corp.*, 62 F.3d at 761.

Here, the Court entered the preliminary injunction for the purpose of affording the Debtors the opportunity to confirm a plan of reorganization. The Court has given the Debtors two opportunities to obtain approval of a disclosure statement. In light of the absence of substantive changes to the Amended Disclosure Statement and Amended Plan to address the deficiencies identified with respect to the Original Disclosure Statement and Original Plan, it appears to the Court that the Debtors' bankruptcies were filed to forestall the litigation in the state court, and to bring state law issues regarding employment issues into the federal court.² **[Note 2]**. However, as set forth above, the Debtors have failed to diligently pursue confirmation of a plan of reorganization. Given the Debtors' lack of diligence in confirming a plan of reorganization, the Court will no longer permit the Debtors to benefit from the preliminary injunction against the non-debtors. In granting the extension of the preliminary injunction, the Court made clear that the preliminary injunction would not be extended past July 24, 2018, given that such an injunction is an extraordinary remedy. The Court cannot give the Debtors more time to file a Second Amended Disclosure Statement because doing so would require yet another extension of the injunction against the non-debtors.

Having considered the Amended Plan and Amended Disclosure Statement, and having found that the Debtors will be unable to obtain approval of the Amended Disclosure Statement and confirmation of the Amended Plan, the preliminary injunction shall terminate on the date of the entry of the order denying the Motion for Approval of the Amended Disclosure Statement.

III. Conclusion

For the reasons set forth above, the Court DENIES the Motion for Approval of

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the Amended Disclosure Statement with prejudice. The Amended Disclosure Statement does not contain adequate information, and the Court finds, among other things, that the Amended Plan is patently unconfirmable. The preliminary injunction shall terminate on the date of the entry of the order denying the Motion for Approval of the Amended Disclosure Statement.

On **August 14, 2018 at 10:00 a.m.** the Debtors shall appear and show cause, if any there be, why the Court should not convert or dismiss the Debtors' cases, respectively (the "OSC"). The OSC will be set by separate order to be entered by the Court. The deadline for the Debtors' to file a written response to the OSC is **July 24, 2018**. The Deadline for written opposition to the Debtors' response is **July 31, 2018**. The Deadline for the Debtors' reply to any filed opposition is **August 7, 2018**.

The Creditors shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtors have both filed the Amended Disclosure Statement and the Amended Plan in their respective cases. For the purposes of this tentative ruling, the Court will cite the docket of the Rideshare Debtor's case (2:17-bk-22974-ER), and the Amended Disclosure Statement and Amended Plan filed in the Rideshare Debtor's case, Doc. Nos. 95 & 94, respectively. The Disclosure Statement and Plan filed in the Red Booth Debtor's case (2:17-bk-22975-ER) are located at Doc. Nos. 115 & 114, respectively.

Note 2: The Court does not make any findings with regards to the intent of the Debtors in filing the respective petitions. That being said, the Court's observation in this regard is relevant to its decision to deny approval of the Amended Disclosure Statement with prejudice, and to terminate the Preliminary Injunction.

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Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar

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2:18-12081 Prillid, Inc.

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#1.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (1) Toyota Forklift, Model # 8BRU18, 1-Battery, 1-Charger .

Docket 14

Tentative Ruling:

7/6/2018

Tentative Ruling: .

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established that the fair market value of the subject property (equipment) is declining and that Debtor is making insufficient payments to protect Movant against this decline. Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Prillid, Inc.

Represented By
Vanessa M Haberbusch

Trustee(s):

John J Menchaca (TR)

Pro Se

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#2.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (1) 2015 Toyota Forklift, Model #8HBE30, -1 Battery .

Docket 13

Tentative Ruling:

7/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject property (equipment) and that the property is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

CONT... Prillid, Inc.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Prillid, Inc.

Represented By

Vanessa M Haberbusch

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

2:18-12081 Prillid, Inc.

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (1) Toyota Forklift, Model # 8HBE30, 1-Battery, 1-Charger .

Docket 12

Tentative Ruling:

7/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject property (equipment) and that the property is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

CONT... Prillid, Inc.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Prillid, Inc.

Represented By

Vanessa M Haberbusch

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

2:18-15734 Mary Kris Escala Bermido

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Toyota Camry .

Docket 8

Tentative Ruling:

7/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the debtor stated an intention to surrender the property to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

CONT... Mary Kris Escala Bermido

Chapter 7

the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Mary Kris Escala Bermido

Represented By
Raymond J Seo

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

2:18-13968 Gina Lynn Valenzuela

Chapter 7

#5.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 427-429 West 49th Street, Los Angeles, CA 90037 .

Docket 12

Tentative Ruling:

7/6/2018

The Motion is moot per the "Order and Notice of Dismissal for Failure to Appear" entered on June 28, 2018 [Doc. No. 16].

Party Information

Debtor(s):

Gina Lynn Valenzuela

Represented By
Raymond Perez

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

2:18-17001 Jeannette Letona

Chapter 7

#6.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 806 N. Alvarado St., Los Angeles, CA 90026 . (Trenk, Joseph)

Docket 7

Tentative Ruling:

7/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on May 7, 2018. The Movant filed an unlawful detainer action on May 11, 2018, and judgment was entered in favor of the Movant on June 12, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

CONT... Jeannette Letona

Chapter 7

Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jeannette Letona

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

2:18-17316 Patchree Patchrint

Chapter 7

#7.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1000 S. Hope Street #513, Los Angeles, CA 90015 .

Docket 14

Tentative Ruling:

7/6/2018

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with the applicable procedures. Oppositions, if any, will be considered at the hearing. The Court notes that the Motion states that the hearing is being heard on regular notice when, in fact, the Motion was set on shortened notice. While the Court does not find any defects in service because the Debtor was served by the Movant via personal service on June 28, 2018 consistent with the Court's procedures, the failure by the Movant to check the box designating "SHORTENED NOTICE" could result in confusion regarding, for example, the availability of filing a written response to the Motion.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant caused a Notice to Quit to be served on the Debtor on April 10, 2018. The Movant filed an unlawful detainer action on April 30, 2018. The trial in the unlawful detainer action is set for July 15, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 9, 2018

Hearing Room 1568

10:00 AM

CONT... Patchree Patchrint
876 (Bankr. C.D. Cal. 2002).

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Patchree Patchrint	Pro Se
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Trustee(s):

David M Goodrich (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:14-10910 Matthew Messingham and Elise Messingham

Chapter 7

#1.00 APPLICANT: Charges: United States Bankruptcy Court

Hearing re [41] and [42] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

7/9/2018

See Cal. No. 3 below, incorporated by reference.

Party Information

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:14-10910 Matthew Messingham and Elise Messingham

Chapter 7

#2.00 APPLICANT: Attorney - Danning Gill Diamond & Kollitz LLP

Hearing re [41] and [42] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/9/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$72,820.00 (to be paid \$3,000.00 pursuant to Trustee's Final Report)

Expenses: \$4,853.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:14-10910 Matthew Messingham and Elise Messingham

Chapter 7

#3.00 APPLICANT: Trustee - Brad D Krasnoff

Hearing re [41] and [42] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/9/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,862.36 (to be paid \$700.00 pursuant to Trustee's Final Report)

Total Expenses: \$463.83

U.S. Bankruptcy Court Charges: \$700.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Matthew Messingham

Represented By
Michael D Kwasigroch

Joint Debtor(s):

Elise Messingham

Represented By
Michael D Kwasigroch

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT... Matthew Messingham and Elise Messingham

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Diane C Weil

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 10:00 A.M.**

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 10:00 A.M.**

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 12-12-17; 3-7-18; 5-8-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-16-18 AT 10:00 A.M.**

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 24] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#7.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 10:00 A.M.**

Tentative Ruling:

5/7/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 25] entered on March 9, 2018, shall remain unchanged.

The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Represented By
Kelly F Ryan

Henry A. Hakopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18

Docket 1

***** VACATED *** REASON: 7/2/2018 Adv Dismissed**

Tentative Ruling:

5/7/2018

Plaintiff and Defendant have agreed on the substantive terms of a settlement. The deadline for Plaintiff to file a motion for approval of the settlement (the "Rule 9019 Motion") is **June 8, 2018**. Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. To provide time for the Rule 9019 Motion to be heard, the litigation deadlines previously ordered shall be continued as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed—is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

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Judge Ernest Robles, Presiding
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Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

CONT...

Friendly Adult Day Healthcare Center, Inc.

Chapter 7

expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Vineland Sunshine Properties, LLC,

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
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10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#9.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18

Docket 1

*** VACATED *** REASON: 7/2/2018 - ADV dismissed

Tentative Ruling:

5/7/2018

Plaintiff and Defendant have agreed on the substantive terms of a settlement. The deadline for Plaintiff to file a motion for approval of the settlement (the "Rule 9019 Motion") is **June 8, 2018**. Pursuant to the parties' request, a continued Status Conference shall be conducted on **July 10, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. To provide time for the Rule 9019 Motion to be heard, the litigation deadlines previously ordered shall be continued as follows:

- 1) The last day to amend pleadings and/or join other parties—which has already elapsed—is **3/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

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CONT...

Friendly Adult Day Healthcare Center, Inc.

Chapter 7

expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)

- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Represented By
Sevan Gorginian

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
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10:00 AM

2:17-18711 Rosilyn Batiste

Chapter 7

#10.00 APPLICANT: Trustee - ELISSA D MILLER

Hearing

RE: [33] and [34] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/9/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,575.00

Total Expenses: \$391.69

Hahn Fife & Company, LLP: the flat fee in the amount of \$1,000.00 paid to this applicant pursuant to the "Order on Trustee's Motion under LBR 2016-2 to Pay Flat Fee to Tax Preparer" [Doc. No. 30] is approved as final.

Other Expenses (Int'l Sureties, LTD): amounts previously paid to this applicant are approved as final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Rosilyn Batiste

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:17-18711 Rosilyn Batiste

Chapter 7

#11.00 APPLICANT: Accountant - HAHN FIFE & COMPANY

Hearing

RE: [33] and [34] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

See Cal. No. 10 above, incorporated by reference.

Party Information

Debtor(s):

Rosilyn Batiste

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-18711 Rosilyn Batiste

Chapter 7

#12.00 APPLICANT: Other Expenses - International Sureties, LTD

Hearing

RE: [33] and [34] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

See Cal. No. 10 above, incorporated by reference.

Party Information

Debtor(s):

Rosilyn Batiste

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

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Tuesday, July 10, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#13.00 Hearing

RE: [8] Motion For Entry Of Order Pursuant To 11 U.S.C. 543(D)(1) Maintaining Receiver Matthew Taylor As Custodian In Possession And Control Of Real Estate Of Debtor And Excusing Custodian From Compliance With 11 U.S.C. Section 543(A) And (B)

Docket 8

Tentative Ruling:

7/9/2018: Tentative Ruling

For the reasons set forth below, the hearing on the Motion is CONTINUED to be heard concurrently with the Motion to Convert. The continued hearing on the Motion and the hearing on the Motion to Convert will be held on **August 22, 2018 at 10:00 a.m.** The deadline for the Trustee file a written response or opposition to either or both the Motion or to the Motion to Convert is **August 15, 2018**. The Court will prepare the order.

Pleadings Filed and Reviewed:

- 1) Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b) (the "Motion") [Doc. No. 8]
- 2) Response of Rosendo Gonzalez, Interim Chapter 7 Trustee, to the Motion (the "Trustee's Response") [Doc. No. 26]
- 3) Debtor's Opposition to the Motion (the "Opposition") [Doc. No. 27]
- 4) Reply to the Opposition (the "Reply") [Doc. No. 32]

I. Facts and Summary of Pleadings

M & A Enterprises, LLC (the "Debtor") filed a voluntary Chapter 7 petition on May 29, 2018 (the "Petition") [Doc. No. 1]. Rosendo Gonzalez was appointed as

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CONT... **M & A Enterprises, LLC**
interim Chapter 7 trustee (the "Trustee").

Chapter 7

The Motion

On June 7, 2018, secured creditor Luis Munoz dba San Bernardino Apartments (the "Movant") filed the "Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b)" (the "Motion") [Doc. No. 8]. The property at issue is two adjacent apartment buildings located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Property"). The Movant is the holder of the second and third deeds of trust secured by the Property.

In 2015, the Property was sold to Neram Village, Inc. ("Neram"). "Declaration of Joseph G. McCarty" (the "McCarty Decl.") [Doc. No. 9] at ¶ 4. As part of the sale transaction, the Movant received two notes and deeds of trust: (1) the second deed of trust, which was an All Inclusive Trust Deed ("AITD") wrap around the first deed of trust from East West Bank in the original principal amount of \$3,432,154.81; and (2) the third deed of trust in the original principal amount of \$1,123,845.18 (collectively, the "Loans"). *Id.* at ¶ 3. Subsequently, and without notifying the Movant, Neram encumbered the Property with a fourth deed of trust and fifth deed of trust. *Id.* at ¶ 4. The Debtor was the beneficiary of the fifth deed of trust. *Id.* On April 12, 2016, after Neram had failed to make payments to the Movant, the Movant commenced a judicial foreclosure action in the California Superior Court (the "State Court"). *Id.* at ¶ 5. The State Court appointed Eloisa Fernandez as receiver (the "Original Receiver"). *Id.* The Original Receiver made certain (necessary) repairs to the Property and Movant advanced funds to pay for the repairs and other expenses of the Property. *Id.* at ¶ 6. On June 12, 2017, the Debtor commenced a foreclosure action on its fifth deed of trust, and moved to remove the Original Receiver. *Id.* at ¶ 7. The Movant opposed the Debtor's motion and proposed that Matthew Taylor take over as receiver. *Id.* On June 19, 2017, the State Court entered an order appointing Mr. Taylor as receiver (the "Receiver"). *Id.*; *see also id.*, Exhibit 1 (the State Court Order). Over the objection of the Debtor to the discharge of the Original Receiver and to the amount paid for repairs, the State Court discharged the Original Receiver. *Id.* at ¶ 8. The Debtor subsequently filed a cross-complaint which contests the advances for the repairs and the expenses of the Property. *Id.* at ¶ 9. The Debtor's cross-complaint is still pending.

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CONT... M & A Enterprises, LLC

Chapter 7

The Motion contends that the Receiver is currently fulfilling his duties to manage and maintain the Property; thus, the Motion requests that the Receiver be allowed to remain in possession of the Property to maintain the status quo until the Chapter 7 Trustee can assess whether the Property can be administered. It is the position of the Movant that there is no equity in the Property, and that the Petition was filed in bad faith to avoid foreclosure by the Movant.

The Trustee's Response

On June 26, 2018, the Trustee filed the "Response of Rosendo Gonzalez, Interim Chapter 7 Trustee, to [the Motion]" (the "Trustee's Response") [Doc. No. 26]. The Trustee's Response requests that the Court continue the hearing on the Motion for approximately 30-days so that the Trustee can determine whether he can administer the Properties. While the Debtor's schedules state that the Property is worth \$13 million, on June 13, 2018, the Debtor's counsel has acknowledged to the proposed counsel for the Trustee, Brad D. Krasnoff of Danning, Gill, Diamond, and Kollitz, LLP, that the Debtor's estimated value of the Property is actually \$6.5 million. "Declaration of Brad D. Krasnoff" (the "Krasnoff Decl.") [Doc. No. 26] at ¶ 4(a). On June 5, 2018—prior to the Debtor's schedules being filed on June 12, 2018—Mr. Krasnoff was informed by Joseph McCarty, counsel for the Movant, that both the Movant and the Receiver believe that the Property has a value between \$5 million and \$5.5 million. *Id.* at ¶ 4(b). Mr. McCarty further informed Mr. Krasnoff that the outstanding secured encumbrances against the Property, including those of the Movant, total approximately \$5.6 million to \$6 million. *Id.* at ¶ 4(c).

The Debtor's Opposition

On June 26, 2018, the Debtor filed the Opposition to the Motion (the "Opposition") [Doc. No. 27]. The Debtor opposes retention of the receiver under § 543, and requests that the receiver be discharged and provide all cash and accounting to the Debtor. The Opposition explains that the Debtor's case was filed as a Chapter 7 due to time limitations in getting bankruptcy documents on file, and due to the fact that the Debtor's present counsel is not experienced in Chapter 11. The Opposition notes that the Debtor intends to convert the case to Chapter 11 (the Debtor's Motion to Convert is discussed in more detail below). The Debtor states that the Debtor intends to file amended schedules which will show the Debtor having significantly

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CONT... M & A Enterprises, LLC

Chapter 7

more assets than was reflected in the initial Schedules. *See* "Supplemental Declaration of Managing Member of the Debtor, Miguel Arreola, in Support of the Opposition" ("Supp. Arreola Decl.") [Doc. No. 30] at ¶¶ 3–7; *see also* "Amended Schedule A/B" [Doc. No. 38]. Specifically, on the Petition date the Debtor had cash and secured notes in the approximate amount of \$5,880,431.00, as well as a pending judicial foreclosure lawsuit with a potential recovery of \$1,395,000.00. *Id.* at ¶ 7.

The Opposition further states that the Debtor has never had management control of the Property because the Property has been continuously managed by the respective receivers. Opposition at 5; *see also* Supp. Arreola Decl. at ¶ 9. The Opposition contends that, in the absence of previous mismanagement by the Debtor, there is no justification for the Receiver to remain in control of the Property, especially considering that retention of the Receiver would cause the Estate to incur further fees for the Receiver who is paid \$250 per hour. Opposition at 5.

The Reply

On July 3, 2018, the Movant filed the Reply to the Opposition (the "Reply") [Doc. No. 32]. The Reply contends that: (1) the Opposition admits that the Debtor's Schedules are inaccurate, and the Court should not consider the Opposition or the Motion to Convert until the Schedules have been amended and the need for amendment has been adequately explained; and (2) excusing the Receiver from turnover at this time is in the best interest of creditors.

First, the Reply contends that without the amended schedules, the Movant's position remains that the Petition was filed in bad faith to avoid foreclosure, and that a reorganization is not in prospect. The Reply additionally sets forth certain facts regarding the Debtor's prepetition foreclosure on the fifth deed of trust, seemingly in an effort to call into question whether the Petition was filed in bad faith. Secondly, the Reply points to the fact that the Trustee has only recently started his review of the case, and that maintaining the Receiver at least until the Trustee determines whether to administer the Property. Alternatively, the Reply states that a continuance of the hearing to be heard concurrently with the Debtor's Motion to Convert may be appropriate if the Debtor is required to make monthly adequate protection payments.

The Debtor's Pending Motion to Convert to Chapter 11

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CONT... M & A Enterprises, LLC

Chapter 7

On June 22, 2018, the Debtor filed the "Motion to Convert Case from Chapter 7 to Chapter 11" (the "Motion to Convert") [Doc. No. 17], as well as the "Notice of Opportunity to Request a Hearing" pursuant to LBR 9013-1(o).

On July 5, 2018, the Movant filed the "Notice of Opposition [to the Motion to Convert] and Request for a Hearing" (the "Opposition to the Motion to Convert") [Doc. No. 37]. The Opposition to the Motion to Convert states that the Movant opposes conversion of the case to Chapter 11 on the following grounds: (1) the Debtor's schedules are inaccurate and incomplete and a reorganization is not in prospect; (2) the Petition was filed in bad faith and the Debtor is attempting to abuse the bankruptcy process in order to further delay the Movant's foreclosure on the Property; and (3) the Court should not consider the Opposition or the Motion to Convert until the Schedules have been amended and the need for amendment has been adequately explained.

II. Findings of Fact and Conclusions of Law

Having considered the arguments in connection with this matter, and for the reasons set forth below, the hearing on the Motion is CONTINUED to be heard concurrently with the Motion to Convert on August 22 at 10:00 a.m., subject to the briefing schedule set forth in more detail below.

The Trustee Needs Time to Investigate and to Take a Position on the Motion

Section 541 of the Bankruptcy Code provides that the commencement of a case under Title 11 creates an estate consisting of all legal and equitable interests of the debtor in property as of the commencement of the case. Section 323(a) provides that "[t]he trustee in a case under this title is the representative of the estate." Thus, after the estate is created and a trustee is appointed, "although the trustee is not vested with title of the debtor," 3 Collier on Bankruptcy ¶ 323.02 (Richard Levin & Henry J. Sommer eds., 16th ed.), the trustee is the authorized individual through whom the estate acts as its representative under § 323(a).

Here, the Trustee requests that the hearing on the Motion be continued because the Trustee has not yet had the opportunity to investigate the Property to determine what actions the Trustee will take regarding the Property. Notwithstanding the Motion to Convert, the Petition was filed under Chapter 7, and the case is governed by the

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CONT... M & A Enterprises, LLC

Chapter 7

provisions of Chapter 7 pending the resolution of the Motion to Convert. Thus, the Court finds that a continuance of the hearing on the Motion is warranted under the circumstances in order to give the Trustee a reasonable period of time to investigate the Property and take a position on the Motion.

Chapter 7 Debtor's Standing to Oppose Actions for Turnover under §§ 542 and 543

The Court notes, but does not make any findings, that there is a potential issue as to whether the Chapter 7 Debtor has standing to oppose the Motion. This issue in particular weighs in favor of continuing the hearing on the Motion to be heard concurrently with Motion to Convert.

In the bankruptcy context, standing requires an "aggrieved person who is directly and adversely affected pecuniarily by an order of the bankruptcy court." *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir. 1983)). In most Chapter 7 cases, the debtor's liabilities exceed their assets, and because Chapter 7 debtors only receive distribution from the estate after all allowed claims are paid in full, a Chapter 7 debtor rarely has a "pecuniary interest" in the administration of the estate. *See In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998). Thus, a Chapter 7 debtor only has standing if the debtor "can show a reasonable possibility of surplus after satisfying all debts." *Id.* at 608 (debtor lacked standing to object to sale because there was no "reasonable possibility of a surplus of assets").

Sections 542 and 543 are related statutes. Section 542 sets for the requirements for non-custodial turnovers of property of the estate to the trustee, *see Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713, 725 (B.A.P. 9th Cir. 2012) (§ 543 "enables the bankruptcy trustee, or the debtor-in-possession in a reorganization case to seek turnover of the debtors' assets, for the benefit of the estate"), and § 543 governs turnover of property of the estate by a prepetition custodian to the trustee after a bankruptcy case is filed, *see* 5 Collier on Bankruptcy ¶ 543.01 (Richard Levin & Henry J. Sommer eds., 16th ed.). Under §§ 542 and 543, "a chapter 7 debtor is not mentioned and generally has no standing to bring an action for turnover." *In re Hernandez*, 483 B.R. at 725. It logically follows that a Chapter 7 debtor generally does not have standing to oppose an action by a party in interest under § 543 to maintain a receiver.

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CONT... M & A Enterprises, LLC

Chapter 7

Here, the issue of the Debtor's standing is particularly important in light of the Debtor's Motion to Convert, which if granted would result in the Debtor, as debtor-in-possession under Chapter 11, having the powers and duties of the trustee, including the power to seek turnover under §§ 542 and 543. Thus, the Court finds that the hearing on the Motion should be continued to be heard concurrently with the Motion to Convert.

The Issue of Adequate Protection is Not Properly Before the Court

The Reply requests that the hearing on the Motion is continued, that the Debtor be ordered to make adequate protection payments to the Movant in the interim. Given the fact that the Movant has not filed a motion for relief from the automatic stay under § 362(d), the issue of adequate protection is not properly before the Court, and the Court, therefore, does not make any findings with regards to whether the Movant is entitled to adequate protection payments.

III. Conclusion

Based on the foregoing, the hearing on the Motion is CONTINUED to be heard concurrently with the Motion to Convert. The continued hearing on the Motion and the hearing on the Motion to Convert will be held on **August 22, 2018 at 10:00 a.m.** The deadline for the Trustee file a written response or opposition to either or both the Motion or to the Motion to Convert is **August 15, 2018.**

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

Debtor(s):

M & A Enterprises, LLC

Represented By
Steven Ibarra

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, July 11, 2018

Hearing Room 1568

10:00 AM

2:17-17199 John Fuchs

Chapter 11

#1.00 HearingRE: [205] Motion for order confirming chapter 11 plan with Plan Ballot Summary, Notice and Proof of Service

Docket 205

Tentative Ruling:

7/10/2018

The Plan is CONFIRMED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Papers Pertaining to Plan Confirmation:
 - a) Notice of Motion for Order Confirming Chapter 11 Plan [Doc. No. 205] (the "Confirmation Motion")
 - b) United States of America's Limited Objection to Plan Confirmation [Doc. No. 212]
 - c) Debtor's Reply Memorandum of Points and Authorities in Opposition to the Limited Objection by the Internal Revenue Service, Demanding \$7,448.50 in Post-Petition Interest [Doc. No. 216]
 - d) United States of America's Limited Response to Debtor's Reply to the United States of America's Objection to Plan Confirmation [Doc. No. 218]
- 2) Papers Pertaining to the IRS' Administrative Tax Claim:
 - a) Order (1) Finding that Amended Disclosure Statement Contains Adequate Information and (2) Settling Deadlines with Respect to Plan Confirmation [Doc. No. 192]
 - b) Debtor's Declaration in Compliance with the Court Order Requiring the Debtor to Set Forth His Contentions with Respect to the Administrative Tax Claim by the Internal Revenue Service Regarding Potential Federal Taxes Due from the Sale of the Debtor's Residence [Doc. No. 198]
 - c) United States of America's Response to the Debtor's Declaration Regarding Determination of the IRS Administrative Tax Claim [Doc. No. 206]
 - d) Debtor's Reply Memorandum of Points and Authorities in Support of His Declaration Regarding His Contentions with Respect to the Administrative Tax Claim by the Internal Revenue Service Regarding Potential Federal Taxes Due

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CONT...

John Fuchs

Chapter 11

from the Sale of the Debtor's Residence [Doc. No. 211]

I. Facts and Summary of Pleadings

Attorney John Fuchs (the "Debtor") commenced a voluntary Chapter 11 petition on June 13, 2017. The Debtor is being represented in this case by his law firm, the Fuchs Law Group, APC. The work on the Debtor's behalf in this case has been performed by Mr. Fuchs and his associate, Gail S. Gilfillan. Fuchs Decl. [Doc. No. 44] at ¶1.

On October 25, 2017, the Court approved the Debtor's motion to sell real property located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 (the "Residence"). *See* Order Authorizing the Sale of the Estate's Right, Title, and Interest in Real Property Located at 17726 Calle de Palermo, Pacific Palisades, CA 90272 [Doc. No. 62] (the "Sale Order"). The Sale Order required the Debtor to deposit the net sales proceeds of the Residence into the Court's registry. Sale Order at ¶5.

On November 16, 2017, the Court authorized the Debtor to pay from the sales proceeds of the Residence (1) his homestead exemption in the amount of \$175,000; (2) the actual and customary ordinary closing costs; and (3) real estate brokerage commissions in the amount of \$169,750. *See* Doc. No. 82. On December 5, 2017, the Debtor deposited \$3,014,642.94 into the Court's registry from the sale of the Residence. *See* Doc. No. 92.

On December 20, 2017, the Court approved settlement agreements between the Debtor and secured creditors Logan Mortgage, Inc. ("Logan"), JSC Pacific LLC ("JSC Pacific"), and the Dawn Miller O.D. Retirement Trust (the "Miller Trust"). Pursuant to the settlement agreements, the Court authorized the Debtor to pay from the funds on deposit in the Court's registry (1) \$619,941.79 to Logan, (2) \$74,535.00 to JSC Pacific, and (3) \$619,941.79 to the Miller Trust. The settlement agreements resolved the secured claims of Logan, JSC Pacific, and the Miller Trust. On December 20, 2017, the Court entered an order authorizing the Clerk of the Court to disburse from the Court's registry funds in the aggregate amount of \$919,905.65, for the purpose of paying Logan, JSC Pacific, and the Miller Trust. *See* Doc. No. 107.

On February 23, 2018, the Court overruled the Debtor's objection to the Proof of Claim filed by Specializing Loan Servicing, in its capacity as servicer for the Bank of New York Mellon ("SLS"). The Court held that SLS holds an allowed secured claim in the amount of \$1,648,975.29. *See* Doc. Nos. 141 and 149. On March 23, 2018, the Court overruled the Debtor's objection to the Proof of Claim filed by the Internal Revenue Service (the "IRS"). The Court held that the IRS holds an allowed secured claim in the amount of \$152,073.43 on account of unpaid taxes. *See* Doc. Nos. 169 and 174.

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On February 23, 2018, the Court scheduled trial on the Debtor's objections to the claims of Rainbow International of Van Nuys ("Rainbow") and Mikhaeil Rouel Corporation, Inc. d/b/a Service Master Professional Restoration ("Service Masters") for the week of August 27, 2018. *See* Doc. Nos. 147–48. On June 26, 2018, the Court approved a compromise of the Debtor's objection to Rainbow's claim. *See* Doc. Nos. 208 and 210. Pursuant to the compromise, Rainbow holds an allowed unsecured claim in the amount of \$7,500, which shall be paid in full from proceeds on deposit in the Court's registry upon confirmation of the Plan. On July 5, 2018, the Court approved a compromise of the Debtor's objection to Service Masters' claim. *See* Doc. No. 217. Pursuant to the compromise, Service Masters holds an allowed unsecured claim in the amount of \$7,500, which shall be paid in full from proceeds on deposit in the Court's registry upon confirmation of the Plan.

On March 23, 2018, the Court issued an order finding that the Disclosure Statement filed in connection with the Debtor's Chapter 11 Plan did not contain adequate information. *See* Doc. No. 173. On April 9, 2018, the Debtor filed an Amended Chapter 11 Plan (the "Plan") and an Amended Disclosure Statement. *See* Doc. Nos. 177–78. On May 18, 2018, the Court issued an order (1) finding that the Amended Disclosure Statement contained adequate information, (2) setting deadlines pertaining to Plan confirmation, and (3) establishing procedures to determine the amount of the §503(b)(1)(B)(i) administrative expense claim asserted by the United States, on behalf of its agency the Internal Revenue Service (the "IRS"). *See* Doc. No. 192 (the "Procedures Order").

Issuance of the Procedures Order was necessary because §503(b)(1)(D), added to the Bankruptcy Code by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), provides that a "governmental unit shall not be required to file a request for the payment of [a §503(b)(1)(B)(i) administrative expense] as a condition of its being an allowed administrative expense." As noted by one court, the fact that governmental units may hold an allowed administrative expense even without filing a request for payment of such an expense creates a "peculiar situation":

Under current law, therefore, a governmental unit is not required to file any request for payment of an administrative expense—"timely," "tardily," or at all—in order to be allowed an administrative expense for a tax incurred by the estate under § 503(b)(1)(B)(i). Thus, the fact that no taxing authority has filed such a request in this case does not necessarily mean that no such administrative expense can be allowed.

This creates procedural questions for the Chapter 13 Trustee, and for the Court. The real estate taxing authority here, which appears to be either Orchard Lake Village, Michigan or the Oakland County Treasurer, has an allowed

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administrative claim if there are any real estate taxes that were incurred by the Chapter 13 bankruptcy estate that remain unpaid, and the Trustee, in turn, must pay any such allowed administrative claim from the funds on hand, under § 1326(a)(2), along with other allowed administrative expenses. But how is the Chapter 13 Trustee to know whether such taxing authority actually has such an administrative claim, and if so, what is the amount of such claim, when the Trustee has heard nothing from the taxing authority? In this case, no governmental unit has filed any claim for unpaid real estate taxes. And Debtor's schedules and plan make no mention of any real estate taxes. What is a Chapter 13 Trustee in this situation to do?

In re Halabu, 501 B.R. 685, 693–94 (Bankr. E.D. Mich. 2012), supplemented, No. 11-59449, 2013 WL 780757 (Bankr. E.D. Mich. Mar. 1, 2013).

The *Halabu* court addressed this procedural conundrum by requiring the party who had alerted the Court to the possible existence of an administrative expense claim to provide notice to the governmental units holding the claim. *Id.* at 702. The court then held hearings to establish the amount of the claim. *Id.*

The Ninth Circuit took a similar approach in *Dreyfus v. Cory (In re Cloobek)*, 788 F.3d 1243 (9th Cir. 2015). The Ninth Circuit held that if “the governmental unit does not file a request for payment but the tax obligation is discovered by the trustee, it will be the trustee’s [or debtor-in-possession’s] responsibility, rather than the government unit’s responsibility, to provide the notice and obtain the hearing.” *Id.* at 1246.

By way of the Procedures Order, the Court adopted procedures similar to those espoused in *In re Cloobek* to establish the amount of the IRS’ administrative tax claim. Specifically, the Court (1) ordered the Debtor to file a declaration setting forth his position with respect to the amount of the IRS’ administrative tax claim, (2) ordered the IRS to file a responsive declaration, (3) ordered the Debtor to file a reply to the IRS’ responsive declaration, and (4) notified the parties that the amount of the IRS’ administrative tax claim would be determined at the confirmation hearing.

Summary of Papers Filed by the Debtor and the IRS Regarding the Amount of the IRS’ Administrative Tax Claim

The Debtor states that he is unable to calculate the exact amount owed the IRS on account of its administrative tax claim because he has not yet filed his 2017 tax return. (The Debtor obtained an extension to file his 2017 tax return and will be filing the return on or before October 15, 2018.) The Debtor proposes to resolve the IRS’ administrative tax claim by disbursing \$25,000 to the IRS from the funds now on deposit in the Court’s registry. The \$25,000 disbursement is the Debtor’s estimate of his 2017 tax liability and

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would be credited as a payment for the Debtor's 2017 taxes, such that the Debtor would be entitled to receive a refund in the event that his 2017 tax liability is less than \$25,000. The Debtor asserts that the \$25,000 figure is conservative, based upon the Debtor's estimate that his remaining projected 2017 tax liability will be \$21,655. [Note 1]

The IRS agrees with the Debtor's proposal for resolving its administrative tax claim, except that the IRS contends that it should receive a payment of \$36,626.34 from the registry funds. According to the IRS, the figures in the Debtor's declaration show that his tax liability for 2017 is \$36,626.34, not \$21,655. The IRS' position is that the taxable rate upon the Debtor's income is 28%, not 15%. The IRS further asserts that the Debtor should have made a payment to the IRS of \$36,626.34 on April 17, 2018, because 26 U.S.C. §6151(a) requires that taxes be paid when due, regardless of whether the taxpayer has obtained a filing extension. The IRS states that the Debtor's failure to make the \$36,626.34 payment on April 17, 2018 may result in the imposition of penalties under 26 U.S.C. §6656.

The Debtor disputes the IRS' position that it should receive \$36,626.34 from the registry, arguing that such a payment vastly overestimates the Debtor's tax liability. The Debtor contends that an additional \$50,000 in deductions and offsets against his estimated taxable income will further reduce his tax liability. However, the Debtor states that after an extended confrontation with the IRS, he "simply has no more fight in him," Doc. No. 211 at p.3, and will defer to the discretion of the Court regarding the amount to be paid to the IRS from the registry on account of the IRS' administrative tax claim.

Summary of Papers Filed by the Debtor and the IRS Regarding the Amount to Be Paid from the Court's Registry to the IRS on Account of Its Allowed Secured Claim

As noted previously, on March 23, 2018, the Court overruled the Debtor's objection to the IRS' Proof of Claim, and held that the IRS holds an allowed secured claim in the amount of \$152,073.43, on account of unpaid prepetition taxes. The Debtor's Plan provides that the IRS' allowed secured claim shall be "[p]aid in full as allowed" from the funds on deposit in the Court's registry upon confirmation of the Plan. The IRS contends that it is entitled to post-petition interest on its secured claim, pursuant to §506(b), because it is over-secured. According to the IRS, the balance on its allowed secured claim, calculated as of August 1, 2018, the estimated Effective Date of the Plan, is \$159,521.92, not \$152,073.42.

The Debtor objects to paying the IRS post-petition interest on numerous grounds. According to the Debtor, the IRS is not entitled to post-petition interest because (1) its claim for post-petition interest is untimely; (2) delays in prosecution of the Debtor's case

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have largely been caused by objections interposed by the IRS, as well as the fact that the original Proof of Claim filed by the IRS was excessive and inaccurate, such that paying the IRS post-petition interest would reward its obstreperous behavior during the case; (3) the Debtor offered to partially satisfy the IRS' claim concurrently with the payment of other secured creditors, thereby reducing post-petition interest liability, but the IRS refused to accept the offer; and (4) the IRS has failed to set forth the applicable interest rate, the period for which post-petition is sought, and the principal balance on which the interest rate has been applied. The Debtor asserts that in the event the IRS' claim for post-petition interest is not denied in its entirety, the Court should adopt one of the following alternatives:

- 1) Reduce the post-petition interest by at least 50% because the IRS' objections have delayed resolution of the case and because post-petition interest liability would have been less had the IRS accepted the Debtor's prior offer to partially satisfy its secured claim; or
- 2) Reduce the post-petition interest by at least \$506.91, based on the fact that the Debtor stipulated to the IRS' request for a 30-day continuance of the hearing on the Debtor's objection to the IRS' secured claim.

The IRS filed a Sur-Reply in response to the Debtor's objections to its demand for post-petition interest. The IRS states that the Sur-Reply was necessary to correct the following mis-statements made by the Debtor:

- 1) The Debtor's contention that the IRS' demand for post-petition interest is untimely is incorrect. The IRS has asserted its entitlement to post-petition interest as early as February 2018. *See, e.g.*, Doc. No. 153, at pp. 1:8-10; 11:18-19; 12:6-8; 12:10-14 (filed February 28, 2018) ("The United States further requests that the Court order that the IRS be paid in full on its secured claim, *with interest calculated through the date of payment*, from the sales proceeds in the Court registry."; "This balance *continues to accrue interest* until it is paid in full."; "Based on the foregoing, the United States respectfully requests that the Court overrule the Objection and order the payment of the IRS secured claim, *in full, with interest*, from the funds in the Court's registry."; "Wherefore, the United States respectfully requests that...(2) the Court order that the IRS be *paid in full on the balance of its secured claim, with interest calculated through the date of payment*, from the sales proceeds in the Court registry.") (emphasis added); Doc. No. 154, at pp. 4:20-23; 5:4-6 (filed February 28, 2018) ("The IRS has an allowed proof of claim, pursuant to section 502, which must be provided for in the Plan, *with*

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interest at the current statutory rate of 4%. See 11 U.S.C. § 511(b). Specifically, the Plan should address that the IRS secured claim will be paid in full with interest from the funds in the Court registry."; "Based on the foregoing, the Government respectfully requests that the Court deny the Debtor's request for approval of the Disclosure Statement, absent an amendment clearly stating that the IRS will *be paid in full with interest*, in one lump payment, from the funds in the Court registry."); Doc. No. 182, at p. 4:21-5:2 (filed May 2, 2018) ("The IRS has an allowed proof of claim, pursuant to section 502, which must be provided for in the Plan, *with interest at the current statutory rate of 5%*. See 11 U.S.C. § 511(b). Specifically, the Plan and Disclosure Statement should clearly state that the IRS secured claim will be paid *in full with interest*, in one lump payment, from the funds in the Court registry, not that the IRS will be paid in installments over 60 months."); Doc. No. 206, at p. 2 fn. 4 (filed June 19, 2018) ("The Government notes that the balance on the IRS secured claim *with interest* through and including August 1, 2018, the estimated Effective Date of the Plan, is \$159,521.92, not \$152,073.42. Kakuske Decl., at ¶ 16."); and Doc. No. 212, at p. 4:3-5 (filed June 27, 2018) ("The IRS has an allowed proof of claim, pursuant to section 502, which must be provided for in the Plan, *with interest at the current statutory rate of 5%*. See 11 U.S.C. § 511(b).").

- 2) The initial Proof of Claim filed by the IRS was not excessive or inaccurate. When the IRS filed its initial Proof of Claim, the Debtor had not yet filed his Form 1040 for the 2016 tax year. The IRS was required to file an Amended Proof of Claim after the Debtor filed his Form 1040.
- 3) The IRS did not refuse to accept a partial payment from the Debtor on account of its secured claim. In an order issued on October 31, 2017, the Court denied "[t]he Debtor's request for discretionary authority to pay from escrow the undisputed amounts owed to secured creditors ... SLS, Logan Mortgage, the Dawn Miller O.D. Retirement Trust ..., the ... IRS, and JSC Pacific LLC."

Overview of the Plan's Provisions

As set forth above, the vast majority of claims against the Debtor have already been paid in connection with various settlement agreements. The Plan provides for the payment, in full, of remaining creditors via proceeds on deposit in the Court's registry, except that the Debtor will continue making installment payments to creditors in connection with two automobile loans and a mortgage loan. SLS, which holds an allowed secured claim in the amount of \$1,648,975.29, is the only creditor who voted on

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the Plan; SLS accepts the Plan. The Plan provides that the Debtor will continue to pay the claims of Mercedes Benz Financial Services and Loan Mart, both of are secured by automobiles, in accordance with the original installment schedule. Arrearages on the claim of Ocwen Mortgage Servicing ("Ocwen"), secured by the Debtor's condominium in Palm Desert, will be paid in full upon confirmation, and the Debtor will continue to make payments consistent with the installment schedule. The claims of general unsecured creditors Capital One (\$4,921.19 and \$1,663.65) and Union Bank (\$450) will be paid in full from registry proceeds. As noted, the claims of Rainbow and Service Masters have been settled for \$7,500 each; these amounts will also be paid from registry proceeds.

II. Findings and Conclusions

The IRS' Administrative Tax Claim

Section 503(b)(1)(B)(i) provides in relevant part: "After notice and a hearing, there shall be allowed administrative expenses, ... including any tax incurred by the estate, whether secured or unsecured ..." Pursuant to §507(a)(2), an administrative expense claim must be paid in full on the effective date of the Plan, unless the claimant agrees to alternative treatment. §1129(a)(9)(A).

Here, the Debtor and the IRS have agreed to an alternative treatment of the IRS' administrative tax claim. In contrast to the normal procedure contemplated by §503(b)(1)(B)(i), under which the Bankruptcy Court would determine the amount of the administrative tax claim, the Debtor and the IRS have agreed that the tax claim should not be determined until after the Debtor files his 2017 tax return, which is due on or before October 15, 2018. The parties have further agreed that the Debtor's liability on account of the administrative tax claim shall be determined through the IRS' normal administrative review process. The only disagreement between the parties is the amount of the estimated taxes that the Debtor should be required to pay at Plan confirmation.

The Court agrees with the Debtor and the IRS that the liability on account of the IRS' administrative tax claim can most efficiently be determined through the course of the IRS' normal administrative review, rather than by this Court. The Debtor's post-petition tax liability is the only issue that remains unresolved in this case. It does not make sense for the Court to retain jurisdiction solely to adjudicate this issue, as the amounts in dispute are minimal compared to the size of the case. Retention of jurisdiction would cause both the Debtor and the IRS to incur further additional and unnecessary expenses.

Therefore, the Court will not make a final determination regarding the Debtor's

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administrative tax liability. Instead, the Court will require the Debtor to make an estimated payment to the IRS on account of such tax liability, with such payment to be credited against whatever amount is ultimately deemed to be owed during the course of the IRS' normal administrative process. The Court will not retain jurisdiction to adjudicate any future disputes regarding post-petition tax liability.

In the typical case, it is appropriate for the Bankruptcy Court to be the ultimate arbiter of an administrative tax claim, because in the absence of a surplus estate, any increase in administrative claims reduces the recovery to other creditors. However, this is a surplus case in which creditors are being paid in full. Therefore, the ultimate determination of post-petition administrative tax liability will have no effect upon the overall creditor body. In view of these unusual circumstances, it is more efficient for this Court to refrain from adjudicating post-petition tax liability and to allow such liability to be determined in the manner that the IRS and the Debtor have agreed upon.

The only issue that remains for this Court to decide is the appropriate estimated payment that should be distributed to the IRS from the Court's registry. In establishing this estimated payment amount, the Court makes no findings regarding the ultimate post-petition tax liability. The Debtor asserts his post-petition tax liability is \$21,655, and proposes to pay the IRS \$25,000. The IRS maintains that post-petition tax liability is \$36,626.34. Because the Court is making no findings regarding ultimate post-petition tax liability, the Court will require the Debtor to pay the IRS \$30,813.17 from the registry. This figure represents the midpoint between the amount proposed by the Debtor and the amount demanded by the IRS. Averaging the figures is most consistent with the Court's statements that the figure is only an estimate and that the Court is not making any findings regarding post-petition tax liability.

The IRS' Allowed Secured Claim

Section 506(b) entitles the holder of an allowed secured claim that is over-secured to post-petition interest on that claim. The Supreme Court has held that holders of involuntary secured claims—such as the IRS' claim here, which arises from a statutory lien—are entitled to interest. *See United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989). Section 511(b) sets the interest rate that must be paid on tax claims.

The Debtor asserts that the amount of post-petition interest to be paid to the IRS should be reduced because the IRS has delayed resolution of the Debtor's case. The Debtor ignores the reality that it was entirely within the IRS' rights to object to actions taken by the Debtor during the case. The Debtor also does not take sufficient account of the practical reality that proceedings under Chapter 11 are often vigorously contested. Having chosen to avail himself of the protections afforded by Chapter 11, the Debtor is

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in no position to complain about the delays associated with the process. Nothing in the Bankruptcy Code or in cases interpreting the relevant Code provisions permits post-petition interest to be reduced simply because proceedings in Chapter 11 take time.

The plain language of the statute entitles the IRS to post-petition interest on its over-secured claim. The Debtor has identified no legal principles excusing his obligation to pay post-petition interest. Nor is there merit to the Debtor's contention that the IRS waived its rights to collect post-petition interest by failing to timely assert them. As the IRS Sur-Reply shows, the IRS has consistently asserted its entitlement to post-petition interest throughout this case.

The Debtor attempts to blame the IRS for the accrual of some of the post-petition interest, by asserting that the IRS refused to accept the Debtor's offer to partially satisfy its secured claim earlier in the case. The Debtor overlooks the fact that it was this Court that ordered that the net sales proceeds of the Residence remain in the registry and not be paid out to creditors. *See* Order Setting Hearing on Debtor's Motion for Authorization to Distribute Funds from Escrow [Doc. No. 69] ("The Debtor's request for discretionary authority to pay from escrow the undisputed amounts owed to secured creditors Specialized Loan Servicing, LLC ("SLS"), Logan Mortgage, the Dawn Miller O.D. Retirement Trust (the "Miller Trust"), the Internal Revenue Service (the "IRS"), and JSC Pacific LLC ("JSC") is DENIED.").

In sum, the IRS is entitled to post-petition interest on its allowed secured claim, at the current statutory rate of 5%. The balance on the IRS' secured claim, with interest calculated through August 1, 2018, is \$159,521.92. The exact amount of post-petition interest to which the IRS is entitled will be calculated by the Court at the time the order authorizing disbursement of funds from the Court's registry is entered.

The Plan is Confirmed

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The Plan is confirmed.

SECTION 1129(A)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th Cong., 2d Sess. 126 (1978)).

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1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a). It is appropriate for secured claims to be separately classified; the Plan's classification structure with respect to unsecured claims is also appropriate.

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of ever unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 1122(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest." There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan appropriately classifies administrative expense claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan." The Plan specifies that all classes are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the Plan." As there are no impaired classes, § 1123(a)(3) does not apply.

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." The Plan provides the

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same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation." The Plan provides for disbursement of funds on deposit in the Court's registry to pay most remaining creditors. The Debtor's Monthly Operating Reports establish that he has sufficient income to make the installment payments in connection with his automobile loans and mortgage loan. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation . . . , of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

Because no securities are being issued under the Plan, § 1123(a)(6) does not apply.

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders. No officers or directors are being appointed under the Plan. Section 1123(a)(7) does not apply.

10. Section 1123(b)

Section 1123(b) sets forth provisions that are permitted, but not required, in a plan of reorganization. The Plan contains certain of § 1123(b)'s optional provisions. The Plan is consistent with § 1123(b).

SECTION 1129(A)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that Debtor as plan proponent has complied with orders of the Court throughout the case, and has complied with his obligations under Title 11. Consistent with such obligations, the Debtor has obtained approval of a Disclosure Statement and has appropriately served the Plan Solicitation

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Package upon parties entitled to notice.

SECTION 1129(A)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

Bankruptcy Rule 3020 provides that if no timely objection to confirmation of the plan is filed, "the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issues." Here, the only objections to confirmation pertain to the amount of taxes which the IRS is owed. No parties have asserted that the Debtor has acted in bad faith during this case. The Court finds that the Plan was proposed in good faith. Section 1129(a)(3) is satisfied.

SECTION 1129(A)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable." Because work in this case has been performed by the Debtor's law firm, no professional fees are sought in connection with the Plan. The Court finds that the Debtor's payment to his law firm of \$5,000 in settlement proceeds received post-petition, as reimbursement for expenses associated with mailing out the Plan Solicitation Package, was reasonable. The plan satisfies § 1129(a)(4).

SECTION 1129(A)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii) requires that the appointment to or continuation in office of an director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)

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(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

No directors or officers are appointed under the Plan. Section 1129(a)(5) does not apply.

SECTION 1129(A)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(A)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Creditors will be paid in full on account of their claims. The Plan satisfies § 1129(a)(7).

SECTION 1129(A)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired. No classes are impaired and therefore all classes are conclusively presumed to accept the Plan.

SECTION 1129(A)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment. As discussed above, the IRS, which holds an administrative tax claim, has agreed to alternative treatment of its claim. Section 1129(a)(9) is satisfied.

SECTION 1129(A)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider." Because no classes are impaired, § 1129(a)(10) does not apply.

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SECTION 1129(A)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Plan is feasible. There are more than sufficient funds on deposit on the registry to pay creditors. As noted above, the Debtor's Monthly Operating Reports show that he earns sufficient income to continue making installment payments on his automobile and mortgage loans.

SECTION 1129(A)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date. To the Court's knowledge, UST fees are current. Section 1129(a)(12) is satisfied.

SECTION 1129(A)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(A)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(A)(15)

Section 1129(a)(15) prohibits individual debtors from retaining property unless certain minimum amounts are paid to creditors. Section 1129(a)(15) is satisfied because this is a surplus case in which creditors are being paid in full.

SECTION 1129(A)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan does not provide for the transfer of any property in contravention of applicable nonbankruptcy law. The Plan satisfies § 1129(a)(16).

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SECTION 1129(D)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes. No securities are issued under the Plan. The Plan satisfies § 1129(d).

III. Conclusion

Based upon the foregoing, the Plan is CONFIRMED. The Debtor shall submit (1) an order confirming the Plan and (2) an order authorizing the disbursements of the funds on deposit in the Court's registry (using Local Bankruptcy Rules Form **F 7067-1.1.ORDER.REGISTRY.FUND**) within seven days of the hearing. The Debtor must file a *Notice of Lodgment* of both orders. So that creditors may be paid as expeditiously as possible, any objection to the form of either order must be filed within 24 hours of the filing of the *Notice of Lodgment*. Notwithstanding Bankruptcy Rule 6004, both orders shall take effect immediately upon entry.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Debtor asserts that the capital gain from the sale of the Residence is approximately \$152,528. According to the Debtor, his tax basis in the Residence is \$2,522,115, based upon the following:

- 1) Land purchase and construction costs in the amount of \$2,092,500.
- 2) Various upgrades made during ownership, including:
 - a) Extension of rear patio (\$2,545);

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- b) Remodeling of master show (\$15,200);
- c) Upgrades to garage (\$2,475); and
- d) Upgrades of wood thresholds to marble (\$895).
- 3) Costs to repair damages, over and above insurance coverage:
 - a) Repair costs from 2011 fire in kitchen (\$96,500); and
 - b) Repair costs from 2015 flood (\$196,000).
- 4) Litigation fees incurred in disputes with trust deed lenders and insurer State Farm:
 - a) Lawsuit against first and second trust deed lenders filed in 2010 (\$12,000);
 - b) Lawsuit against Wells Fargo filed in 2013 (\$32,000);
 - c) Lawsuit against the third trust deed lender filed in 2017 (\$11,000); and
 - d) Lawsuit against State Farm in connection with the 2015 flood (\$40,000).

Per the Debtor's figures, subtracting the sum of the tax basis and one-time \$500,000 credit (\$3,022,115) from the net sales proceeds of \$3,174,642.94 yields the capital gain of \$152,528. The Debtor estimates that the combined taxable income of the Debtor and his wife for 2017 (including capital gains taxes) will be \$216,053; after accounting for taxes previously withheld, the Debtor estimates that he owes the IRS \$21,655, based upon a 15% tax rate for ordinary income and capital gains.

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

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2:17-24716 Leslie P Martinez and Enrique H Martinez

Chapter 7

#1.00 APPLICANT: TRUSTEE, HOWARD M. EHRENBERG

Hearing RE [29] and [30] re Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

7/11/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$653.61

Total Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Leslie P Martinez

Represented By
Sundee M Teeple
Craig K Streed

Joint Debtor(s):

Enrique H Martinez

Represented By
Sundee M Teeple
Craig K Streed

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

#100.00 HearingRE: [673] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) - Motion For Order (A) Approving Sale Of Property Free And Clear Of Liens, Claims And Interests; (B) Approving Payment Of Broker Commission; And (C) Granting Related Relief; Memorandum Of Points And Authorities And Declarations Of Lawrence Perkins And Thom Bluemel Support Thereof.

Docket 673

Tentative Ruling:

7/11/2018

Final Ruling:

For the reasons set forth below, the Sale Motion is GRANTED in its entirety. No opposition has been filed and there are no other bidders for the Property. Hearing on the Sale Motion is waived by the Court and the matter is determined on the briefs.

Key Sale Terms:

- 1) Proposed purchaser: Mai Thon Ly
- 2) Property for Sale: Vacant land located at 201 Mel Canyon Road, Duarte, CA 91010 (APN: 8602-018-005)
- 3) Purchase price: \$75,000

Pleadings Filed and Reviewed:

- 1) Motion for Order (A) Approving Sale of Property Free and Clear of Liens, Claims and Interests; (B) Approving Payment of Broker Commission; and (C) Granting Related Relief [Doc. No. 673] (the "Sale Motion")
 - a) Notice of Hearing on [Sale Motion] [Doc. No. 674]
 - b) Notice of Sale of Estate Property [Doc. No. 675]
 - c) Notice of Consent to [Sale Motion] [filed by Plan Administrator] [Doc. No. 679]
- 2) Los Angeles Country Treasurer and Tax Collector's Statement of Obligations in

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Response to [Sale Motion] [Doc. No. 677]

- 3) Notice of Consent to [Sale Motion] [filed by Plan Administrator Bradley D. Sharp]
[Doc. No. 679]

I. Facts and Summary of Pleadings

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

On June 9, 2016, the Court granted Liberty's application to employ Lawrence R. Perkins as Chief Restructuring Officer ("CRO"), with such employment effective as of March 28, 2016. Doc. No. 94.

On June 18, 2018, the Court confirmed a Plan of Liquidation (the "Plan"), proposed by Liberty's Official Committee of Unsecured Creditors (the "Committee"). Doc. No. 665. The Plan provides for the liquidation of Liberty's assets, with such liquidation to be overseen by a Plan Administrator. Bradley D. Sharp of Development Specialists, Inc. ("DSI") is presently serving as the Plan Administrator. Mr. Sharp has retained Pachulski Stang Ziehl & Jones LLP, the law firm that advised the Committee, to represent him in overseeing the liquidation.

Liberty seeks authorization to sell vacant land located at 201 Mel Canyon Road, Duarte, CA 91010 (APN: 8602-018-005) (the "Mel Canyon Property"), free and clear of liens, claims, and interests, to Mai Thon Ly, for \$75,000. Prior to September 13, 2016, Lowridge Place, LLC ("Lowridge"), an entity controlled by Lucy Gao, was the owner of record of the Mel Canyon Property. On September 13, 2016, the Court approved a stipulation (the "Turnover Stipulation," Doc. No. 215) executed by Liberty, the Committee, Lucy Gao, various entities controlled by Lucy Gao, and Benjamin Kirk. The Turnover Stipulation required the entity holding title to the Mel Canyon Property to convey the property to Liberty by quitclaim deed, and further provided that such entity released any and all claims it held to the Mel Canyon Property. Lucy Gao failed to comply with her obligations under the Turnover Stipulation to cause the entity holding title to the Mel Canyon Property to quitclaim the property to Liberty.

The Turnover Stipulation states that Mel Canyon LLC ("Mel Canyon"), not Lowridge, was the record owner of the Mel Canyon Property. It is unclear whether this statement was in error or whether the Mel Canyon Property was subsequently transferred from Mel Canyon to Lowridge. Whatever the circumstances, the Turnover

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Stipulation makes clear that all the properties referenced therein are to be transferred to Liberty, and that all the Gao-controlled entities referenced in the Turnover Stipulation relinquish any claims to such properties. The Court finds that as a result of the Turnover Stipulation, Liberty is now the beneficial owner of the Mel Canyon Property and has the right to prosecute the instant Sale Motion. The Court makes this finding notwithstanding Ms. Gao's failure to comply with her obligation to cause the Mel Canyon Property to be quitclaimed to Liberty.

A Preliminary Title Report conducted by Liberty showed that the Mel Canyon Property is encumbered by a deed of trust recorded in 1966 (the "1966 DOT"). The 1966 DOT secures indebtedness of \$15,300. Liberty asserts that the 1966 DOT likely should have been reconveyed, because the Mel Canyon Property was purchased approximately half a century later with no reference to the obligation. Liberty has sent a letter to the trustor, trustee, and beneficiary related to the 1966 DOT in an attempt to clear title, but has not yet received a response. In the event the issue is not resolved prior to the hearing, Liberty requests that the obligation secured by the 1966 DOT attach to the sale proceeds with the same extent, validity, and priority it was entitled to prior to sale.

The Los Angeles County Treasurer and Tax Collector (the "LA Tax Collector") asserts an administrative tax claim, in the estimated amount of \$6,484.89, and a secured tax claim, in the estimated amount of \$9,164.26, against the Mel Canyon Property. The LA Tax Collector asserts that its claims should be paid from escrow.

The Plan Administrator consents to the sale, provided that the net sales proceeds are turned over to the Plan Administrator through escrow, and provided that the Plan Administrator's written approval of the closing statement is required.

II. Findings and Conclusions

Section 363(b) permits debtors to sell estate property out of the ordinary course of business, subject to court approval. Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Liberty has articulated a sufficient business justification for the sale. The sale is consistent with Liberty's confirmed liquidating Plan, will free Liberty of vacant land that continues to accrue tax obligations, and will generate substantial proceeds.

The Court notes that the sales price of \$75,000 is lower than the price at which the Mel Canyon Property was initially listed—\$149,000. Thom Bluemel, the real estate

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broker who marketed the Mel Canyon Property, testifies that there was limited interest in the property because it is located on a fault line, making development extremely difficult and risky. The Court finds that the \$75,000 sales price is fair and reasonable.

Section 363(f)(3) provides that the Court may authorize a sale free and clear of liens, if the "price at which such property is to be sold is greater than the aggregate value of all liens on such property." Regardless of the validity of the 1966 DOT, the sales price of \$75,000 exceeds the \$15,300 obligation secured by the 1966 DOT. The Court approves the sale free and clear of liens, claims, and interests. The 1966 DOT shall attach to the sales proceeds with the same extent, validity, and priority it was entitled to prior to sale.

Having reviewed the declaration of Thom Bluemel, the real estate broker who marketed the Mel Canyon Property, the Court finds that purchaser Mai Thon Ly is entitled to the protections of §363(m).

The Court finds that the LA County Tax Collector holds an administrative tax claim, in the approximate amount of \$6,484.89, and a secured tax claim, in the approximate amount of \$9,164.26, against the Mel Canyon Property. (The amounts are an approximation because daily interest continues to accrue.) The tax claims shall be paid to the LA County Tax Collector directly from escrow. The exact amount of interest to which the LA County Tax Collector is entitled shall be calculated based upon the date that the funds are distributed to the Tax Collector from escrow. Liberty shall cooperate with the Tax Collector in the preparation of the proposed order to insure that the precise amounts to which the Tax Collector is entitled are reflected therein, and the proposed order submitted by Liberty shall be approved as to form by the Tax Collector, pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Net sales proceeds shall be turned over to the Plan Administrator through escrow, and the Plan Administrator's written approval of the closing statement is required.

Liberty is authorized to pay real estate brokerage commissions, in the total amount of \$4,500, from the sales proceeds. Pursuant to Bankruptcy Rule 6004(f), Liberty's representatives are authorized to execute whatever documents and instruments are necessary to effectuate the transfer of the Mel Canyon Property. Liberty is authorized to retain in an escrow account an appropriate amount of the sales proceeds on account of the disputed 1966 DOT. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

III. Conclusion

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Based upon the foregoing, the Sale Motion is GRANTED in its entirety. Liberty shall submit an order incorporating this final ruling by reference within seven days of the hearing. The order shall be approved as to form by the Plan Administrator and the LA County Tax Collector pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:18-17345 Fu Kong Inc.

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#1.00 Hearing re: Motion to Use Cash Collateral (2) Granting adequate protection to secured creditors

Docket 11

Tentative Ruling:

7/13/2018: Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Motion on an interim basis, and hold a further interim hearing on the continued use of cash collateral on **August 9, 2018 at 10:00 a.m.** The Debtor is authorized to use cash collateral through and including August 9, 2018, as outlined in the Budget and consistent with this tentative ruling. In granting the Motion on an interim basis, the Court finds that the Secured Creditor's interest in the collateral is not adequately protected by an equity cushion in the collateral; therefore, the Debtor shall make an adequate protection payment to the Secured Creditor in the amount of \$6,780.32, the amount of the monthly payment on the Loan. *See* Waye Declaration, Exhibit 27. The Debtor is not authorized to use cash collateral to make payments to Lillian or George Hsu, or to pay pre-petition wages or pre-petition utilities. The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **July 26, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **August 2, 2018**.

Pleadings Filed and Reviewed:

- 1) Motion for Order: (1) Authorizing Debtor to Use Cash Collateral; (2) Granting Adequate Protection to Secured Creditors (the "Motion") [Doc. No. 11]
- 2) Application for Order Setting Hearing on Shortened Notice (the "Application") [Doc. No. 12]
 - a) Order Setting Hearing on Cash Collateral Motion [Doc. No. 13]
 - b) Declaration of Kelvin J. Lo RE Telephonic Notice and Service of Order Setting Hearing on Cash Collateral Motion [Doc. No. 16]

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- 3) Limited Opposition of the United States Trustee to the Motion (the "UST Opposition") [Doc. No. 17]
- 4) Opposition of Creditor, Cathay Bank to the Motion (the "Opposition") [Doc. No. 18]
 - a) Notice of Objection by Secured Creditor, Cathay Bank, to Use of Cash Collateral (the "Objection") [Doc. No. 3]

I. Facts and Summary of Pleadings

Fu Kong Inc. (the "Debtor"), filed a voluntary Chapter 11 petition on June 26, 2018 (the "Petition") [Doc. No. 1]. The Debtor is an importer, wholesaler, and designer of women's apparel under the brands "Lu Lu" and "Shu Shu." The Debtor has 29 years of experience in the industry and has created designs and sold women's apparel under various labels to high end retailers such as Nordstrom, Saks, Lord & Taylor, Dillard's, Macy's, and Stein Mart. Lillian Yu-Li Hsu is the Debtor's president, sole shareholder, and sole director; George Hsu is the Debtor's secretary. The Debtor has six employees including Lillian and George Hsu.

The Petition was precipitated by the Debtor's recent cash flow problems due to a slowdown in business in the last three to six months, and a delayed shipment due to production issues in China which delay resulted in a number of the Debtor's customers to cancel orders. The Debtor's ability to generate income was also interfered with for a few weeks due to the father of George Hsu having an emergency health issue.

On June 1, 2018, the Debtor's secured lender, Cathay Bank (the "Secured Lender"), filed a lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC070342 (the "State Court Action"), for failing to make payments on a business loan, seeking possession of the Debtor's assets and appointment of a receiver, foreclosure of the commercial warehouse leased by the Debtor, and foreclosure of Lillian and George Hsu's principal residence. Other of the Debtor's creditors have also recently began attempting to collect debts.

The Motion

On July 9, 2018, the Debtor filed the "Motion for Order: (1) Authorizing Debtor to

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Use Cash Collateral; (2) Granting Adequate Protection to Secured Creditors" (the "Motion") [Doc. No. 11]. The Debtor concurrently filed the "Application for Order Setting Hearing on Shortened Notice" [Doc. No. 12], which the Court granted pursuant to the "Order Setting Hearing on Cash Collateral Motion" [Doc. No. 13] entered on July 9, 2018. On July 11, 2018, the Debtor filed the "Declaration of Kelvin J. Lo RE Telephonic Notice and Service of Order Setting Hearing on Cash Collateral Motion" [Doc. No. 16].

The Secured Lender is the holder of a promissory note in the total current amount of \$1,574,163.00 (the "Loan"), secured by the Debtor's assets including inventory and accounts receivable. The Secured Lender's Loan is also secured by two real properties: (1) the Loan is secured by a second deed of trust on the Debtor's principals' residence located at 1324 N. Vosburg Dr., Azusa, CA 91702 (the "Vosburg Property"), which was appraised at \$1.225 million on September 20, 2017, with approximately \$975,000.00 in equity to satisfy the Loan; and (2) the Loan is secured by a second deed of trust on the industrial warehouse leased by the Debtor located at 2455 Lee Avenue, S. El Monte, CA 91733 (the "El Monte Property"), which is valued at \$2.4 million, with approximately \$1.075 million in equity. Based on these figures, the Secured Lender is protected by equity in the approximate amount of \$2.05 million on the \$1,574,163.00 principal balance of the Loan.

The Debtor has four additional working capital lenders that each have UCC-1 security interests in the Debtor's assets and accounts receivable: (1) Funding Metrics, LLC; (2) Landing Club Corp; (3) Wide Merchant Investment Inc.; and (4) Yellowstone Capital West, LLC (collectively, the "Capital Secured Creditors").

The Motion requests an order authorizing the Debtor to use cash collateral for payment of its ongoing operating expenses. These expenses include pre- and post-petition wages to the Debtor's employees who are critical to the Debtor's ongoing business operations, and an adequate assurance payment to Southern California Edison for the provision of post-petition electricity service. Pre-petition, the Debtor had \$15,730.71 in its Chase bank account, which funds are being deposited into the Debtor's debtor-in-possession account. Beginning in September or October 2018, the Debtor projects up to \$100,000.00 to \$200,000.00 in monthly gross revenue at a 15% to 20% profit margin through selling custom fabrics. The Debtor's six-month "Budget" is attached as Exhibit A to the Motion. The Budget represents the Debtor's best estimate of the necessary business expenses; however, because the needs of the

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business may fluctuate, the Debtor requests authority to deviate from the total expenses contained in the Budget by no more than 10% and to deviate by expense category without the need for further court order.

The Motion contends that the use of cash collateral is necessary to continue business operations. The Debtor states that, based on the figures set forth above, the Secured Creditor is adequately protected by equity in the Vosburg Property and the El Monte Property, and has an equity cushion of approximately 30.2%. Additionally, the Debtor states that the Secured Creditor and the Capital Secured Creditors are adequately protected by the Debtor's continued business operations because the Debtor will continue to generate revenue and preserve the business.

The UST Opposition

On July 11, 2018, the United States Trustee ("UST") filed the Limited Opposition to the Motion (the "UST Opposition") [Doc. No. 17]. The UST does not oppose approval of the use of cash collateral, but notes that the Motion mentions payments of employee wages and payments for utility services. To the extent that any of the payments of employee wages or payments to Southern California Edison are for pre-petition payroll or pre-petition utilities, separate motions and court approval will be required before any such pre-petition debts may be paid.

The Opposition

On July 12, 2018, the Secured Lender filed the "Opposition of Creditor, Cathay Bank to [the Motion]" (the "Opposition") [Doc. No. 18]. The Secured Lender opposes the Motion. According to the Opposition, as of June 29, 2018, the total owing on the Loan is \$1,589,689.04. "Declaration of Margaret Waye" ("Waye Declaration") [Doc. No. 18] at ¶ 3; *cf.* "Declaration of Lillian Hsu" ("Hsu Declaration") [Doc. No. 11] at ¶ 10. Both the Vosburg Property and the El Monte Property are owned by Lillian and George Hsu. Opposition at 3. In addition to the Loan to the Debtor, the Secured Creditor has made two additional loans to the Hsus, personally: a home equity line of credit secured by a first deed of trust on the Vosburg Property, and a commercial real estate loan secured by a first deed of trust on the El Monte Property. Waye Declaration at ¶ 25. The Debtor defaulted on its loan after failing to make the payment due on February 18, 2018. The Loan matured on June 18, 2018. On June 1, 2018, the Secured Creditor commenced the State Court Action, and on June 5, 2018,

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the State Court entered a temporary restraining order and an order to show cause re: appointment of receiver. *Id.* at ¶ 9; *see also id.*, Exhibit 6 (State Court Order Re: TRO and OSC). During the period from the issuance of the TRO on June 5, 2018, through June 26, 2018, the Secured Creditor experienced significant difficulties in its attempts to get the Debtor's compliance with the TRO. *See generally id.* at ¶¶ 11–25. Such difficulties included, among other things, multiple delays by the Debtor's principals of the field examination of the Debtor's records, *id.* at ¶¶ 11–18, and the Debtor's failure to produce certain documents requested by the Secured Creditor, *id.* at ¶¶ 18–22. The hearing on the State Court OSC was set for June 27, 2018, and on June 26, 2018, the State Court entered its tentative ruling granting the receivership and related relief. *Id.* at ¶ 10; *see also id.*, Exhibit 7 (State Court Tentative Ruling). The Debtor filed the Petition shortly thereafter.

The Opposition raises the following issues regarding the Debtor's Schedules:

- (1) Schedule A/B purports to value inventory at \$1,400,000.00, but lists the cost of inventory as "0". Opposition at 4.
- (2) On Schedule D, the value of the Secured Creditor's collateral is given as \$15,265.00, and the Secured Creditor questions whether this is the true value of the Debtor's inventory or an attempt to deny the Secured Creditor's security interest in the inventory collateral. *Id.*
- (3) Schedule A/B, ¶ 11, lists the amount of accounts receivable as \$3,250.00; however, in written financial statements provided by the Debtor to the Secured Creditor prepetition, the Debtor represented that as of December 31, 2017, it had \$1,200,370.78 in accounts receivable. Way Declaration at ¶ 7; *see also id.*, Exhibit 5.
- (4) The Debtor's Statement of Financial Affairs, Part 1, states that the gross sales of the Debtor in 2017 totaled "\$1,200,00.00" [*sic*]; however, in the 2017 Financial Statements provided to the Secured Lender, the gross sales of the Debtor were stated as \$6,250,267.00. Opposition at 4.
- (5) The Motion states that the Debtor has "temporary cash flow problems but is solvent;" the Debtor's summary of assets, however, shows that the Debtor has \$1,459,729.00 in assets, and \$4,550,870.38 in debts. *Id.*

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The Opposition further contends that the Budget is "fictional and unrealistic," based on the disparity between the Budget's projections and the Debtor's past performance. The Debtor's 2016 tax return shows that the Debtor had gross sales in the amount of \$6,167,200.00, and reported cost of goods sold of \$4,783,280.00 (77.6% cost of goods). Way Declaration, Exhibit 4. The Debtor's unaudited 2017 Financial statements show that the Debtor had gross sales in the amount of \$6,250,267.00, and reported cost of goods sold of \$4,898,057.00 (78.4% cost of goods). *Id.*, Exhibit 5. In contrast, the Budget projects gross sales of \$855,000.00, with a projected cost of goods sold of \$278,000.00 (only 32.5% of the projected gross sales). The Opposition contends that the Debtor's projection that future goods purchased will sell for three times what they cost is completely unrealistic. The Opposition raises additional issues regarding the assumption in the Budget that the Debtor will be able to obtain new credit, as well as significant discrepancies between the Debtor's net profit before taxes in 2016 and 2017 (.9% and 1.7% of gross sales, respectively), and the projected net profit before taxes of 30.7% of gross sales in the Budget. Furthermore, the Opposition contends that the Budget is not supported by documentation or business records, which the Secured Creditor argues—based on the field inspection performed by the Secured Creditor on June 15, 2018, pursuant to the TRO, *see* Way Declaration at ¶¶ 16–22—is a result of the failure of the Debtor to maintain normal business records. Specifically, the Secured Creditor discovered that the Debtor "maintained no general ledger and that no accounts receivable agings were available, no inventory agings were available, and the Debtor's accounts payable agings appear[ed] to be highly inaccurate" Opposition at 6; Way Declaration at ¶¶ 16, 20, 21, 22. Given the absence of these financial records, the Secured Creditor contends that, when the issue of adequate protection is raised, the Debtor will be unable to support its projections with sufficient documentary evidence.

Lastly, the Opposition contends that the Secured Creditor's interest in the collateral is not adequately protected. The Secured Creditor disputes the Debtor's valuation of the Vosburg Property and El Monte Property. Based on the Secured Creditor's appraisal of the Vosburg Property on May 7, 2018, the Vosburg Property has a value of \$978,000.00, leaving gross equity in the amount of \$696,258.71 (including a reduction for delinquent property taxes). Way Declaration at ¶ 25; *id.*, Exhibit 21 (Secured Creditor's Appraisal of the Vosburg Property). Based on the Secured Creditor's appraisal of the El Monte Property on May 8, 2018, the El Monte Property has a value of \$1,630,000.00, leaving gross equity in the amount of

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\$571,919.35 to secure the Loan. *Id.* at ¶ 25; *id.*, Exhibit 25 (Secured Creditor's Appraisal of the El Monte Property). Thus, according to the Secured Creditor's calculations, the guarantees of the Loan are secured by real property with total available equity of \$1,268,278.06, while the principal and interest balance on the Loan as of June 29, 2018, totals \$1,589,689.04, leaving \$321,410.98 unsecured by real property equity. The Opposition argues that the Debtor's valuation of the Vosburg property is based on an unrealistic appraisal, which is based upon older and more distant comparables than the Secured Creditor's appraisal of the Vosburg Property. Furthermore, the Opposition points out that the Debtor's valuation of the El Monte Property is based upon a listing price, which does not establish the value of the El Monte Property, *i.e.* what the property would actually sell for. Lastly, the Opposition states that the Debtor's valuation of the Vosburg Property is not supported by the declaration of an appraiser, and there is also no declaration in support of the value of the El Monte Property.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

For the reasons set forth below, the Court finds it appropriate to GRANT the Motion on an interim basis, and to CONTINUE the hearing on the Motion in order to allow time to better assess whether the Debtor will be able to meet its financial obligations. In granting the Motion on an interim basis, the Court finds that the

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Secured Creditor's interest in the collateral is not adequately protected by an equity cushion in the collateral; therefore the Court finds that the Debtor must make adequate protection payment in the amount of \$6,780.32, the amount of the monthly payment on the Loan. *See* Waye Declaration, Exhibit 27. The Court will hold a further hearing on the interim use of cash collateral on **August 9, 2018 at 10:00 a.m.** The Court has questions regarding certain line item expenses in the Budget which lack sufficient detail, and particularly whether the Budget expense for "Wages" in the amount of \$26,000.00 includes insider compensation.

The Budget lacks sufficient detail for certain line item expenses, and the Debtor has provided little information to support the income projections reflected in the Budget. First, the Budget includes an expense labeled "Warehouse/Office Rental" in the amount of \$10,000.00 per month, presumably for the Debtor's lease of the El Monte Property; however, based on the "Listing Agreement" for the El Monte Property, *see* Motion, Exhibit C, and the representations by the Secured Creditor in the Opposition, it appears that the El Monte Property is owned by the Debtor's principal, Lillian Yu-Li Hsu, and her husband, George Hsu, as joint tenants. Given this apparent relationship, and in the absence of any information regarding the fair market rental value of the El Monte Property, the Court requires further information in order to ascertain whether the "Warehouse/Office Rental" is an arm's length transaction. The Budget lists an additional expense for "Travel Expense" in the amount of \$6,000.00 for the months of July and October, and \$2,000.00 for the month of August; however, the Debtor has not provided any information regarding the necessity of this expense or the relationship to the business. Another category of expenses in the Budget is for "Auto Expense" in the amount of \$800.00 per month, but the Debtor has not provided any information regarding the nature of this expense to enable the Court to determine, for example, whether funds from the Debtor are being used to pay for the personal vehicle of the Debtor's principal. Additionally, as outlined by the Secured Creditor in the Opposition and based on the evidence submitted in support thereof, there are significant disparities between the Budget projections and the past performance of the Debtor. Coupled with the absence of any documentary evidence to support the projections in the Budget, such disparities raise questions about whether the Budget projections are realistic. These are only a few among many ambiguities in the Budget that require additional detail. Therefore, the Court finds that it appropriate to continue the Motion to a further interim hearing on **August 9, 2018 at 10:00 a.m.**

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Under 11 U.S.C. § 101, and in relation to a corporation, the term "insider" includes the director, officer, or person in control of the debtor, as well as any relatives of the director, officer, or person in control of the debtor. 11 U.S.C. § 101(31)(B). Lillian Yu-Li Hsu is the Debtor's president and sole shareholder, which qualifies as an insider under the Bankruptcy Code. George Hsu, the husband of the Debtor's principal and the Debtor's secretary, also qualifies as an insider under the Bankruptcy Code. Under Local Bankruptcy Rule ("LBR") 2014-1(a), the Debtor is required to file a Notice of Setting / Increasing Insider Compensation in order to make payments to the Debtor's insiders as defined under § 101(31). Here, it is not clear whether the Budget includes payments to Lillian or George Hsu. *See* Motion, Ex. 1. The Debtor has not filed a Notice of Setting / Increasing Insider Compensation or complied with the procedures of LBR 2014-1(a). Therefore, the Debtor is not authorized to use cash collateral to make payments to Lillian or George Hsu.

Lastly, as stated in the UST Opposition, to the extent that any of the payments of employee wages or payments to Southern California Edison are for pre-petition payroll or pre-petition utilities, separate motions and court approval will be required before any such pre-petition debts may be paid. Therefore, the Debtor is not authorized to use cash collateral to pay pre-petition wages or pre-petition utilities.

III. Conclusion

Based on the foregoing, the Court GRANTS the Motion on an interim basis, and CONTINUES the hearing on the Motion to **August 9, 2018 at 10:00 a.m.** The Debtor is authorized to use cash collateral through and including August 9, 2018, as outlined in the Budget and consistent with this tentative ruling. In granting the Motion on an interim basis, the Court finds that the Secured Creditor's interest in the collateral is not adequately protected by an equity cushion in the collateral; therefore, the Debtor shall make an adequate protection payment to the Secured Creditor in the amount of \$6,780.32, the amount of the monthly payment on the Loan. The Debtor is not authorized to use cash collateral to make payments to Lillian or George Hsu, or to pay pre-petition wages or pre-petition utilities. The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **July 26, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **August 2, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

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Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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2:18-17220 iLabPharma, Inc.

Chapter 7

#2.00 HearingRE: [22] Emergency motion Emergency Motion of Chapter 7 Trustee for Order (1) Dismissing Case Effective Immediately Upon Entry of the Order Pursuant to 11 U.S.C. § 707(a), (2) Authorizing the Trustee to Reimburse Costs Incurred by Her Firm and to Trustee Resources Group from Secured Creditor's Cash Collateral, and (3) Authorizing Trustee to Return all Excess Proceeds Held and/or Received by Trustee to Debtor; Memorandum of Points and Authorities; and Declaration of Elissa D. Miller in Support Thereof (Miller (TR), Elissa)

Docket 22

Tentative Ruling:

7/12/2018

Tentative Ruling:

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Emergency Motion to Dismiss in its entirety.

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Chapter 7 Trustee for Order (1) Dismissing Case Effective Immediately Upon Entry of the Order Pursuant to 11 U.S.C. §707(a), (2) Authorizing the Trustee to Reimburse Costs Incurred by Her Firm and to Trustee Resources Group from Secured Creditor's Cash Collateral, and (3) Authorizing Trustee to Return All Excess Proceeds Held and/or Received by Trustee to Debtor [Doc. No. 22] (the "Emergency Motion to Dismiss")
 - a) Order Setting Hearing on Trustee's Emergency Motion to Dismiss Chapter 7 Case [Doc. No. 21]

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") seeks, on an emergency basis, an order (1) dismissing this case effective immediately upon entry, (2) authorizing reimbursement of costs incurred by the Trustee's firm and Trustee Resources Group, in the total amount of \$1,841.79, from the cash collateral of AmerisourceBergen Drug

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iLabPharma, Inc.

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Corporation ("Amerisource"), and (3) authorizing the Trustee to, upon dismissal of the case, return to the Debtor all cash the Trustee is currently holding (approximately \$9,377.44), less amounts paid as reimbursement.

iLabPharma, Inc. (the "Debtor") commenced a voluntary Chapter 7 petition on June 21, 2018. The Debtor operated a retail pharmacy open to the public in Lancaster, California, and a wholesale pharmacy in Palmdale, California that serviced nursing homes, hospices, and similar healthcare facilities. At both sites, the Debtor stored a substantial amount of drug inventory (the "Drug Inventory"), including controlled substances locked in safes.

The Drug Inventory, and other assets of the Debtor, are subject to Amerisource's lien. Amerisource holds a claim against the estate in the approximate net amount of \$120,000. The Trustee has determined that the value of the Drug Inventory and other assets is likely less than the amount of Amerisource's claim. Amerisource has not agreed to a carve-out from the sale of the Drug Inventory, and the Trustee has no funds not subject to Amerisource's lien to continue to safeguard the Drug Inventory and the Debtor's patient records.

According to the Trustee, the costs, burdens, and liabilities associated with regulatory requirements relating to the Drug Inventory and patient records far exceed the estate's available assets. For example, to keep the alarm system working at the facilities where the Drug Inventory is stored, the Trustee will be required to pay approximately \$600 to Southern California Edison and \$59.99 to the alarm company by no later than July 16, 2018. Pursuant to California regulations, before the Drug Inventory can be sold, returned, or destroyed, the controlled substances must be inventoried by a licensed pharmacist, and the pharmaceuticals that are not controlled substances must be inventoried by a pharmacy technician. In addition, the Debtor's patient records must be maintained by a licensed pharmacist.

On June 29, 2018, the Court authorized the Trustee to sell two of the Debtor's vehicles to CarMax, Inc. ("CarMax"). *See* Doc. Nos. 15–16. However, as a result of title issues with one of the vehicles, CarMax is still inspecting the vehicles and has not delivered any funds to the Trustee.

Based upon the lack of resources available to the estate to continue to safeguard the Drug Inventory and patient records, the Trustee requests that the case be dismissed immediately. The Trustee has conferred with the United States Trustee (the "UST"), who does not oppose dismissal.

The Trustee seeks authorization to reimburse her law firm and Trustee Resources Group, in the amount of \$1,841.79, for out-of-pocket costs that have been incurred

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safeguarding the Drug Inventory. Such reimbursement would come from the \$9,377.44 in Amerisource's cash collateral that the Trustee is currently holding.

II. Findings and Conclusions

Section 707(a) provides that a Chapter 7 petition may be dismissed "only for cause." In *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008), the court observed that the "term 'for cause' is defined in the Bankruptcy Code only by way of a list of three examples—unreasonable delay prejudicial to creditors, nonpayment of filing fees, and not filing schedules—that is plainly incomplete." The *Hickman* court explained that courts should examine the totality of the circumstances in determining whether "cause" under §707(a) is present. *Id.* at 840.

Examining the totality of the circumstances, the Court finds that there is ample cause for dismissal of this case. The Trustee has spent 53.7 hours attempting to administer the Drug Inventory. As a result of Amerisource's refusal to agree to a carve-out which would permit the Trustee to sell the Drug Inventory, the estate has no resources available to continue to comply with complex regulations governing the storage, sale, or disposal of the Drug Inventory. The Trustee's investigation has established that it is unlikely that the Drug Inventory can be sold for more than the amount of Amerisource's secured claim. Thus, even if the case were to continue, the likelihood of a distribution to unsecured creditors is negligible. As the Debtor is a corporation that is not entitled to a discharge, there is no reason for the Debtor to remain in bankruptcy if there are no assets for the Trustee to administer.

The Trustee does not cite a statutory basis for her request to reimburse her law firm and Trustee Resources Group from Amerisource's cash collateral. However, the Court notes that §506(c) authorizes the Trustee to surcharge a secured creditor's cash collateral to pay the "necessary costs and expenses of preserving, or disposing of," such collateral. The expenses incurred by the Trustee to safeguard the Drug Inventory have benefited Amerisource by reducing the likelihood that the Drug Inventory would be stolen. The Court finds that it is appropriate to surcharge Amerisource so that the Trustee's law firm and Trustee Resources Group may be reimbursed for modest out-of-pocket costs of \$1,841.79.

Based upon the foregoing, the Court is prepared to grant the Emergency Motion to Dismiss in its entirety, subject to consideration of any opposition which may be presented at the hearing.

Party Information

Debtor(s):

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iLabPharma, Inc.

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Represented By
Joshua R Driskell

Trustee(s):

Elissa Miller (TR)

Represented By
Steven Werth

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2:18-13645 Andrew James Poulias

Chapter 7

#1.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Hyundai Accent, VIN KMHCT4AE2FU887569 . (Wang, Jennifer)

Docket 13

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Andrew James Poulias

Represented By
Danny K Agai

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:18-15080 Mark C. Wasilow and Elizabeth Wasilow

Chapter 7

#2.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Ford Fusion, VIN 3FA6P0PU1FR253437 . (Wang, Jennifer)

Docket 12

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Mark C. Wasilow and Elizabeth Wasilow

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Mark C. Wasilow

Represented By
Ronald L Brownson

Joint Debtor(s):

Elizabeth Wasilow

Represented By
Ronald L Brownson

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:18-15324 Keith Alan Dennis

Chapter 7

#3.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Ford Mustang, VIN 1FA6P8CF1H5277538 . (Wang, Jennifer)

Docket 15

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Keith Alan Dennis

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Keith Alan Dennis

Pro Se

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:18-16447 Jason T. Lin

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 6840 WALTHALL WAY, PARAMOUNT, CA 90723 . (Cruz, Joseph)

Docket 8

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on April 13, 2018. An unlawful detainer judgment against the Debtor was entered on the the complaint for unlawful detainer on June 1, 2018. "Declaration of George Franzen" [Doc. No. 8] at ¶ 7.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

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Jason T. Lin

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The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jason T. Lin

Represented By
Michael Y Lo

Trustee(s):

David M Goodrich (TR)

Pro Se

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2:18-16221 Alejandro Lopez

Chapter 7

#5.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: 1HGC R2F5 8HA1 72382 .

Docket 9

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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Hearing Room 1568

10:00 AM

CONT... Alejandro Lopez

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Alejandro Lopez

Represented By
Omar Zambrano

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:18-15461 Jessica Cabrera

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2008 Scion TC .

Docket 9

Tentative Ruling:

7/13/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel,

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the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jessica Cabrera

Represented By
Harout G Bouldoukian

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:10-12711 Diana Avanesova

Chapter 7

Adv#: 2:10-01846 CITIBANK, N.A. v. Avanesova

#1.00 Hearing re [32] Appearance and Examination of Judgment Debtor Diana Avanesova
aka Diana Avanesian

fr. 5-16-18

Docket 0

Tentative Ruling:

7/16/2018

Appearances required.

Party Information

Debtor(s):

Diana Avanesova

Represented By

Nazareth V Jansezian - DISBARRED -

Defendant(s):

Diana Avanesova

Pro Se

Plaintiff(s):

CITIBANK, N.A.

Represented By

Jennifer Witherell Crastz

Jennifer Witherell Crastz

Raffi Khatchadourian

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01115 Goodrich v. Shanghai Jingtong International Trading Co.

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01115. Complaint by David M. Goodrich against Shanghai Jingtong International Trading Co.. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 8-15-17; 10-17-17

Docket 1

Tentative Ruling:

7/16/2018

On June 25, 2018, Plaintiff submitted a *Request for Entry of Default*. The Court declined to enter Defendant's default, because the *Request for Entry of Default* did not contain sufficient information to allow the Court to determine whether Defendant had been properly served. Plaintiff has subsequently submitted all the required information—including a copy of the Complaint, as translated into Chinese, that was served upon the Defendant, and the documents showing compliance with the international treaty governing service upon a foreign corporation.

Plaintiff states that it intends to proceed with obtaining a default, but states that it may take an additional six months for Plaintiff to insure that Defendant has been properly served. Plaintiff requests that a continued Status Conference be conducted in six months.

Pursuant to Plaintiff's request, a continued Status Conference shall take place on **January 15, 2019, at 10:00 a.m.** Plaintiff shall file a Status Report by no later than fourteen days prior to the hearing. The Court will enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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CONT... Shasa USA LLC

Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapt v. CELLCO Partnership

#3.00 Status HearingRE: [1] Adversary case 2:18-ap-01097. Complaint by John J. Menchaca, Solely in his Capacity as Chapter 7 Trustee for the Bankruptcy Estate of JW Wireless, Inc. against CELLCO Partnership dba Verizon Wireless, a Delaware limited partnership, BJ Mobile, Inc., a California corporation, JETWORLD, Inc., a California corporation, JW Wireless OKC, an Oklahoma limited liability company, JWK Management, Inc., a California corporation, JETSTAR Auto Sports, Inc., a California corporation, Shaigan Ben Her, an individual, Lea Young Lee, an individual, Joan Yu, an individual, Chu Feng Yu, an individual, Carolyn Rhyoo, an individual. (Charge To Estate). with Adversary Cover Sheet and Summons and Notice of Status Conference Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Eastmond, Thomas)

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendants Jetworld, Inc., Jetstart Auto Sports, Inc., and Lea Young Lee have timely demanded a jury trial in this avoidance action, have not filed proofs of claim against the estate, and do not consent to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendants are entitled to a jury trial before the District Court. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."); Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only if the parties consent).
- 2) All proceedings through and including the Pretrial Conference will take place before the Bankruptcy Court. After the Pretrial Conference has been completed, this action will be transferred to the District Court, which will conduct the jury

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CONT...

JW Wireless Inc.

Chapter 7

trial. *See generally Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 787–88 (9th Cir. 2007) (providing that where a right to a jury trial exists, the Bankruptcy Court retains jurisdiction to hear and determine all pretrial matters, and the action should be transferred to the District Court only once it has reached the trial stage).

- 3) The litigation deadlines previously ordered shall continue to apply, as follows:
- a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel’s responsibility to check the Judge’s self-calendaring dates, posted on the Court’s website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court’s Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:

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JW Wireless Inc.

Chapter 7

- i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- 4) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.
 - 5) With respect to Defendant JWK Management, Inc., which has been served but which has not filed an Answer, Plaintiff shall file a Motion for Default Judgment by no later than **August 31, 2018**.
 - 6) With respect to Defendant Carolyn Rhyoo, who has not been located for service, Plaintiff shall obtain an *Alias Summons* and shall cause Defendant Rhyoo to be served by no later than **August 17, 2018**.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning

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CONT... JW Wireless Inc.
the matter to mediation.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By
Michael Y Lo

Defendant(s):

CELLCO Partnership dba Verizon	Pro Se
BJ Mobile, Inc., a California	Pro Se
JETWORLD, Inc., a California	Pro Se
JW Wireless OKC, an Oklahoma	Pro Se
JWK Management, Inc., a California	Pro Se
JETSTAR Auto Sports, Inc., a	Pro Se
Shaigan Ben Her, an individual	Pro Se
Lea Young Lee, an individual	Pro Se
Joan Yu, an individual	Pro Se
Chu Feng Yu, an individual	Pro Se
Carolyn Rhyoo, an individual	Pro Se

Plaintiff(s):

John J. Menchaca, Solely in his

Represented By

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CONT... JW Wireless Inc.

Chapter 7

Thomas J Eastmond

Trustee(s):

John J Menchaca (TR)

Represented By
Robert P Goe

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10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#4.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 3-13-18; 5-15-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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10:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#5.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

fr. 3-13-18; 5-15-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

fr. 1-16-18; 1-17-18; 3-13-18; 5-15-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 10-2-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

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CONT... Green Jane Inc

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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Hearing Room 1568

10:00 AM

2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

#7.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01407. Complaint by Moysey Chernyavsky against Michael Dekhtyar. willful and malicious injury)) (Havkin, Stella)

Docket 1

***** VACATED *** REASON: CONTINUED 7-18-18 AT 10:00 A.M.**

Tentative Ruling:

11/13/2017

Tentative Ruling:

Defendant states that he does not consent to entry of a final judgment by the Bankruptcy Court. However, this non-dischargeability action is a core proceeding in which the Bankruptcy Court has authority to enter final judgment even absent the Defendant's consent. Therefore, final judgment in this matter will be entered by the Bankruptcy Court.

Plaintiff and Defendant having submitted Unilateral Status Reports, the Court ORDERS that the dates previously ordered shall apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is 12/14/2017.
- 2) The last day to disclose expert witnesses and expert witness reports is 2/28/2018.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is 3/30/2018.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is 4/17/2018. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is 4/24/2018. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on

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2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC.

#8.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

FR. 5-15-18

Docket 1

Tentative Ruling:

7/16/2018

On February 2, 2018, Margaret Tully Imhoff ("Plaintiff"), proceeding *in pro per*, commenced this action to discharge \$166,102.19 in student loan indebtedness, on the grounds of undue hardship pursuant to §523(a)(8). Defendants Educational Credit Management Corporation ("ECMC") and the United States Department of Education ("Education") have both noticed motions to compel the Plaintiff to respond to written discovery for August 16, 2018. Both Motions allege that notwithstanding multiple extensions, Plaintiff failed to respond to written discovery and failed to respond to the Defendants' requests to meet and confer regarding discovery.

In connection with this Status Conference, ECMC and Education filed Unilateral Status Reports. Both Status Reports state that Plaintiff failed to contact the Defendants to prepare a Joint Status Report. On July 6, 2018, the Court issued an *Order to Comply* [Doc. No. 27], requiring Plaintiff to file a Unilateral Status Report. Plaintiff has taken no action in response to the *Order to Comply*.

By separate order, the Court will require Plaintiff to appear and show cause, if any there be, why this action should not be dismissed for failure to prosecute and failure to comply with the Court's orders, pursuant to Civil Rule 41(b). The hearing on the Order to Show Cause shall take place on **August 16, 2018, at 10:00 a.m.**, concurrently with the hearings on the motions to compel filed by the Defendants. The briefing schedule on the Order to Show Cause will be set forth in a separate order.

The litigation deadlines previously ordered by the Court shall continue to apply, as follows:

- 1) The last day to amend pleadings and/or join other parties is **8/14/2018**.

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Margaret Tully Imhoff

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- 2) The last day to disclose expert witnesses and expert witness reports is **10/28/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/27/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **12/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - a) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - b) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion

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CONT...

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in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- c) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
- d) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- 9) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will enter (a) a Scheduling Order and (b) an order requiring Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT... Margaret Tully Imhoff

Chapter 7

Defendant(s):

Navient Solutions, LLC. Pro Se

Plaintiff(s):

Margaret Tully Imhoff Pro Se

Trustee(s):

Timothy Yoo (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:17-25674 John E Bennett

Chapter 7

Adv#: 2:18-01089 First National Bank Of Omaha v. Bennett

#9.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01089. Complaint by First National Bank Of Omaha against John Bennett. false pretenses, false representation, actual fraud)) (Rooney, Cory)

Docket 1

***** VACATED *** REASON: DISMISSED ON 5-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John E Bennett

Represented By
David R Hagen

Defendant(s):

John Bennett

Pro Se

Joint Debtor(s):

Deborah Bennett

Represented By
David R Hagen

Plaintiff(s):

First National Bank Of Omaha

Represented By
Cory J Rooney

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01088 LOANME, INC. v. Uzeta

#10.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01088. Complaint by LOANME, INC. against Christina Marie Uzeta. false pretenses, false representation, actual fraud)) (Tran, Kelly Ann)

fr. 6-5-18

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **7/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/30/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/29/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **12/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/29/2018**. (If the non-expert discovery cutoff date

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)

- g) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

LOANME, INC.

Represented By
Kelly Ann M Tran

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:18-10408 Christina Marie Uzeta

Chapter 7

Adv#: 2:18-01103 Torices et al v. Uzeta

#11.00 Status Hearing RE: [1] Adversary case 2:18-ap-01103. Complaint by Basilio Torices , Roxanne Martinez against Christina Marie Uzeta . false pretenses, false representation, actual fraud) ,(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Serrano, Vera)

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

calendar.)

- g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **2/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Christina Marie Uzeta

Chapter 7

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Christina Marie Uzeta

Represented By
Heather J Canning

Defendant(s):

Christina Marie Uzeta

Pro Se

Plaintiff(s):

Basilio Torices

Represented By
Nick A Urick

Roxanne Martinez

Represented By
Nick A Urick

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:18-11170 Min Young Kim

Chapter 7

Adv#: 2:18-01132 Daimler Trust v. Kim

#12.00 Status Hearing RE: [1] Adversary case 2:18-ap-01132. Complaint by Daimler Trust against Min Young Kim. false pretenses, false representation, actual fraud)) (Mroczynski, Randall)

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Min Young Kim

Chapter 7

fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **2/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Min Young Kim

Chapter 7

lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Min Young Kim

Represented By
Kelly K Chang

Defendant(s):

Min Young Kim

Pro Se

Plaintiff(s):

Daimler Trust

Represented By
Randall P Mroczynski

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:18-11594 GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

Adv#: 2:18-01147 Ramirez v. Gutierrez Contreras

#13.00 Status HearingRE: [1] Adversary case 2:18-ap-01147. Complaint by Manuel Ramirez against Gabriel Axel Gutierrez Contreras . (d),(e)) ,(68 (Dischargeability - 523(a)(6), willful and malicious injury)) ,(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Collins, Kim S.)

Docket 1

Tentative Ruling:

7/16/2018

Notwithstanding the issuance of an *Order to Comply*, neither Plaintiff or Defendant filed a *Unilateral Status Report* as ordered by the Court. Plaintiff is advised that continued failure to comply with the Court's orders will most likely result in dismissal of the action for failure to prosecute. Defendant is advised that continued failure to comply with the Court's orders will most likely result in entry of default judgment against the Defendant.

Plaintiff asserts claims under 18 U.S.C. §157, California Vehicle Code §12500(a), and California Ins. Code §11580.1. These are regulatory and criminal statutes which Plaintiff lacks standing to assert. The Court *sua sponte* dismisses the claims under the aforementioned statutes, for failure to state a claim upon which relief can be granted. *See Omar v. Sea-Land Service, Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("A trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6). Such a dismissal may be without notice where the claimant cannot possibly win relief.").

By no later than **July 31, 2018**, Plaintiff must file a First Amended Complaint that does not contain any of the claims that have been dismissed. The Court notes that Plaintiff has failed to file a Proof of Service establishing that original *Summons and Complaint* were properly served upon the Defendant. Plaintiff must properly serve *Summons and First Amended Complaint* in accordance with Bankruptcy Rule 7004(e). Plaintiff must file a Proof of service establishing proper service by no later than **August 10, 2018**. If Plaintiff does not effectuate proper service, the Court will require Plaintiff to appear and show cause why this action should not be dismissed for failure to prosecute.

Upon filing of the *First Amended Complaint*, the Clerk of the Court will issue a *Scheduling Order* setting forth updated litigation deadlines, including the date of a continued Status Conference.

The Court will enter an appropriate order.

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT... GABRIEL AXEL GUTIRREZ CONTRERAS

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

GABRIEL AXEL GUTIRREZ

Represented By
Lisa F Collins-Williams

Defendant(s):

Gabriel Axel Gutierrez Contreras

Pro Se

Plaintiff(s):

Manuel Ramirez

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#14.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18

Docket 0

Tentative Ruling:

7/16/2018

This hearing is VACATED and no appearances are required. All parties agree that this litigation should not proceed until property located at 119 Furlong Lane, Bradbury, CA 91008 is sold. A continued status conference shall be held on **November 13, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

The Court will enter an order setting the continued Status Conference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

HANDING HOLDING	Pro Se
TLH REO MANAGEMENT LLC	Pro Se
BRADBURY FURLONG LLC	Pro Se
OAK RIVER ASSET	Pro Se
LIBERTY ASSET MANAGEMENT	Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Jeffrey S Kwong
David B Golubchik
John-Patrick M Fritz
Eve H Karasik

PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

YCJS 2012 LLC	Represented By David S Henshaw
AHA 2012 LLC	Represented By David S Henshaw
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
RICHBEST HOLDING LLC	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01095 Official Committee of Unsecured Creditors of Garde v. Blue Cross Blue

#15.00 Status Hearing RE: [1] Adversary case 2:18-ap-01095. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Blue Cross Blue Shield of Michigan, Inc.. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court
HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

10:00 AM

CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

calendar.)

- g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **2/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Blue Cross Blue Shield of Michigan,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

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2:17-22786 Beach Dans, Inc.

Chapter 11

Adv#: 2:18-01091 Beach Dans, Inc. v. United Community Bank et al

#16.00 Status Hearing RE: [1] Adversary case 2:18-ap-01091. Complaint by Beach Dans, Inc. against United Community Bank. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)) (Goe, Robert)

Docket 1

Tentative Ruling:

7/16/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Pursuant to the parties' request, a continued Status Conference, to review the status of settlement negotiations, shall be held on **September 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.
- 2) In the Court's experience, maintaining litigation deadlines is the best way to motivate settlement. Therefore, the litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **8/16/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **11/27/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **12/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **1/15/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **1/22/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive

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Chapter 11

- motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **1/26/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **2/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

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- iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **2/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

United Community Bank

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Beach Dans, Inc.

Represented By

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Beach Dans, Inc.

Robert P Goe
Stephen Reider

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2:18-13731 Samuel Antonio Acevedo and Lucy Acevedo

Chapter 11

#17.00 Hearing

RE: [5] Motion to Use Cash Collateral Notice of Motion and Motion in Individual Case for Order Authorizing Use of Cash Collateral

fr. 4-25-18

Docket 5

Tentative Ruling:

7/16/2018

Tentative Ruling:

This is a continued hearing on the "Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral" (the "Motion") [Doc. No. 5]. For the reasons set forth below, and having received no opposition to the further use of cash collateral, the Court GRANTS the Debtor's Motion, and authorizes the Debtors to use cash collateral on a final basis in accordance with the terms of the Motion. The Deadline for the Debtors to file a Chapter 11 Disclosure Statement and Chapter 11 Plan is **September 14, 2018**. The deadline for the Debtors to obtain approval of the disclosure statement is **November 7, 2018**.

Samuel Antonio Acevedo and Lucy Acevedo (the "Debtors") commenced a voluntary Chapter 11 petition on April 3, 2018 (the "Petition") [Doc. No. 1]. The Debtor owns certain real property located at 6220 Palladio Lane, Fontana, CA 92336 (the "Property").

The Court held a hearing on the Motion on April 25, 2018. The Motion was unopposed. On April 26, 2018, the Court entered the "Order RE: Notice of Motion and Motion in Individual Chapter 11 Case for Order Authorizing Use of Cash Collateral" (the "Cash Collateral Order") [Doc. No. 14], which granted the Motion on an interim basis, continued the hearing on the Motion, and authorized the use of cash collateral through July 24, 2018. Pursuant to the Court's Cash Collateral Order, the deadline to file written opposition to the further use of cash collateral was July 2, 2018. No opposition has been filed as of the date of this tentative ruling. The Court finds that, based on the Debtor's Monthly Operating reports, *see* Doc. Nos. 19, 20, the Debtor

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CONT... Samuel Antonio Acevedo and Lucy Acevedo Chapter 11

appears to be in compliance with the terms of the Cash Collateral Order. Therefore, having received no opposition to the further use of cash collateral, the Court GRANTS the Motion, and authorizes the use of cash collateral on a final basis in accordance with the terms of the Motion.

Party Information

Debtor(s):

Samuel Antonio Acevedo

Represented By
Kevin Tang

Joint Debtor(s):

Lucy Acevedo

Represented By
Kevin Tang

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2:18-18021 Sultan Financial Corporation

Chapter 11

#18.00 Hearing
RE: [8] Debtor's Emergency Motion For Order Authorizing The Payment Of Certain
Prepetition Taxes

Docket 8

Tentative Ruling:

7/16/2018

Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Pre-Petition Tax Motion. The Debtor is authorized, in its discretion as debtor-in-possession, to pay the Taxes in the ordinary course of business.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Order Authorizing Payment of Certain Pre-Petition Taxes (the "Pre-Petition Tax Motion") [Doc. No. 8]
- 2) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
- 3) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]
- 4) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was

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incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. The Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under this contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all of its assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is \$15,556,285.54. *Id.* at ¶ 15.

The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest,

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while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016 promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* There is currently a dispute between Aaron's and the Debtor, and the Debtor, therefore, asserts that all amounts owed to Aaron's are subject to offset, avoidance, setoff, recoupment, etc. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Pre-Petition Tax Motion

On the Petition Date, the Debtor filed the "Emergency Motion for Order Authorizing Payment of Certain Pre-Petition Taxes" (the "Pre-Petition Tax Motion") [Doc. No. 8]. The Pre-Petition Tax Motion requests an order authorizing: (1) the payment of pre-petition sales, use, and other similar taxes; (2) payment of pre-petition business and regulatory fees; (3) payment of other taxes or fees that may be imposed by various state and local authorities (collectively, the "Taxes"); and (4) to issue post-petition replacement checks to those persons or entities that received pre-petition checks on account of the Taxes that were not presented or cleared prior to the Petition Date. *Id.* at 1. The Debtor contends that the discretion to honor the pre-petition Taxes is essential to the Debtor's continued business operations and a successful reorganization. *Id.*

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

11 U.S.C. §§ 1107(a) and 1108 authorize a debtor-in-possession to operate its

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business. Additionally, § 363(c) allows a debtor-in-possession to use property of the estate in the ordinary course of business without notice or a hearing. Furthermore, § 363(b) provides in relevant part that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." In absence of objections or where business judgment is entailed in the analysis, the position of the trustee is afforded deference. *In re Lahijani*, 325 B.R. 282, 289 (9th Cir. 2005).

Here, the Court finds that payment of the pre-petition Taxes is necessary to the Debtor's continued business operations, and is in the interest of the Estate and the Debtor's creditors. If the Debtor fails to pay the Taxes, the various taxing, regulatory, and other authorities may take actions that could interrupt the Debtor's business operations. Furthermore, failure to pay the Taxes would result in the Debtor incurring increased interest and significant penalties, as well as expose the Debtor to risk of audit which would have a negative impact on the Debtor's reorganization efforts.

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Pre-Petition Tax Motion. The Debtor is authorized, in its discretion as debtor-in-possession, to pay the Taxes in the ordinary course of business.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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2:18-18021 Sultan Financial Corporation

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#19.00 Hearing
RE: [7] Debtor's Emergency Motion For Order Authorizing Payment And/Or Honoring Of Pre-Petition Employee Compensation, Benefits, Reimbursements, Withholding Taxes, Accrued Vacation, And Related Employee Claims

Docket 7

Tentative Ruling:

7/16/2018

Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Pre-Petition Wage Motion. The Debtor is authorized to pay priority pre-petition wages as described and requested in the Pre-Petition Wage Motion, subject to the statutory limits set forth in the Bankruptcy Code. The Debtor is not authorized to pay Employee Claims for any Insider until the requirements under LBR 2014-1 have been satisfied. The Debtor is authorized to continue to honor the pre-petition employee benefits programs as set forth in the Pre-Petition Wage Motion.

Pleadings Filed and Reviewed:

- 1) Emergency Motion Authorizing Payment and/or Honoring of Pre-Petition Employee Compensation, Benefits, Reimbursements, Withholding Taxes, Accrued Vacation, and Related Employee Claims (the "Pre-Petition Wage Motion") [Doc. No. 7]
- 2) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
- 3) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]
- 4) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on

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July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. The Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under this contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all of its assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is

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\$15,556,285.54. *Id.* at ¶ 15.

The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest, while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016 promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* There is currently a dispute between Aaron's and the Debtor, and the Debtor, therefore, asserts that all amounts owed to Aaron's are subject to offset, avoidance, setoff, recoupment, etc. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Pre-Petition Wage Motion

On the Petition Date, the Debtor filed the "Emergency Motion Authorizing Payment and/or Honoring of Pre-Petition Employee Compensation, Benefits, Reimbursements, Withholding Taxes, Accrued Vacation, and Related Employee Claims" (the "Pre-Petition Wage Motion") [Doc. No. 7].

The Debtor contends that approval of the Pre-Petition Wage Motion is necessary to maintain employee stability and morale, and in order to facilitate the Debtor's ongoing business operations. As of the Petition Date, the Debtor employs approximately 129 full-time employees (the "Employees"). Sultan Declaration at ¶ 37. With three exceptions, the Employees are not insiders of the Debtor. Pre-Petition Wage Motion at 5. Gregg Sultan, Randall Sultan, and Zackary Vandenberg (the "Insiders") will each submit a Notice of Setting/Insider Compensation in accordance with LBR 2014-1(a). *Id.* None

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of the Insiders will receive any compensation from the Debtor until permitted under the Local Rules. *Id.* The Employees are paid twice per calendar month, and the next payroll is schedule for July 20, 2018 for the pay period July 1 through July 15, 2018. Sultan Declaration at ¶ 37. The Pre-Petition Wage Motion states that the Debtor will not pay any employee any amount for pre-petition claims in excess of the \$12,850.00 priority limit pursuant to 11 U.S.C. § 507(a). Pre-Petition Wage Motion at 6. Lastly, the Debtor contends that the payment of the pre-petition wages will not render the Estate administratively insolvent. *Id.* The Debtor anticipates that its payroll on July 20, 2018 will be approximately \$217,000.00, and that, subject to the Court's authorization for the Debtor to use cash collateral, the Debtor has sufficient funds to make the upcoming payroll payment. *Id.*

Additionally, the Employees are offered various types of benefits, including but not limited to, medical insurance plans, life insurance, accrued vacation, and a 401(k) retirement plan (collectively, the "Employee Benefits"). *Id.* at 8. The Debtor seeks to continue providing the Employee Benefits, and requests authorization to continue the following benefit plans: (1) medical, vision, and dental coverage; (2) paid vacation; (3) accrued sick leave; (4) voluntary life/AD&D; (5) short term disability; and (6) accident and critical illness. *Id.*

Certain of the Debtor's Employees are entitled to reimbursement of expenses incurred during the course of their employment, which expenses the Debtor requests authorization to reimburse. As of the Petition Date, the total amount of unreimbursed expenses is approximately \$3,000.00. *Id.* In addition to the unreimbursed expenses, six of the Employees have company issued charge cards which are used for merchandise purposes and other corporate expenses. As of the Petition Date, the approximate balance of these charge cards is \$16,745.00. *Id.* at 9. Lastly, approximately 35 of the Employees hold company gas cards for use in the ordinary course of business for customer deliveries and pickups. *Id.* The approximate balance of these gas cards as of the Petition Date is \$9,703.00. *Id.* The Debtor requests authorization to pay outstanding amounts due on the charge cards and the gas cards. *Id.*

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

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As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim. Since Debtor filed its voluntary Chapter 11 petition on October 23, 2017, only wages that were earned by the end of the day on October 23, 2017, are entitled to priority. Additionally, § 507(a)(4) imposes a limit of \$12,850.00 for each individual employee for priority status. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify 'first day' orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

COLLIER ON BANKRUPTCY ¶ 507.06[2] (16th ed. 2017). Local Bankruptcy Rule 2081-1(a) provides that a motion to pay prepetition payroll must be supported by evidence that establishes the following: "(A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect of reorganization; (E) Whether the employees are insiders; (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and that (G) The payment will not render the estate administratively insolvent."

Here the Debtor has proffered sufficient evidence to support the Pre-Petition Wage Motion. The Debtor states that the Employees to whom the Debtor seeks to pay prepetition wages and benefits are still employed. The payment is necessary for the Debtor to maintain its current business operations because the Employees know and understand the Debtor's business operations, and, therefore, are vital to the success of the Debtors'

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reorganization. *See* Sultan Declaration at ¶ 45–46. If the Debtor is not permitted to meet its pre-petition obligations to the Employees, the Debtor will suffer hardship and may lose the ability to continue business operations, which will cause harm to the Estate and have an adverse impact on the Debtor’s ability to reorganize. The wages of each of the Employees, individually, for the subject payroll period is less than the amount of the priority claim to which each Employee is entitled under 11 U.S.C. § 507(a)(4). The Debtor has appropriately identified the Insiders who will only be paid after the Notice of Insider Compensation has been served and if no timely objections are filed. Lastly, the Court finds that the payment will not render the Estate administratively insolvent.

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Pre-Petition Wage Motion. The Debtor is authorized to pay priority pre-petition wages as described and requested in the Pre-Petition Wage Motion, subject to the statutory limits set forth in the Bankruptcy Code. The Debtor is not authorized to pay Employee Claims for any Insider until the requirements under LBR 2014-1 have been satisfied. The Debtor is authorized to continue to honor the pre-petition employee benefits programs as set forth in the Pre-Petition Wage Motion.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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#20.00 Hearing
RE: [6] Debtor's Emergency Motion For Order: (1) Deeming Utility Companies Adequately Assured Of Future Performance; (2) Establishing Procedures For Requests For Additional Assurance; (3) Restraining Utility Companies From Discontinuing, Altering, Or Refusing Service; And (4) Providing For Related Relief

Docket 6

Tentative Ruling:

7/16/2018

Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Utility Motion.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Order: (1) Deeming Utility Companies Adequately Assured of Future Performance; (2) Establishing Procedures for Requests for Additional Assurance; (3) Restraining Utility Companies from Discontinuing, Altering, or Refusing Service; and (4) Providing Related Relief (the "Utility Motion") [Doc. No. 6]
- 2) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
- 3) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]
- 4) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive

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Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. The Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under this contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all of its assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is \$15,556,285.54. *Id.* at ¶ 15.

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The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest, while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016 promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* There is currently a dispute between Aaron's and the Debtor, and the Debtor, therefore, asserts that all amounts owed to Aaron's are subject to offset, avoidance, setoff, recoupment, etc. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Utility Motion

On the Petition Date, the Debtor filed the "Emergency Motion for Order: (1) Deeming Utility Companies Adequately Assured of Future Performance; (2) Establishing Procedures for Requests for Additional Assurance; (3) Restraining Utility Companies from Discontinuing, Altering, or Refusing Service; and (4) Providing Related Relief" (the "Utility Motion") [Doc. No. 6].

The Debtor's Stores are operated as franchises of Aaron's, and the Debtor leases all of its Stores, as well as its corporate headquarters, from non-debtor third parties. *Id.* at 3. Most of the Debtor's leases require the Debtor to be responsible for payment of all utilities for the particular location. *Id.* The Debtor's Stores receive utility services from multiple "Utility Providers." *Id.* at 6; *see id.*, Ex. 1 (list of the respective "Utility Providers"). The Debtor states that the Debtor is not in default of any of its obligations to its Utility Providers, and that the Debtor intends to timely pay all post-petition obligations owed to the Utility Providers. Sultan Declaration at ¶ 49. This

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notwithstanding, the Debtor proposes to provide adequate assurance to the Utility Providers by making a deposit equal to 50% of one month's utility service, which deposit is based on the average monthly payment for the three most recent billing periods before June 2018 for each respective Utility Provider, *see id.* at ¶¶ 49–52, into a segregated Debtor account (the "Adequate Assurance Deposits") upon entry of the order on the Utility Motion, with the exception of the City of Porterville, which currently holds a deposit in excess of the amount of the proposed Adequate Assurance Deposit. The Debtor anticipates that the total amount of the Adequate Assurance Deposits will be approximately \$8,151.56. *Id.* at ¶ 52.

The Debtor contends that entry of the order sought will reduce the administrative costs to the Estate by establishing a procedure and process for the Debtor to deal with the Utility Providers. Absent entry of the order sought, the Utility Providers may discontinue service on the date 30-days following the Petition Date. *Id.* at ¶ 51.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

Section 366(c)(2) provides that a utility companies may "alter, refuse, or discontinue utility service if, during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor . . . adequate assurance of payment for utility service that is satisfactory to the utility." However, § 366(c)(3) provides that upon request of a party in interest and after notice and a hearing, the court "may order modification of the amount of an assurance of payment" under § 366(c)(2).

In *In re Circuit City Stores, Inc.*, 2009 WL 484553 (Bankr. E.D. Va. Jan. 14, 2009), the court evaluated proposed procedures for determining adequate assurance of payment to utility providers. The *Circuit City* court concluded that the statute "does not prohibit a court from making a determination about the adequacy of an assurance of payment until only after a payment 'satisfactory to the utility' has been received from the debtor under § 366(c)(2). The first clause of § 366(c)(2) clearly renders the entire section subject to the court's authority outlined in § 366(c)(3). *See* 11 U.S.C. § 366(c)(2); *see also* 3 *Collier on Bankruptcy* ¶ 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008) (stating § 366(c)(2) means that the debtor must 'pay what the utility demands, unless the court orders otherwise.')." *In re Circuit City Stores,*

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supra, at *5.

The *Circuit City* court rejected the interpretation of § 363(c)(2) that "concludes that a bankruptcy court may not determine the appropriate amount of adequate assurance until the debtor has first paid whatever amount the utility has demanded." *Id.* at *3. Such an interpretation, the court reasoned, "is simply unworkable" and "could lead to absurd results." *Id.* For instance, a utility company might "simply fail to respond to a debtor's offer of adequate assurance, or it may choose to respond on the thirtieth day. In either event, the result would be calamitous for a debtor in the throes of bankruptcy." *Id.*

"The requirement is for 'adequate assurance' of payment, which . . . need not necessarily be provided by deposit." *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002). "Whether utilities have adequate assurance of future payment is determined by the individual circumstances of each case." *Id.* "Accordingly, bankruptcy courts must be afforded reasonable discretion in determining what constitutes 'adequate assurance' of payment for continuing utility services." *Virginia Elec. & Power Co. v. Caldor, Inc.-New York*, 117 F.3d 646, 650 (2d Cir. 1997) (citations omitted).

The Court finds that the proposed procedures and the Adequate Assurance Deposits constitute "adequate assurance of payment" pursuant to 11 U.S.C. § 366(c)(2). Any interruption in the utility services may have a significant negative impact on the Debtor's continued business operations, which would consequently reduce the Debtor's revenue and hamper its ability to reorganize. Furthermore, requiring the Debtor to first meet a utility provider's demands for adequate assurance of payment before requesting a court order modifying that request would enable utility providers to subject the Debtor to unreasonable demands. On the other hand, the Utility Providers will not be prejudiced by providing services to the Debtor since the Debtor is current on payments and has sufficient funds to pay all post-petition charges. The Utility Providers are further protected by the Adequate Assurance Deposits and the proposed procedures. The procedures set forth in the Utility Motion adequately identify the method by which the Debtor will calculate the Adequate Assurance Deposit for each respective Utility Provider, and the Court finds that the anticipated amount of the respective Adequate Assurance Deposits (\$8,151.56) complies with the requirements of § 366(c)(2).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Utility Motion. The

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Utility Providers will be deemed to be receiving adequate assurance of payment on these terms.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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#21.00 Hearing
RE: [5] Debtor's Emergency Motion For Order Authorizing Debtor To Maintain Bank Accounts, Cash Management System, And Use Of Existing Business Forms

Docket 5

Tentative Ruling:

7/16/2018

Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Cash Management Motion on an interim basis. The Debtor is authorized to maintain and continue to use its existing bank accounts, cash management system, and business forms for an initial 60-day post-petition transition period. The Court will conduct a further hearing on the continued use of the Debtor's existing bank accounts, cash management system, and business forms on a final basis on **September 18, 2018, at 10:00 a.m.** Any opposition to the Debtor's use of existing bank accounts, cash management system, and business forms on a final basis must be submitted by no later than **September 11, 2018.**

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Order Authorizing Debtor to Maintain Bank Accounts, Cash Management System, and Use of Existing Business Forms (the "Cash Management Motion") [Doc. No. 5]
- 2) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
- 3) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]
- 4) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

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Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. The Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under this contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all of its

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assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is \$15,556,285.54. *Id.* at ¶ 15.

The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest, while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016 promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* There is currently a dispute between Aaron's and the Debtor, and the Debtor, therefore, asserts that all amounts owed to Aaron's are subject to offset, avoidance, setoff, recoupment, etc. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Cash Management Motion

On the Petition Date, the Debtor filed the "Emergency Motion for Order Authorizing Debtor to Maintain Bank Accounts, Cash Management System, and Use of Existing Business Forms" (the "Cash Management Motion") [Doc. No. 5].

The Cash Management Motion requests an order authorizing the Debtor's maintenance and continued use of its existing bank accounts, cash management system, and business forms for an initial 60-day post-petition transition period, subject to the authority to maintain these accounts on a permanent basis post-petition absent an objection by the United States Trustee ("UST"). Cash Management Motion [Doc. No. 5] at 2. The Debtor states that entry of the order sought by the Cash Management Motion "will make the transition to Chapter 11 seamless to the Debtor's business partners,

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including its lender, franchisor, depository institutions, and . . . its customers." *Id.* Furthermore, the Cash Management Motion states that if the Debtor is not granted the relief sought, the Debtor, the Estate, and creditors will be prejudiced by: (i) the resulting disruption in the Debtor's business operations; (ii) potential delay in the administration of the Estate; and (iii) the unnecessary cost to the Estate to set up new accounts and new systems and purchase/print new Business Forms. *Id.* at 5; *see also* Sultan Declaration at ¶ 57. To prevent inadvertent cashing of outstanding pre-petition checks by the Debtor's bank, the Debtor will provide the institutions where the Debtor's accounts are maintained with notice of the Petition, and directions that outstanding pre-petition checks are not to be honored in the absence of Court authorization for the payment of such obligations. Cash Management Motion at 5.

The Debtor has twenty bank accounts (the "Debtor Accounts"), seventeen of which are with Bank of America, and three of which are with CBT. *See id.; id.*, Ex. 1 (list of the Debtor Accounts); Sultan Declaration at ¶ 53. The Cash Management Motion explains that each of the Debtor's Stores has its own deposit account with Bank of America into which all cash, checks, and credit card receipts are deposited each day. Sultan Declaration at ¶ 53. The balances in the individual store accounts are then swept each day into the certain "Concentration Account" at Bank of America. *Id.* The amount in the Concentration Account are then transferred each day into the certain "General Disbursement Account" at CBT. *Id.* Pre-Petition, the Debtor's practice was to notify CBT of the obligations that the Debtor intended to pay each day, after which CBT swept all amounts in the General Disbursement Account that were not needed to pay the identified obligations, and applied that amount to the outstanding line of credit. *Id.* at ¶ 54. As provided by the Cash Collateral Stipulation, the Debtor seeks permission to modify the above-described practice after the Petition Date to eliminate the daily transfer from the General Disbursement Account to the line of credit balance. *Id.* Instead, the cash collections will be maintained in the General Disbursement Account until they are paid to creditors in accordance with the budget approved in the order on the Cash Collateral Motion.

The Cash Management Motion additionally requests that the Debtor be permitted to continue to use its correspondence and business forms, including but not limited to, invoices, purchase orders, checks, letterhead, envelopes and other business forms (collectively, the "Business Forms"), without reference to the Debtor's status as a debtor-in-possession. *Id.* at ¶ 56. The Debtor contends that the continued use of the Business Forms will minimize the expense to the Estate. *Id.*

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II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

11 U.S.C. §§ 1107(a) and 1108 authorize a debtor-in-possession to operate its business. Additionally, § 363(c) allows a debtor-in-possession to use property of the estate in the ordinary course of business without notice or a hearing. Furthermore, § 363(b) provides in relevant part that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." In absence of objections or where business judgment is entailed in the analysis, the position of the trustee is afforded deference. *In re Lahijani*, 325 B.R. 282, 289 (9th Cir. 2005).

The UST Guidelines mandate that all existing bank accounts that a Chapter 11 debtor-in-possession owns, has access to, or over which the debtor exercises possession, custody, or control, must be closed immediately upon filing of the petition. In business cases, a minimum of three new debtor-in-possession bank accounts (general, payroll and tax) must be opened in a bank appearing on the UST's list of approved depositories, with all estate funds kept in these accounts. *See* 11 U.S.C. §§ 541 and 1115. The Debtor seeks a waiver of these requirements, asserting that closing the existing accounts and opening new accounts will disrupt the Debtor's business and cash flow. Cash Management Motion at 4–5.

Here, the Court finds that the Debtor's maintenance and continued use of the Debtor Accounts, the Debtor's existing cash management system, and the Debtor's Business Forms for an initial 60-day post-petition transition period is in the interest of the Estate and the Debtor's creditors. The maintenance and continued use of the Debtor Accounts, the Debtor's existing cash management system, and the Debtor's Business Forms will facilitate the Debtor's transition to Chapter 11, and will minimize the costs to the Estate.

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Cash Management Motion. The Debtor is authorized to maintain and continue to use its existing bank accounts, cash management system, and business forms for an initial 60-day post-petition transition period. The Court will conduct a further hearing on the continued use of the

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Debtor's existing bank accounts, cash management system, and business forms on a final basis on **September 18, 2018, at 10:00 a.m.** Any opposition to the Debtor's use of existing bank accounts, cash management system, and business forms on a final basis must be submitted by no later than **September 11, 2018.**

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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Chapter 11

#22.00 Hearing

RE: [4] Debtor's Emergency Motion For An Interim Order: (1) Authorizing Debtor Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (2) Granting Adequate Protection To Prepetition Senior CBT Pursuant To 11 U.S.C. §§ 361, 362, And 363, (3) Scheduling A Continued Hearing Pursuant To Bankruptcy Rule 4001; And (4) Granting Related Relief

Docket 4

Tentative Ruling:

7/16/2018

Tentative Ruling

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Cash Collateral Motion, and authorize the interim use of cash collateral consistent with the terms of the Cash Collateral Stipulation. The Court will conduct a further hearing on the use of cash collateral on **September 18, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **September 4, 2018**. Any opposition to the continued use of cash collateral must be submitted by no later than **September 11, 2018**.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Motion for an Interim Order: Authorizing Debtor Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (2) Granting Adequate Protection to Prepetition Senior CBT Pursuant to 11 U.S.C. §§ 361, 362, and 363; (3) Scheduling a Continued Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief (the "Cash Collateral Motion") [Doc. No. 4]
- 2) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
- 3) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]

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CONT... Sultan Financial Corporation

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4) No Opposition filed as of the date of the tentative ruling

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. The Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under this contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to

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the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all of its assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is \$15,556,285.54. *Id.* at ¶ 15.

The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest, while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016 promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* There is currently a dispute between Aaron's and the Debtor, and the Debtor, therefore, asserts that all amounts owed to Aaron's are subject to offset, avoidance, setoff, recoupment, etc. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Cash Collateral Motion

On the Petition Date, the Debtor filed the "Emergency Motion for an Interim Order: Authorizing Debtor Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (2) Granting Adequate Protection to Pre-petition Senior CBT Pursuant to 11 U.S.C. §§ 361, 362, and 363; (3) Scheduling a Continued Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief" (the "Cash Collateral Motion") [Doc. No. 4].

The Cash Collateral Motion requests an order authorizing the use of cash collateral,

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in which CBT has an interest (the "Cash Collateral"), on an interim basis, and to grant CBT adequate protection. Cash Collateral Motion [Doc. No. 4] at 2. The Debtor states that the Debtor has an immediate need to use the Cash Collateral to finance the ordinary costs of its operations, make payroll, and satisfy other working capital and operational needs. *Id.* The Debtor states that the use of Cash Collateral is necessary to preserve the value of the Debtor's business and the Estate. *Id.* The Debtor and CBT have agreed upon the terms of a "Stipulation for Authorization to Use Cash Collateral Under 11 U.S.C. § 363" (the "Cash Collateral Stipulation") [Doc. No. 4, Ex. 1].

Among other terms, the Cash Collateral Stipulation: (1) sets forth terms pertaining to the authorized use of the Cash Collateral, *see* Cash Collateral Stipulation at 5–6; (2) the limitations on the use of the Cash Collateral, *see id.* at 6–7; (3) grants the Lender a post-petition security interest and replacement lien pursuant to §§ 361 and 363(e) in all present and future, pre-petition and post-petition real and personal property assets in which the Debtor holds an interest, *see id.* at 7–9; (4) provides for monthly adequate protection payments in the amount of \$88,027.00, which payment is due on or before the fifth day of each month while the Stipulation is in effect commencing on August 1, 2018, *see id.* at 9; (5) sets forth terms pertaining to the segregation of the Cash Collateral, *see id.* at 9–10; (6) sets forth terms pertaining to the maintenance of insurance of the Collateral, *see id.* at 10; and (7) reporting requirements, *see id.* at 10–12.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the "Proof of Service for First Day Motions and Related Documents" [Doc. No. 24] shows compliance with the Court's order setting this matter on shortened notice. The Court finds that notice is adequate.

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368–69 (9th Cir. 1987).

Here, the Court finds that the terms of the Cash Collateral Stipulation comply with §§ 361 and 363. Because the Cash Collateral Stipulation constitutes "affirmative express consent" by CBT to the Debtor's use of the Cash Collateral, the Court GRANTS

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the Cash Collateral Motion. The Debtor is authorized to use the Cash Collateral in accordance with the terms of the Cash Collateral Stipulation.

Furthermore, the Court finds that the Debtor will suffer irreparable harm absent the interim use of cash collateral. *See* Fed. R. Bankr. P. 4001. The Court additionally finds that there is a reasonable likelihood that the Debtor will prevail at the final hearing on the use of cash collateral. *See* §363(c)(3).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Cash Collateral Motion. The Debtor's interim use of the Cash Collateral is authorized in accordance with the terms of the Cash Collateral Stipulation. The Court will conduct a further hearing on the use of cash collateral on **September 18, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **September 4, 2018**. The additional evidence shall include an updated budget and updated financial projections. Any opposition to the continued use of cash collateral must be submitted by no later than **September 11, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#100.00 Pre-Trial Conference: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 7-18-13; 10-17-13; 3-6-14; 5-8-14; 7-10-14; 10-16-14; 1-22-15; 5-12-15; 9-15-15; 1-12-16; 4-12-16; 3-14-17; 7-11-17; 9-12-17; 11-14-17; 2-13-18; 5-15-18

Docket 1

***** VACATED *** REASON: 7/6/2018 - Settlement agreement approved**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

UNION BANK, N.A., a national Pro Se

Plaintiff(s):

JASON M. RUND Represented By
Ronald P Abrams

Trustee(s):

Jason M Rund (TR) Pro Se

Jason M Rund (TR) Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond

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Daniel H Gill
Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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11:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (91 (Declaratory judgment)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))(Shechtman, Zev)

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Pro Se

Maitreya, LLC, a Nevada limited

Pro Se

Maitreya, LLC, an Arizona limited

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

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Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:12-22639 Claire Levine

Chapter 7

#102.00 Pre-trial Conference

RE: [275] Motion RE: Objection to Claim Number by Claimant Gerald Goldstein.
Claim Number 10

FR. 6-4-14; 8-6-14; 9-17-14; 10-22-14; 1-7-15; 4-21-15; 6-17-15; 1-6-116; 3-15-16;
7-13-16; 11-9-16; 1-25-17; 4-12-17; 6-14-17

Docket 275

Tentative Ruling:

7/16/2018

For the reasons set forth below, the Court will sign the Debtor's proposed *Unilateral Pretrial Order*. Trial will take place on Monday, July 30, 2018, commencing at 9:00 a.m. The seven Motions in Limine filed by the Debtor are GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtor's Objection to Gerald Goldstein Claim Number 10 [Doc. No. 275] (the "Claim Objection")
- 2) Order (1) Finding that PWB Holds the Right to Receive Any Funds or Property Distributed From the Estate on Account of the Goldstein Claim and (2) Requiring PWB to Participate in the Claim Objection Trial to the Extent Set Forth Herein [Doc. No. 591] (the "Rule 3001 Order")
- 3) Levine Objection to Claim #10 Pretrial Statement [Doc. No. 596]
 - a) Declaration of Stella Havkin Re: Pretrial Stipulation and Compliance Order as to Trial of Levine Objection to Claim #10 [Doc. No. 597]
- 4) Motions in Limine filed by the Debtor:
 - a) Levine Objection to Claim #10: Debtor's Motion in Limine No. 1: Objection to Evidence of Calimed Sums Beyond the Statute of Limitations [Doc. No. 571] (the "First Motion in Limine")
 - b) Levine Objection to Claim #10: Debtor's Motion in Limine No. 2: Preclusion of Omitted Writings and or Reasonable Expenses/Fees [Doc. No. 572] (the "Second Motion in Limine")
 - c) Levine Objection to Claim #10: Debtor's Motion in Limine No. 3: Objection to Tabular Compilation Evidence [Doc. No. 573] (the "Third Motion in Limine")

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- d) Levine Objection to Claim #10: Debtor's Motion in Limine No. 4: Evidence of Tender and Receipt [Doc. No. 574] (the "Fourth Motion in Limine")
- e) Levine Objection to Claim #10: Debtor's Motion in Limine No. 5: Evidence of Trust/Contractual Predicate [Doc. No. 575] (the "Fifth Motion in Limine")
- f) Levine Objection to Claim #10: Debtor's Motion in Limine No. 6: Trust Res Sold at a Loss [Doc. No. 576] (the "Sixth Motion in Limine")
- g) Levine Objection to Claim #10: Debtor's Motion in Limine No. 7: Goldstein Separate Trust Document [Doc. No. 577] (the "Seventh Motion in Limine")
- h) Notice of Motions in Limine [Doc. No. 578]

I. Facts and Summary of Pleadings

Pursuant to Bankruptcy Rule 3001(e)(4), the Court has issued an order specifying the division of rights associated with Proof of Claim No. 10, asserted by Gerald Goldstein (the "Goldstein Claim"). *See* Order (1) Finding that PWB Holds the Right to Receive Any Funds or Property Distributed From the Estate on Account of the Goldstein Claim and (2) Requiring PWB to Participate in the Claim Objection Trial to the Extent Set Forth Herein [Doc. No. 591] (the "Rule 3001 Order"). As set forth in the Rule 3001 Order, Pacific Western Bank ("PWB") "is entitled to receive any distribution from the estate that would otherwise be paid to Goldstein on account of the Goldstein Claim." Rule 3001 Order at 2. As further provided in the Rule 3001 Order:

Goldstein remains responsible for defending the Goldstein Claim against the Debtor's claim objection. Placing such responsibility with Goldstein is appropriate given that he has greater knowledge of the transactions underlying the Goldstein Claim than PWB. Nonetheless, PWB shall appear at the Pretrial Conference and trial and shall advise the Court in the event Goldstein's actions in defending the Goldstein Claim prejudice PWB's economic interest in that claim. Any objections of PWB to actions taken by Goldstein in connection with the prosecution and/or settlement of the Goldstein Claim that are not presented to the Court at the Claim Objection Trial shall be deemed to have been waived.

Id. at 2.

II. Findings and Conclusions

The Debtor has submitted a proposed *Unilateral Pretrial Order* (the "Debtor's Pretrial Order"). The Debtor states that Goldstein participated in the preparation of the Debtor's Pretrial Order, but did not sign the order because he had not retained counsel. The Court set this matter for trial on January 30, 2018. Goldstein has had more than sufficient time to retain counsel and prepare for trial. Goldstein's failure to diligently

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comply with his trial preparation obligations is not cause for further delaying the trial. The Court will sign the Debtor's Pretrial Order.

The Debtor has submitted seven Motions in Limine. Goldstein has not opposed any of the Motions in Limine. For the reasons set forth below, all seven Motions in Limine are GRANTED.

First Motion in Limine

The Goldstein Claim alleges that the Debtor was responsible, under the terms of the *The Amadeus Trust* (the "Amadeus Trust"), to pay 50% of the costs of maintaining various properties held by the Amadeus Trust. The Goldstein Claim alleges that the Debtor failed to pay her share of the maintenance costs.

In the First Motion in Limine, the Debtor moves to exclude evidence of all amounts claimed prior to December 3, 2008, on the grounds that such amounts are beyond the applicable statute of limitations.

Under California law, an action to recover upon a written contract must be commenced within four years. Cal. Code Civ. Proc. §337(a). The Amadeus Trust is a written contract subject to the four-year statute of limitations. Debts allegedly accrued prior to December 3, 2008 are time-barred. The First Motion in Limine is GRANTED.

Second Motion in Limine

In the Second Motion in Limine, Debtor moves to preclude any writings omitted from the Goldstein Claim, pursuant to Bankruptcy Rule 3001(c)(2)(D)(i).

Bankruptcy Rule 3001(c) requires that any written materials supporting a claim must be filed with the Proof of Claim. Where a claimant fails to file written materials supporting the claim, Bankruptcy Rule 3001(c)(2)(D)(i) allows the Court to preclude the claimant from relying upon any omitted materials in connection with attempts to enforce the claim.

According to the Debtor, Goldstein has failed to respond to the Debtor's requests to supply additional documents substantiating the Goldstein Claim. Pursuant to Bankruptcy Rule 3001(c)(2)(D)(i), Goldstein will be precluded from introducing at trial any written documents in support of the Goldstein Claim that have not been previously provided to the Debtor. The Second Motion in Limine is GRANTED.

Third Motion in Limine

In the Third Motion in Limine, Debtor moves to preclude tabular compilations of amounts allegedly owed by the Debtor that are attached to the Goldstein Claim. The Debtor asserts that the tabular compilations are inadmissible hearsay and violate the best

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evidence rule. The Debtor notes that the tabular compilation is accompanied by the following disclaimer:

The information provided and the treatment of any financial issues are subject to the review of Mr. Goldstein's CPAs and/or counsel. We are not intending to act as Mr. Goldstein's accountant. The information presented has been assembled by documentation on hand and has not been reviewed by tax professionals on whom we rely upon to correct any omissions, errors, or other presentations.

The Debtor further asserts that no party with personal knowledge of the amounts represented in the compilations has provided an authenticating declaration.

The Court finds that the tabular compilation lacks sufficient indicia of reliability because it has not been properly authenticated. The Goldstein Claim was signed by Goldstein's counsel, who has not provided evidence that she has personal knowledge of the sums reflected within the tabular compilation. Neither Goldstein or Goldstein's accounting professionals have authenticated the compilation. As such, the compilation constitutes inadmissible hearsay. The Third Motion in Limine is GRANTED.

Fourth Motion in Limine

In the Fourth Motion in Limine, Debtor moves to preclude, as prejudicial hearsay, any evidence of payments that are not substantiated by persuasive evidence of tender and receipt. According to the Debtor, the tabular compilation submitted to support the Goldstein Claim contains a large number of voided and reversed transactions. The Debtor seeks to exclude the following:

- 1) Checks written but not tendered;
- 2) Checks tendered, but never deposited;
- 3) Checks deposited, but returned due to nonsufficient funds or a bank hold;
- 4) Checks identified as written from one account, but actually paid from another;
and
- 5) Checks written to one payee but deposited by a differing party.

The Court agrees that evidence of payments bearing any of the characteristics enumerated above do not contain sufficient indicia of reliability to be admissible. Accordingly, such evidence will be excluded. The Fourth Motion in Limine is GRANTED.

Fifth Motion in Limine

In the Fifth Motion in Limine, the Debtor moves to preclude, as irrelevant, evidence of amounts lacking a contractual predicate in trust. The Debtor notes that the Amadeus

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Trust requires that both Trustees (the Debtor and Goldstein) approve trust expenditures, and that the Amadeus Trust further authorizes expenditures of funds only for trust-related purposes. The Debtor seeks to exclude Goldstein from introducing evidence of expenditures if such expenditures were not made in accordance with the contractual provisions of the Amadeus Trust.

The Goldstein Claim asserts that Goldstein spent approximately \$11.5 million to preserve assets of the Amadeus Trust, and that the Debtor failed to reimburse Goldstein for her share of such expenditures. To the extent that expenditures were not authorized under the express terms of the Amadeus Trust, evidence of such expenditures is not relevant and will be excluded. The Fifth Motion in Limine is GRANTED.

Sixth Motion in Limine

In the Sixth Motion in Limine, Debtor moves to preclude, as irrelevant and prejudicial, evidence pertaining to trust properties that were sold at a loss. According to the Debtor, Goldstein is not entitled to recover funds expended in connection with properties that were disposed of at a loss. The Debtor asserts that the Amadeus Trust is not an agreement to share co-habitation expenses, but rather an agreement to hold property. The Debtor asserts that as co-trustee, she is not a guarantor or surety, and cannot be held responsible for costs Goldstein incurred in connection with properties disposed of at a loss.

The Court agrees that under the terms of the Amadeus Trust, the Debtor has no obligation to reimburse Goldstein in connection with assets disposed of at a loss. Accordingly, the Sixth Motion in Limine is GRANTED.

Seventh Motion in Limine

In the Seventh Motion in Limine, the Debtor moves to exclude, as irrelevant and prejudicial, the *Second Amendment and Restatement of the Gerald Goldstein Revocable Trust* that is attached to the Goldstein Claim at p. 62. The Debtor asserts that this document is not relevant because it pertains to a completely different trust than the Amadeus Trust that is at issue.

The Court finds that because the Goldstein Claim is predicated upon the Amadeus Trust, not the Gerald Goldstein Revocable Trust, documents pertaining to the Gerald Goldstein Revocable Trust are not relevant. The Seventh Motion in Limine is GRANTED.

III. Conclusion

Based upon the foregoing, the Court will sign the Debtor's Pretrial Order. The seven

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Motions in Limine filed by the Debtor are GRANTED. Trial will take place on Monday, July 30, 2018, commencing at 9:00 a.m. The Debtor shall submit orders in connection with the Motions in Limine, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Movant(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

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2:12-22639 Claire Levine

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#102.10

Hearing

RE: [571] Motion in Limine to Exclude All Sums Beyond Statute of Limitations

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

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#102.20

Hearing

RE: [572] Motion for Preclusion of Omitted Evidence

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.30

Hearing

RE: [573] Motion in Limine to Exclude Tabular Compilation of the Claim

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.40

Hearing

RE: [574] Motion in Limine Number 4 Regarding Lack of Evidence of Tender and Receipt

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.50

Hearing

RE: [575] Motion in Limine Number 5 Regarding Lack of Contractual Predicate

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.60 HearingRE: [576] Motion in Limine Number 6 regarding trust assets sold

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E McGoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-22639 Claire Levine

Chapter 7

#102.70

Hearing

RE: [577] Motion in Limine Number 7 Regarding Irrelevant Trust Documents

Docket 576

Tentative Ruling:

7/16/2018

See Cal. No. 102, above, incorporated in full by reference

Party Information

Debtor(s):

Claire Levine

Represented By

Dennis E McGoldrick

Thomas M Geher

Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#103.00 Pre-Trial Conference RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-11-17, 9-12-17; 10-17-17; 3-13-18; 5-15-18

Docket 0

Tentative Ruling:

The Court will sign the proposed *Joint Pretrial Stipulation* submitted by Plaintiff and Defendant. Trial shall take place on **Tuesday, July 31, 2018, commencing at 9:00 a.m.** The parties shall comply with the *Order Establishing Procedures for the Adjudication of Evidentiary Objections* [Doc. No. 231] and the *Order Re: Courtroom Procedures* [Doc. No. 71].

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT... Morad Javedanfar

Chapter 7

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

***** VACATED *** REASON: DISMISSED 3-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#106.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

Docket 1

***** VACATED *** REASON: CONTINUED 9-11-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT...

Green Jane Inc

Keith Patrick Banner
C John M Melissinos

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-17843 Berger Bros., Inc.

Chapter 7

Adv#: 2:17-01510 Berger Bros., Inc. v. Oltmans Construction Co., Inc. et al

#107.00 Pre-Trial Conference
RE: [10] Counterclaim by Oltmans Construction Co., Inc. against Berger Bros., Inc.
Counterclaims of Oltmans Construction Co. (Polard, Steven)

Docket 10

***** VACATED *** REASON: REMANDED TO STATE COURT ON 3-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Berger Bros., Inc.

Represented By
Dean G Rallis Jr

Defendant(s):

Oltmans Construction Co., Inc.

Represented By
Steven G Polard

Westside Family YMCA aka YMCA

Pro Se

DOES 1 through 30, inclusive

Pro Se

Plaintiff(s):

Berger Bros., Inc.

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Timothy J Yoo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-18077 Tamara Ann Lopez

Chapter 7

Adv#: 2:17-01489 Lopez v. U.S. Department of Education

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01489. Complaint by Tamara Ann Lopez against U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

Docket 1

***** VACATED *** REASON: DISMISSED 6-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

Plaintiff(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#109.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01512. Complaint by Fred Rosenberg against ROBERT MARK CARPENTER. fraud as fiduciary, embezzlement, larceny)) (Ure, Thomas)

Docket 1

Tentative Ruling:

7/16/2018

The parties have not submitted a *Joint Pretrial Stipulation*. The Court has reviewed the *Unilateral Pretrial Orders* submitted by both the Plaintiff and Defendant.

Plaintiff has not conducted any discovery in this action. Plaintiff's position is that the State Court Judgment establishing the indebtedness alleged to be non-dischargeable is entitled to preclusive effect. Plaintiff asserts that according the State Court Judgment preclusive effect compels entry of judgment in Plaintiff's favor.

The Court finds that this matter can be most efficiently resolved by way of a Motion for Summary Judgment. The trial, set for the week of **July 30, 2018**, is VACATED. Plaintiff shall file a Motion for Summary Judgment by no later than **August 17, 2018**. In the event that Plaintiff's Motion for Summary Judgment does not resolve this matter, the Court will set a continued trial date.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-20655 Brandon J Duley

Chapter 7

Adv#: 2:17-01513 Duley v. Navient Corporation et al

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01513. Complaint by Brandon J Duley against Navient Corporation, Department of Education. (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Raba, Claire)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED ON 6-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon J Duley

Represented By
Claire J Raba

Defendant(s):

Navient Corporation

Pro Se

Department of Education

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Brandon J Duley

Represented By
Leigh E Ferrin
Claire J Raba

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01507 Yoo v. Tan et al

#111.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01507. Complaint by Timothy J Yoo against Tran Hung Tan. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h)))(Avery, Wesley)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Tran Hung Tan

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01508 Yoo v. Tran

#112.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01508. Complaint by Timothy J Yoo against Hiep Tan Tran. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Avery, Wesley)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Hiep Tan Tran

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:12-50423 Deborah Earle

Chapter 11

#113.00 HearingRE: [428] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 428

Tentative Ruling:

7/16/2018

Having reviewed the United States Trustee's Motion, the Debtor's Opposition, and relevant documents, for the reasons set forth herein, the Court DENIES the United States Trustee's Motion in its entirety. The Debtor must remain in full and timely compliance with the United States Trustee requirements as set forth in more detail below.

Pleadings Filed and Reviewed:

- 1) Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon ("Motion") [Doc. No. 428]
- 2) Debtor's Response to the Motion [Doc. No. 433]

I. Facts and Summary of Pleadings

Deborah Earle (the "Debtor") filed a voluntary Chapter 11 petition on December 9, 2012 (the "Petition") [Doc. No. 1]. The Court entered the "Order Confirming Chapter 11 Plan of Reorganization" on April 25, 2016 [Doc. No. 387].

The Motion

The United States Trustee ("UST") filed the "Motion Under 11 U.S.C. § 1112(b) (1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and For Judgment Thereon" (the "Motion") [Doc. No. 160] on June 13, 2018. The Motion seeks to Convert, Dismiss or Appoint a Chapter 11 Trustee. The Motion states that the Debtor has failed to comply with the requirements of the United States Trustee Chapter 11 Notices and Guides, the Bankruptcy Code and/or Local Rules by failing to provide documents, financial reports or attend requested

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT... Deborah Earle

Chapter 11

meetings as follows: (1) the Debtor has failed to file the required Quarterly Post-Confirmation Status Report for the period March 31, 2018 (the "March Quarterly Status Report"); and (2) the Debtor has failed to pay quarterly fees for the second quarter 2018, and fees for the second quarter 2018 continue to accrue.

Based on a review of the Debtor's Schedules, the UST believes that conversion is in the best interest of creditors because it appears that there are assets that a trustee can readily administer in a Chapter 7 case. Alternatively, the UST requests that the Court order that the Debtor remain in full and timely compliance with the UST requirements.

The Opposition

On July 11, 2018, the Debtor filed the "Response to [the Motion]" (the "Opposition") [Doc. No. 433]. The Opposition contends that the Debtor has submitted the required March Quarterly Status Report, as well as payment of the second quarter 2018 fees. The March Quarterly Status Report was submitted to the UST on or about July 2, 2018. Opposition at 2; *see also id.* at Ex. A. With regards to the payment of the second quarter 2018 fees, a check in the amount of \$650.00 dated July 9, 2018, was mailed to the UST's. *Id.*, Ex. B.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under Chapter 7 upon a showing of "cause." Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause." Having considered the Motion, the Opposition, and relevant documents, the Court finds that, in light of the Debtor having submitted the missing document, and having paid the second quarter 2018 fees, the relief sought by the UST is not appropriate at this time. Therefore, the Court DENIES the UST's Motion. However, the Court orders that the Debtor must remain in full and timely compliance with the United States Trustee requirements as set forth below.

Terms of Continuing Compliance

The Debtor will remain in full and timely compliance with all UST Guideline Requirements. If the Debtor becomes delinquent in any of the UST reporting requirements, the UST may provide one-time written notice of delinquency to the Debtors' counsel of record to cure the deficiencies in the reporting requirements within seven (7) calendar days. If such deficiencies are not cured within seven (7) calendar

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT...

Deborah Earle

Chapter 11

days, or if the Debtors thereafter fail to remain in compliance with the UST Guideline requirements, the UST may submit, without further notice or hearing, an application, declaration, and proposed order, converting or dismissing this case with a judgment for any outstanding UST quarterly fees.

III. Conclusion

In conclusion, the Court DENIES the United States Trustee's Motion in its entirety. The Debtor must remain in full and timely compliance with the United States Trustee requirements in accordance with the Terms of Continuing Compliance set forth above.

The United States Trustee shall submit an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By

Anthony Obehi Egbase

Crystle Jane Lindsey

Edith Walters

W. Sloan Youkstetter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#114.00 Pre-Trial Conference

RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18

Docket 1

Tentative Ruling:

7/16/2018

The Court has previously continued the Pretrial Conference in this action based upon a finding that resolution of the Chapter 11 case of Crystal Waterfalls, LLC ("Crystal") may resolve this action. *See* Order Continuing Pretrial Conference Pending Confirmation of Crystal Waterfalls, LLC's Chapter 11 Plan [Doc. No. 26]. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") in Crystal's bankruptcy case. The Approval Order provides that the structured dismissal of Crystal's Chapter 11 case shall occur through a two-step process. First, Crystal shall be required to make payments to various creditors. Once satisfactory evidence of those payments has been received, the case will be dismissed.

Not all payments contemplated by the Approval Order have been made, and Crystal's Chapter 11 case remains pending. Accordingly, the Pretrial Conference is CONTINUED to **September 11, 2018, at 10:00 a.m.**, and shall be converted to a Status Conference. The Plan Administrator appointed in the Chapter 11 case of Liberty Asset Management Corporation ("Liberty"), which is now pursuing this action as the successor in interest to the Plaintiff, shall file a Status Report by no later than fourteen days prior to the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT... Crystal Waterfalls LLC Chapter 11

to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC	Represented By Ian Landsberg
------------------------	---------------------------------

Defendant(s):

Crystal Waterfalls, LLC	Pro Se
Golden Bay Investments, LLC	Pro Se
Lucy Gao	Pro Se

Plaintiff(s):

Liberty Asset Management	Represented By Jeffrey S Kwong
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U.S. Trustee(s):

United States Trustee (LA)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#115.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

FR. 3-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford Frey

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Pro Se

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

**United States Bankruptcy Court
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Tuesday, July 17, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Sunshine Valley, LLC Pro Se

California International Bank, N.A. Pro Se

All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 18, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#1.00 Show Cause Hearing re [148] Order To Show Cause Why Green CO2 IP, LLC, Bevtch, Inc., Michael K. Shutte, Daniel Schneider, Brette Schutte, Randall Willard, And Willard & Associates, P.C. Should Not Be Held In Contempt For Violation Of The Automatic Stay

fr. 2-21-18; 4-25-18

Docket 0

***** VACATED *** REASON: CONTINUED TO 10-2-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 18, 2018

Hearing Room 1568

10:00 AM

2:17-14223 Phina Eng

Chapter 7

#2.00 APPLICATION: Other Expenses: International Sureties, LTD

Hearing

RE: [30] and [31] re Applications for chapter 7 fees and administrative expenses

Docket 28

Tentative Ruling:

7/17/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Phina Eng

Represented By
Solida T Ly

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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2:17-14223 Phina Eng

Chapter 7

#3.00 APPLICATION: Accountant for Trustee - Hahn Fife & Company

Hearing

RE: [30] and [31] re Applications for chapter 7 fees and administrative expenses

Docket 28

Tentative Ruling:

7/17/2018

Tentative Ruling:

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$1,638.00

Expenses: \$234.30

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Phina Eng

Represented By
Solidia T Ly

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:17-14223 Phina Eng

Chapter 7

#4.00 APPLICATION: TRUSTEE: ELISSA D. MILLER

Hearing

RE: [30] and [31] re Applications for chapter 7 fees and administrative expenses

Docket 28

Tentative Ruling:

7/17/2018

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,150.00

Total Expenses: \$84.66

Other Expenses (Int'l Sureties, LTD): amounts previously paid to this applicant are approved as final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Phina Eng

Represented By
Solida T Ly

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01407. Complaint by Moysey Chernyavsky against Michael Dekhtyar. willful and malicious injury)) (Havkin, Stella)

fr. 7-17-18

Docket 1

Tentative Ruling:

7/17/2018

See Cal. No. 6, below, incorporated in full by reference.

Party Information

Debtor(s):

Michael Dekhtyar Pro Se

Defendant(s):

Michael Dekhtyar Pro Se

Plaintiff(s):

Moysey Chernyavsky Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR) Pro Se

**United States Bankruptcy Court
Central District of California
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2:17-15939 Michael Dekhtyar

Chapter 7

Adv#: 2:17-01407 Chernyavsky v. Dekhtyar

#6.00 Hearing
RE: [39] Motion For Summary Judgment Request for Judicial Notice (Havkin, Stella)

Docket 39

Tentative Ruling:

7/17/2018

For the reasons set forth below, the Motion for Summary Judgment is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint for Nondischargeability of Debt Pursuant to 11 U.S.C. §523(a)(6) [Doc. No. 1] (the "Complaint")
- 2) Plaintiff Moysey Chernyavsky's Motion for Summary Judgment [Doc. No. 41] (the "Motion")
 - a) Plaintiff's Proposed Statement of Undisputed Issues of Fact and Conclusions of Law [Doc. No. 40]
 - b) Corrected Notice of Hearing [Doc. No. 45]
 - c) Notice of Filing of California Court of Appeal Decision on Debtor/Defendant's Appeal [Doc. No. 38]
- 3) Defendant Michael Dekhtyar's Opposition to Plaintiff's Renewed Motion for Summary Judgment [Doc. No. 48] (the "Opposition")
 - a) Defendant Michael Dekhtyar's Statement of Genuine Issues in Opposition to Plaintiff's Motion for Summary Judgment [Doc. No. 49]
 - b) Defendant Michael Dekhtyar's Objections to Plaintiff's Evidence [Doc. No. 48]
 - c) Defendant's Request to Deem His Undisputed Material Facts Admitted or Undisputed [Doc. No. 48]
- 4) Reply in Support of Plaintiff Moysey Chernyavsky's Motion for Summary Judgment [Doc. No. 53] (the "Reply")

I. Facts and Summary of Pleadings

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Central District of California
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10:00 AM

CONT... Michael Dekhtyar

Chapter 7

On November 10, 2015, Moysey Chernyavsky ("Chernyavsky") filed a *Second Amended Complaint for Malicious Prosecution* (the "Malicious Prosecution Complaint") against Michael Dekhtyar ("Dekhtyar") in the Los Angeles Superior Court (the "LASC"). Chernyavsky alleged that Dekhtyar had engaged in malicious prosecution in connection with three actions: (1) *Chernyavsky v. Dekhtyar*, LASC Case No. BC440114 (filed June 21, 2010); (2) *Dekhtyar v. Cothran and Chernyavsky*, LASC Case No. BC460343 (filed April 27, 2011); and (3) *Sanchez v. Dekhtyar*, LASC Case No. TC26535 (filed June 6, 2012).

On February 29, 2016, the LASC entered judgment in Chernyavsky's favor in the Malicious Prosecution Complaint, in the amount of \$25,500 (the "Malicious Prosecution Judgment"). The LASC found that Dekhtyar had engaged in malicious prosecution in connection with a cross-complaint that Dekhtyar had filed in the BC440114 action. The LASC did not find that Dekhtyar had engaged in malicious prosecution with respect to the BC460343 or TC26535 actions.

On May 23, 2018, the California Court of Appeal for the Second Appellate District (the "California Appellate Court" or "Appellate Court") issued a lengthy opinion affirming the Malicious Prosecution Judgment [Doc. No. 38] (the "Affirmance"). Pursuant to California Rules of Court ("CRC") §8.500(e)(1) and 8.264(b)(1), the deadline for Dekhtyar to seek review before the California Supreme Court was forty days after issuance of the Affirmance—or July 2, 2018. Dekhtyar has not sought review before the California Supreme Court, so the California Appellate Court's affirmance of the Malicious Prosecution Judgment is now final.

In the Affirmance, the California Appellate Court concluded that "substantial evidence" [Note 1] supported the LASC's finding that Dekhtyar's litigation against Chernyavsky was motivated by hostility and a desire to retaliate:

[T]he court could reasonably infer that [Dekhtyar's] cross-complaint was actuated by hostility, rather than to secure relief for the claims he actually asserted.

The record also contains a significant amount of evidence that Dekhtyar felt animosity toward Chernyavsky based on their prior business dealings, which provided a motive to engage in malicious, retaliatory conduct. First, as noted, Chernyavsky had previously voted to remove Dekhtyar from his position as president of the Huntington Restaurant Group after concluding that he had improperly withdrawn funds from the company. Dekhtyar denied those claims at trial, and contended he should not have been removed from his position at Huntington. Second, Dekhtyar's declaration and trial testimony

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Michael Dekhtyar

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make clear that he held Chernyavsky responsible for the losses he incurred in the failed barbeque restaurant venture. His declaration asserts that Chernyavsky had encouraged him to invest in Herman Cothran's smoker technology, and then declined to assist him when the Hermans restaurant began failing. Third, the evidence showed Chernyavsky had seized control of Dekhtyar's ownership interest in Verax after he defaulted on the SBA loan and the promissory note. In his declaration, Dekhtyar contended that Chernyavsky had "forced [him] out" of Verax, which was his "last hope to maintain a source of income." Finally, in June of 2010, Chernyavsky filed his breach of contract claims against Dekhtyar seeking repayment of the promissory note. Chernyavsky testified that shortly after he filed his complaint, Dekhtyar had physically threatened him, telling him that he would "put him in a wheelchair." The court could reasonably infer from this evidence that Dekhtyar was extremely hostile toward Chernyavsky as a result of their past business dealings, and that he had filed the cross-claims as a retaliatory measure.

Affirmance at 26–27.

The California Appellate Court further concluded that substantial evidence supported the trial court's finding "that the factual allegations underlying Dekhtyar's cross-complaint were false, and that he knew they were false." Affirmance at 25. The California Appellate Court observed that it "is well-established that 'malice [can] be inferred from [the plaintiff's] knowingly false allegations.'" *Id.* (citing *Nunez v. Pennisi*, 241 Cal. App. 4th 861, 878, 193 Cal. Rptr. 3d 912, 927 (Cal. Ct. App. 2015)).

On August 18, 2017, Chernyavsky filed the instant action, alleging that the indebtedness established by the Malicious Prosecution Judgment is non-dischargeable pursuant to §523(a)(6). On March 7, 2018, Chernyavsky moved for summary judgment, arguing that Dekhtyar was precluded from contesting his liability under § 523(a)(6), because the elements of a malicious prosecution claim mirror those of a § 523(a)(6) action. On April 24, 2018, the Court denied without prejudice Chernyavsky's motion for summary judgment. At that time, the appeal of the Malicious Prosecution Judgment was still pending. The Court explained that under California law, the pending appeal meant that the Malicious Prosecution Judgment was not final for issue preclusion purposes. *See Franklin & Franklin v. 7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th 1168, 1174, 102 Cal. Rptr. 2d 770, 774 (2000) ("Unlike the federal rule and that of several states, in California the rule is that the finality required to invoke the preclusive bar of res judicata is not achieved

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CONT... Michael Dekhtyar

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until an appeal from the trial court judgment has been exhausted or the time to appeal has expired."). As a result, the Court could not accord preclusive effect to the Malicious Prosecution Judgment. The Court emphasized that once the Malicious Prosecution Judgment became final, Chernyavsky could bring a renewed motion for summary judgment. *See* Final Ruling Denying Motion for Summary Judgment Without Prejudice [Doc. No. 32] at pp. 6–7.

Now that the Malicious Prosecution Judgment has become final, Chernyavsky brings a renewed motion for summary judgment, again arguing that the Malicious Prosecution Judgment precludes Dekhtyar from contesting liability under §523(a)(6).

Dekhtyar disputes Chernyavsky's contention that the Malicious Prosecution Judgment is entitled to preclusive effect. According to Dekhtyar, nothing in the California Appellate Court's Affirmance of the Judgment establishes that Dekhtyar intended to injure Chernyavsky, had a desire to injure Chernyavsky, or believed injury to Chernyavsky was likely to occur. Thus, Dekhtyar argues, he cannot be precluded from contesting the willfulness element of §523(a)(6). Dekhtyar cites *Arden v. Silas (In re Arden)*, 2015 WL 4068962 (9th Cir. BAP July 2, 2015), an unpublished opinion, for the proposition that a California judgment for malicious prosecution lacks preclusive effect. The *Arden* court reasoned that "[w]illfulness is not a separate and distinct element of the tort of malicious prosecution," and noted that under California law, "[m]erely because a tort is classified as intentional does not mean that any injury caused by the tortfeasor is willful." *Arden*, 2015 WL 4068962, at *11 (citing *Ditto v. McCurdy*, 510 F.3d 1070, 1078 (9th Cir. 2007)).

In his Reply to Dekhtyar's Opposition, Chernyavsky argues that the California Court of Appeal made specific findings that Dekhtyar engaged in the litigation with the intent to cause injury. Chernyavsky cites the California Appellate Court's determination that the record contained ample evidence that Dekhtyar's cross-complaint "was actuated by hostility" and that "Dekhtyar felt animosity toward Chernyavsky based on their prior business dealings, which provide a motive to engage in malicious, retaliatory conduct." Affirmance at 26–27.

II. Findings and Conclusions

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v.*

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Catrett, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

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

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

As discussed above, the Malicious Prosecution Judgment is now final. Dekhtyar has not sought review before the California Supreme Court, and his deadline to do so expired on July 2, 2018. See CRC §§8.500(e)(1) and 8.264(b)(1). There is privity between the parties, and as the California Appellate Court's Affirmance reflects, the matters at issue were actually litigated and necessarily decided.

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The key dispute concerns the first element—whether the issue sought to be precluded from relitigation is identical to that decided in the prior state court proceedings. [Note 2] To resolve this dispute, the Court must determine whether the Malicious Prosecution Judgment establishes that Dekhtyar committed "willful and malicious injury" against Chernyavsky within the meaning of §523(a)(6).

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.'" The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

Under California law, to "establish a cause of action for malicious prosecution, a plaintiff must demonstrate that the prior action (1) was initiated by or at the direction of the defendant and legally terminated in the plaintiff's favor, (2) was brought without probable cause, and (3) was initiated with malice." *Siebel v. Mittlesteadt*, 41 Cal. 4th 735, 740, 161 P.3d 527, 530 (Cal. 2007). "In the context of the tort of malicious prosecution, malice 'refers to an improper *motive* for bringing the prior action.' '[T]he cases speak of malice as being present when a suit is actuated by hostility[,] ... ill will, or for some purpose other than to secure relief' or where a plaintiff 'asserts a claim with *knowledge of its falsity*.'" *Nunez v. Pennisi*, 241 Cal.App.4th 861, 877, 193 Cal.Rptr.3d 912, 926 (Cal. Ct. App. 2015) (emphasis in original; internal citations omitted).

Here, the Malicious Prosecution Judgment precludes Dekhtyar from contesting that he committed "willful and malicious injury" to Chernyavsky within the meaning of §523(a)(6). With respect to willfulness, the decisions of the LASC and Appellate

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CONT... Michael Dekhtyar

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Court establish that Dekhtyar harbored a subjective intent to injure Chernyavsky. The California Appellate Court observed that substantial evidence supported the LASC's finding that Dekhtyar's "cross-complaint was actuated by hostility, rather than to secure relief for the claims he actually asserted." Affirmance at 26. The Appellate Court noted that the record contained "a significant amount of evidence that Dekhtyar felt animosity toward Chernyavsky based on their prior business dealings, which provided a motive to engage in malicious, retaliatory conduct." *Id.* This evidence included (1) Dekhtyar's resentment that Chernyavsky had voted to remove him as president of Huntington Restaurant Group; (2) Dekhtyar's testimony that he blamed Chernyavsky for losses Dekhtyar incurred in a failed barbeque venture; and (3) Dekhtyar's threat that he would "put [Chernyavsky] in a wheelchair." *Id.* Based upon all this evidence, the Appellate Court stated that substantial evidence supported the LASC's inference that "Dekhtyar was extremely hostile toward Chernyavsky as a result of their past business dealings, and that he ... filed the cross-claims as a retaliatory measure." *Id.* In short, the trial court's Malicious Prosecution Judgment, and the Appellate Court's subsequent affirmance, establish that Dekhtyar's purpose in commencing the litigation was to injure Chernyavsky.

Dekhtyar mistakenly relies upon *In re Arden* for the proposition that a malicious prosecution judgment does not establish "willfulness" for purposes of §523(a)(6). The *Arden* court noted that under California law, the "malice required in malicious prosecution 'is not limited to actual hostility or will toward [the] plaintiff but exists when the proceedings are instituted primarily for an improper purpose.'" *Arden*, 2015 WL 4068962 at *9. As a result, "in a malicious prosecution action, the proof may or may not establish a willful intent to injure on the part of the defendant." *Id.* at *10. The *Arden* court conducted a thorough review of the instructions provided to the jury responsible for the malicious prosecution verdict. *Id.* at *10–11. Unfortunately, that review shed no light on the jury's precise reasons for finding that the debtor acted with malice. The jury's malice finding could have been based on a determination that the debtor acted with hostility or ill will; alternatively, the finding could have been based on a determination that the debtor acted for an improper purpose. *Id.* This lack of clarity made it impossible for the *Arden* court to hold that on the record before it, the malicious prosecution judgment precluded the debtor from contesting that he had acted willfully within the meaning of §523(a)(6). *Id.* at *10–12.

In stark contrast to the situation faced by the *Arden* court, the record here contains a detailed explanation of the reasons underlying the Malicious Prosecution Judgment. Those findings, quoted above, clearly establish that the Judgment was predicated upon

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Michael Dekhtyar

Chapter 7

a determination that Dekhtyar acted with the intent to inflict injury upon Chernyavsky. As *Arden* acknowledged, in a malicious prosecution action, "the proof may or may not establish a willful intent to injure on the part of the defendant." *Id.* at *10. Here, there is abundant proof of Dekhtyar's willful intent to injure. Contrary to Dekhtyar's contention, *Arden* does not prevent the Court from according preclusive effect to the Malicious Prosecution Judgment.

The state court record also establishes that Dekhtyar's conduct was "malicious" for purposes of §523(a)(6). As found by the trial court and affirmed by the Appellate Court, the filing of the cross-complaint was tortious and therefore qualified as a wrongful act. As discussed, Dekhtyar's commencement of the litigation was intentional. Dekhtyar's decision to prosecute an action containing allegations which he "knew ... were false," Affirmance at 25, is an act which necessarily causes injury. Finally, there was no just cause or excuse for Dekhtyar's actions.

Having found that all five elements of issue preclusion are satisfied, the Court must determine whether the "application of preclusion furthers the public policies underlying the doctrine," *Harmon*, 250 F.3d at 1245—namely, "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation," *Lucido*, 795 P.2d at 1227. Applying preclusion law preserves the integrity of the judicial system by giving full effect to a judgment that was obtained after both parties were afforded full opportunity to litigate the matter. Preclusion promotes judicial economy by obviating the need for a duplicative and unnecessary trial. The avoidance of an unnecessary trial promotes the public policy against vexatious litigation.

III. Conclusion

Based upon the foregoing, Chernyavsky's renewed Motion for Summary Judgment is GRANTED. All future hearings and litigation deadlines in this action are VACATED. Within seven days of the hearing, Chernyavsky shall submit (1) a proposed order incorporating this tentative ruling by reference and (2) a proposed judgment. (For purposes of the separate document rule, set forth in Civil Rule 58(a), both an order and a judgment must be submitted.)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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CONT...

Michael Dekhtyar

Chapter 7

Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

In California, "factual findings made by the trier of fact are generally reviewed for substantial evidence." *Ermoian v. Desert Hosp.*, 152 Cal. App. 4th 475, 500–01, 61 Cal. Rptr. 3d 754, 777 (2007).

Note 2

Dekhtyar objects to portions of *Plaintiff's Proposed Statement of Undisputed Issues of Fact and Conclusions of Law* (the "SUF"), on the grounds that the statements therein are irrelevant or are legal conclusions couched as evidence. To the extent that statements in the SUF are legal argument rather than facts, they are construed as such. Dekhtyar's objections as to relevance are overruled.

Party Information

Debtor(s):

Michael Dekhtyar

Pro Se

Defendant(s):

Michael Dekhtyar

Pro Se

Plaintiff(s):

Moysey Chernyavsky

Represented By
Stella A Havkin

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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2:17-24965 Jesus Jose Nevarez

Chapter 7

Adv#: 2:18-01069 Nevarez v. Shellpoint Mortgage Servicing et al

#7.00 Show Cause Hearing RE: [1] Adversary case 2:18-ap-01069. Complaint by Jesus J Nevarez against Shellpoint Mortgage Servicing , Quality Loan Servicing Corp , Mortgage Electronic Registration Systems, Inc , Bank of America N.A. . (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)) ,(71 (Injunctive relief - reinstatement of stay)) ,(81 (Subordination of claim or interest)) ,(91 (Declaratory judgment)) ,(01 (Determination of removed claim or cause)) (Serrano, Vera)

Docket 1

Tentative Ruling:

7/17/2018

Tentative Ruling:

The Court will construe Plaintiff's Response to the Order to Show Cause as a *Notice of Dismissal* brought under Civil Rule 41(a), and will enter an order dismissing the action.

Pleadings Filed and Reviewed:

- 1) Plaintiff's Verified Complaint [for] (1) Injunctive Relief for Final Loan Modification, (2) Verification of Loan Documents, (3) Request of Proof of Claim, [and] (4) Request for Payment History Record from Shellpoint [Doc. No. 1]
- 2) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed, Pursuant to Civil Rule 12(b)(6), for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 12]
 - a) BNC Certificate of Notice [Doc. No. 14]
- 3) Plaintiff's Response to Court Order to Show Cause Why This Action Should Not be Dismissed, Pursuant to Civil Rule 12(b)(6), for Failure to State a Claim Upon Which Relief Can Be Granted [Doc. No. 15] (the "Response")

I. Facts and Summary of Pleadings

In this action, Jesus Jose Nevarez ("Plaintiff"), proceeding *in pro se*, seeks a

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judgment (1) enjoining Defendants from foreclosing upon his residential property (the "Property") and requiring Defendants to modify Plaintiff's loan; (2) requiring Defendants to provide Plaintiff all paperwork pertaining to Plaintiff's loan; (3) requiring Defendants to submit a proof of claim in Plaintiff's underlying Chapter 7 bankruptcy case; and (4) requiring Defendants to provide to Plaintiff all records pertaining to any payments that Defendants have received on account of Plaintiff's loan.

On June 12, 2018, the Court issued an order requiring Plaintiff to show cause why this action should not be dismissed, pursuant to Civil Rule 12(b)(6), for failure to state a claim upon which relief can be granted [Doc. No. 12] (the "Order to Show Cause"). The Court made the following preliminary findings:

Here, the Complaint fails to allege specific facts showing that the Defendants are not entitled to exercise their remedies with respect to the Property, including foreclosure. Instead, the Complaint alleges only that Plaintiff "suspects" that Defendant Shellpoint Mortgage Servicing does "not own the note of the trust deed in question ..." This threadbare, conclusory allegation does not allow the court to reasonably draw the inference that Plaintiff is entitled to an injunction barring the Defendants from foreclosing upon the Property.

The Complaint is similarly deficient with respect to Plaintiff's claim that the Court should order Defendants to modify Plaintiff's mortgage loan. No specific facts are alleged showing that Defendants are required, by the terms of the underlying Note and Deed of Trust, to enter into a loan modification agreement with the Plaintiff. The Complaint suffers the same defect with respect to the claim seeking an order requiring the Defendants to provide Plaintiff all paperwork pertaining to the Note and Deed of Trust. No specific facts are alleged showing that any provision of the Note or Deed of Trust requires Defendants to provide to Plaintiff (a) documents pertaining to the loan or (b) documents pertaining to payments that Plaintiff has made in connection with the loan.

Finally, the Complaint's request that Defendants be required by file a proof of claim in Plaintiff's underlying Chapter 7 bankruptcy case fails as a matter of law because nothing in the Bankruptcy Code or Bankruptcy Rules imposes an obligation upon creditors to file a proof of claim. Section 501(a) provides that a "creditor ... may file a proof of claim"; it does not state that a creditor *must* file a proof of claim.

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CONT... **Jesus Jose Nevarez**

Chapter 7

Order to Show Cause [Doc. No. 12] at pp. 4–5.

Plaintiff filed a Response to the Order to Show Cause. In the Response, Plaintiff states that Shellpoint, his mortgage servicer, has agreed to a loan modification. Obtaining a loan modification was Plaintiff's reason for commencing the Complaint. Plaintiff requests that the Complaint be withdrawn.

II. Findings and Conclusions

Civil Rule 41(a) allows a Plaintiff to voluntarily dismiss an action by filing a *Notice of Dismissal* before the opposing party serves either an answer or motion for summary judgment. Here, no defendant has served either an answer or motion for summary judgment. The Court will construe Plaintiff's Response as a *Notice of Dismissal* made under Civil Rule 41(a), and will enter an order dismissing the action.

The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jesus Jose Nevarez	Pro Se
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Defendant(s):

Shellpoint Mortgage Servicing	Pro Se
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Mortgage Electronic Registration	Pro Se
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Bank of America N.A.	Pro Se
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Quality Loan Servicing, Corp.	Pro Se
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Plaintiff(s):

Jesus J Nevarez	Pro Se
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CONT... Jesus Jose Nevarez

Chapter 7

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Adv#: 2:18-01108 Yolanda Flores Corporation v. Beverly Hills South Pacific Surgery Center,

- #8.00** Show Cause Hearing
re **Order Requiring Defendant To Appear And Show Cause Why This Action Should Not Be Remanded To The Los Angeles Superior Court RE** : [1] Adversary case 2:18-ap-01108. Notice of Removal of State Court Case to Bankruptcy Court [28 U.S.C. Section 1452(a); FRBP 9027, and LBR 9027-1(a)]; State Court Complaint, and Proof of Service by Yolanda Flores Corporation. Nature of Suit: (01 (Determination of removed claim or cause)) (Steinberg, Peter)

Docket 1

Tentative Ruling:

7/17/2018

Tentative Ruling:

For the reasons set forth below, the action is REMANDED to the State Court.

Pleadings Filed and Reviewed:

- 1) Order Requiring Defendant to Appear and Show Cause Why this Action Should Not be Remanded to the Los Angeles Superior Court [Doc. No. 9] (the "Order to Show Cause")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 11]
- 2) Debtor's Opposition to the Honorable Court's OSC Re Why this Adversary Should Not be Remanded to the Los Angeles Superior Court [Doc. No. 12] (the "Opposition")
- 3) Reply of Plaintiff to Order to Show Cause Why the Action Should Not be Remanded to the Los Angeles Superior Court [Doc. No. 13]
- 4) Debtor's Reply to Plaintiff Yolanda Flores Corporation's Reply to the Debtor's Opposition to the Honorable Court's OSC Re Why this Adversary Should Not be Remanded to the Los Angeles Superior Court [Doc. No. 14]

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 18, 2018

Hearing Room 1568

10:00 AM

CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

I. Facts and Summary of Pleadings

Beverly Hills South Pacific Surgery Center, Inc., the Defendant herein and the Debtor in the underlying Chapter 11 case, removed this action to the Bankruptcy Court on April 19, 2018. Prior to the removal, trial before the Los Angeles Superior Court (the "State Court") was set for March 19, 2018. The Debtor and Defendant filed a voluntary Chapter 11 petition on March 15, 2018.

According to the Complaint, Plaintiff entered into a contract to provide medical billing and collection services to the Debtor and Defendant on June 26, 2009. The Complaint alleges that the Debtor and Defendant breached the contract, and seeks damages in excess of \$400,000.

On June 11, 2018, the Court issued an order requiring the Defendant to show cause why this action should not be remanded to the State Court [Doc. No. 9] (the "Order to Show Cause"). Applying the equitable factors governing remand that are set forth in *Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.)*, 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003), the Court made the following preliminary findings:

In the Court's view, multiple *Enron* facts support remand. First, with respect to factor one, remand will not impair the efficient administration of the estate. After the State Court determines Debtor and Defendant's liability and damages, if any, the Debtor can seek confirmation of a Chapter 11 Plan. The State Court's determination of liability and damages will not unduly delay confirmation because the action was on verge of being tried prior to removal. Second, with respect to factor two, the action involves only issues of state law. For the same reason, factor eleven, comity, supports remand. Third, with respect to factor ten, it appears that the removal may have involved forum shopping, given that the bankruptcy petition was commenced on the eve of trial. Finally, although not one of the specifically delineated *Enron* factors, the Court notes that the interests of judicial efficiency weigh in favor of remand, because prior to removal the State Court was on the verge of trying the action.

Order to Show Cause at 3.

Defendant opposes remand for the following reasons:

- 1) If the action were remanded, trial before the State Court would likely not occur for months.
- 2) Plaintiff did not timely file a motion to remand, indicating that Plaintiff appears content to have this dispute adjudicated by the Bankruptcy Court.
- 3) Defendant is considering filing an action against Plaintiff, alleging that

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CONT...

Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Plaintiff failed to pay Defendant for various collections services that Defendant provided. Based upon this non-payment, Defendant may be entitled to a setoff against the claims asserted by the Plaintiff. Should Defendant elect to pursue such an action, it would file a complaint before the Bankruptcy Court. In that event, a remand of this action would result in related proceedings being adjudicated by different tribunals.

Plaintiff supports remand for the following reasons:

- 1) Because Plaintiff's claims arise under state law and are not inextricably bound to the claims allowance process or rights created by the Bankruptcy Code, the claims are non-core, meaning that the Bankruptcy Court lacks subject-matter jurisdiction.
- 2) As the Court observed in the Order to Show Cause, the *Enron* factors support remand.
- 3) Defendant's real reason for removing the action is its failure to assert a compulsory cross-claim in the State Court regarding its set-off theory. Defendant is hoping to get a "second bite at the apple" by commencing a new adversary proceeding, arising from the same transaction, when such allegations should have instead been timely raised before the State Court.

Defendant makes the following arguments in Reply to Plaintiff's arguments in support of remand:

- 1) Debtor/Defendant has recently obtained an order setting the claims bar date in the underlying bankruptcy case for September 10, 2018. The claims allowance process can proceed more efficiently if this action is not remanded. If remand occurred, claims arising in connection with this action could not be estimated until after the State Court trial is completed. That trial likely will not commence until the winter or spring of 2019.
- 2) Based upon Plaintiff's allegations, Plaintiff is the largest creditor. Therefore, this action is substantially related to Debtor/Defendant's bankruptcy case.

II. Findings and Conclusions

Title 28 U.S.C §1452 provides that the Court may remand an action "on any equitable ground." Courts consider the following factors in determining whether equitable grounds support remand:

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Beverly Hills South Pacific Surgery Center, Inc.

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- 1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- 2) the extent to which state law issues predominate over bankruptcy issues;
- 3) the difficult or unsettled nature of applicable law;
- 4) the presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- 5) the jurisdictional basis, if any, other than § 1334;
- 6) the degree of relatedness or remoteness of proceeding to main bankruptcy case;
- 7) the substance rather than the form of an asserted core proceeding;
- 8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- 9) the burden on the bankruptcy court's docket;
- 10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- 11) the existence of a right to a jury trial;
- 12) the presence in the proceeding of nondebtor parties;
- 13) comity; and
- 14) the possibility of prejudice to other parties in the action.

Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.), 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003).

Nothing in Defendant's response causes the Court to depart from its preliminary conclusion that remand is appropriate. Defendant's primary objection to remand is that it may decide to file a complaint alleging that Plaintiff failed to pay Defendant for various collections services that Defendant provided. Defendant asserts that based upon this alleged non-payment, it may have been entitled to a setoff against the claims asserted by the Plaintiff. Defendant states that it is still investigating whether to pursue its setoff claims.

Of course, Defendant retains the ability to take whatever actions it deems necessary to preserve its rights against the Plaintiff. However, the possibility that Defendant might assert a setoff claim at some unspecified point in the future is not enough to avoid remand. Further, the fact that Defendant allowed the State Court action to reach the trial stage without presenting any of its setoff claims causes the Court to question how serious Defendant is about pursuing such claims.

Defendant next argues that the estate could be more efficiently administered if the

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CONT... **Beverly Hills South Pacific Surgery Center, Inc.**

Chapter 11

action were adjudicated by the Bankruptcy Court. Defendant notes that of the claims that have been filed, Plaintiff's is the largest. Defendant predicts that if the action is remanded, trial will not occur until the winter or spring of 2019.

In the Court's view, Defendant's estimate of the trial timeline before the State Court is too pessimistic. Defendant is of course correct that in remanding the action, this Court loses the ability to control the timing of the adjudication of Plaintiff's claims. But Defendant places too little emphasis on the fact that Defendant sought bankruptcy protection only four days before trial before the State Court was scheduled to take place. Given this fact, it is likely that the action can be restored to the State Court's trial calendar reasonably quickly.

The State Court is best equipped to determine Defendant's liability and damages, if any, since Plaintiff's claims arise entirely under state law. After such a determination has been made, the claims allowance process before this Court can occur. Such a procedure is not unusual in bankruptcy cases and does not impair the Court's ability to efficiently oversee the administration of the estate.

The Court adopts as final the remainder of its preliminary findings. Specifically, the Court finds that removal of the action was significantly motivated by forum shopping. Of the claims on file so far, Plaintiff's claim is by far the largest, and Defendant sought bankruptcy protection on the eve of trial. In addition, factor eleven, comity, supports remand. Finally, although not one of the specifically delineated *Enron* factors, the Court notes that the interests of judicial efficiency weigh in favor of remand, because prior to removal the State Court was on the verge of trying the action.

III. Conclusion

Based upon the foregoing, the action is REMANDED to the State Court. The Court will enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Hearing Room 1568

10:00 AM

CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

Defendant(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

Plaintiff(s):

Yolanda Flores Corporation

Represented By
Jerry Jen

**United States Bankruptcy Court
Central District of California
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Wednesday, July 18, 2018

Hearing Room 1568

10:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#9.00 Hearing
RE: [16] Motion to Use Cash Collateral Notice of Motion and Motion for Approval
of Cash Collateral Stipulation

fr. 5-16-18

Docket 16

Tentative Ruling:

7/17/2018

On June 6, 2018, the IRS filed the “Renewed Stipulation for Interim Use of Cash Collateral between the United States and Debtor” (the “Renewed Stipulation”) [Doc. No. 31]. On June 8, 2018, the Court entered the “Order Approving Renewed Stipulation” [Doc. No. 33]. Among other terms, the Renewed Stipulation provided that: (1) the Debtor was authorized to use cash collateral through and including July 20, 2018; and (2) the use of cash collateral could be renewed upon subsequent stipulation with the United States or order of the Court. As of the date of this tentative ruling, no further stipulation related to the use of cash collateral subsequent to July 20, 2018 has been filed.

As of the date of this tentative ruling, no papers have been filed in connection with the continued hearing on the Motion. Thus, it is unclear whether the Debtor and the IRS are prepared to renew the Stipulation to provide for the use of cash collateral beyond July 20, 2018. Hearing required.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
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Wednesday, July 18, 2018

Hearing Room 1568

11:00 AM

2:17-11911 Dicran Garo Kuftedjian and Linda Torikian Kuftedjian

Chapter 7

#100.00 Hearing
RE: [61] Motion to Avoid Lien Judicial Lien with Econo Lube 'N Tune, LLC

Docket 61

Tentative Ruling:

7/17/2018: Tentative Ruling

For the reasons set forth below, the Court finds that the non-exempt value of the Subject Lien is \$19,000.00. The amount of the Subject Lien in excess of the non-exempt value is avoided pursuant to 11 U.S.C. § 522(f).

Pleadings Filed and Reviewed:

- 1) Motion to Avoid Judicial Lien under 11 U.S.C. § 522(f) (the "Motion") [Doc. No. 61]
- 2) Notice of Opposition and Request for a Hearing (the "Opposition") [Doc. No. 63]
 - a) "Declaration of Charles Baker" [Doc. No. 63]
- 3) Debtor's Reply to the Opposition [Doc. No. 67]
 - a) Declaration of Gregg Freedman (the "Freedman Declaration") [Doc. No. 68]
 - b) Declaration of Michael Han (the "Han Declaration") [Doc. No. 69]
 - c) Supplemental Declaration of Gregg Freedman (the "Supplemental Freedman Declaration") [Doc. No. 70]

I. Facts and Summary of Pleadings

Dicran Garo Kuftedjian and Linda Torikian Kuftedjian (the "Debtors") filed a voluntary Chapter 7 petition on February 16, 2017 (the "Petition") [Doc. No. 1]. On July 3, 2017, the Court entered the "Order of Discharge" [Doc. No. 49], and on August 23, 2017, the Debtors' case was ordered closed. On February 14, 2018, the

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CONT... **Dicran Garo Kuftedjian and Linda Torikian Kuftedjian** Chapter 7

Debtor filed the "Motion to Reopen Bankruptcy Case to Avoid Judgment Lien" (the "Motion to Reopen") [Doc. No. 53]. On April 9, 2018, the Court entered the "Order Granting Debtors' Motion to Reopen to Avoid Judgment Lien" [Doc. No. 60].

The Motion

On April 11, 2018, the Debtors filed the "Motion to Avoid Judicial Lien under 11 U.S.C. § 522(f)" (the "Motion") [Doc. No. 61]. The Debtors are the owners certain real property located at 1813 Calle Fortuna, Glendale, CA 91208 (the "Property"). The Debtors claim a homestead exemption in the Property under Cal. Code Civ. P. § 704.730(a)(3), in the amount of \$100,000.00. According to the Motion, the Debtors claim that the Property has a fair market value of \$800,000.00. The Property is encumbered by a First Deed of Trust held by Bank of America, N.A., in the amount of \$200,000.00 as of August 30, 2006. The Property is also encumbered by a second lien held by Plaza Mortgage in the amount of \$530,000.00 as of March 25, 2016. The Property is additionally encumbered by a judicial lien held by Econo Lube N' Tune, LLC in the amount of \$53,521.00 as of May 16, 2017 (the "Subject Lien"). The Motion seeks to avoid the Subject Lien on the grounds that the Subject Lien impairs an exemption to which the Debtor would be entitled under 11 U.S.C. § 522(b).

The Opposition

On April 24, 2018, Econo Lube N' Tune, LLC (the "Lienholder") filed the "Notice of Opposition and Request for a Hearing" (the "Opposition") [Doc. No. 63]. The Opposition disputes the Debtors' valuation of the Property, which the Lienholder contends is not supported by any evidence, and submits an appraisal of the Property conducted by Charles Baker, a Senior Residential Appraisal and Residential Review Specialist, on February 16, 2017 (the "Baker Appraisal"). See "Declaration of Charles Baker" ("Baker Declaration") [Doc. No. 63], Ex. A. The Baker Appraisal is based on an exterior inspection of the Property, and analysis of comparable sales data collected by Mr. Baker. Mr. Baker states that, based on the Baker Appraisal, as of February 16, 2017—the Petition Date—in his opinion the fair market value of the Property was \$900,000.00. *Id.* at ¶ 2.

Thus, based on the Baker Appraisal, the Opposition contends that the Subject Lien does not impair the Debtors' exemption in the Property, because the amount of the Subject Lien, plus all other liens, and the amount of the Debtors' exemption (which,

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CONT... **Dicran Garo Kuftedjian and Linda Torikian Kuftedjian** Chapter 7

in the aggregate, total \$883,521.00), do not exceed the value that the Debtors' interest in the Property would have in the absence of any liens.

The Reply

The Reply states that after the Debtors received the Opposition, the Debtors retained two professional real estate appraisers to appraise the value of the Property as of the Petition Date. The first appraisal submitted in support of the Reply was performed by Gregg Freedman, a California State Certified General Appraiser and Accredited Senior Appraiser/Real Property (the "Freedman Appraisal"). See "Declaration of Gregg Freedman" ("Freedman Declaration") [Doc. No. 68], Ex. B. The Freedman Appraisal is based on an exterior inspection of the Property, and analysis of comparable sales data collected by Mr. Freedman. Based on the Freedman Appraisal, Mr. Freedman states that his opinion is that the fair market value of the Property as of the Petition Date was \$849,000.00. Freedman Declaration at ¶ 5. The second appraisal submitted in support of the Reply was performed by Michael Han (the "Han Appraisal"). See "Declaration of Michael Han" ("Han Declaration") [Doc. No. 69], Ex. B. Mr. Han is a self-employed independent real estate appraiser for residential single family residences and 2-4 units, with experience appraising residential property in Southern California since 2004. Han Declaration at ¶ 3 & Ex. A. The Han Appraisal is based on an exterior inspection of the Property, and analysis of comparable sales data collected by Mr. Han. Mr. Han states that his opinion is that the fair market value of the Property as of the Petition Date was \$845,000.00.

Additionally, in support of the Reply, the Debtors submit the "Supplemental Declaration of Gregg Freedman" (the "Supplemental Freedman Declaration") [Doc. No. 70], which was filed on July 5, 2018. Mr. Freedman states that since the filing of the Freedman Declaration, the Debtors requested that he perform a review of the Baker Appraisal. Supplemental Freedman Declaration at ¶ 4. Mr. Freedman reviewed the Baker Appraisal, and on July 5, 2018, prepared the "Review Report," see *id.*, Ex. 1. The Review Report identifies areas of concern with regards to the Baker Appraisal, including but not limited to: (1) the comparable sales selected include both attached and detached comparable sales, many of which are "significantly larger" than the Debtors' Property, see Review Report at 3; (2) the Baker Appraisal does not indicate how Mr. Baker achieved his final opinion of value, and weighs the comparable sales in the order of date-of-sale, which Mr. Freedman finds potentially misleading because comparable sales "should not be weighted/emphasized solely

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CONT... **Dicran Garo Kuftedjian and Linda Torikian Kuftedjian** Chapter 7

upon date of sale but upon their degree of comparability," *id.*; (3) the Baker Appraisal indicates that the interior of the Property was not observed, yet Mr. Baker makes comments in the Baker Appraisal regarding improvements to the kitchen counters and wood flooring being installed, *id.* at 4; and (4) the Baker Appraisal includes a "Market Conditions Addendum to the Appraisal Report" which is typically prepared for lending purposes, and casts "doubt upon the accuracy of the final opinion developed," *id.* Based on the Review Report, Mr. Freedman states that he stands by his opinion that the fair market value of the Property as of the Petition Date was \$849,000.00, and that he believes such value to be more accurate than the figure stated in the Baker Appraisal. Supplemental Freedman Declaration at ¶ 5.

Based on these figures, the Reply states that, if the Court adopts the Han Appraisal, the Subject Lien should be partially avoided, with \$15,000.00 permitted to survive. Alternatively, if the Court adopts the Freedman Appraisal, the Subject Lien should be partially avoided, with \$19,000.00 permitted to survive.

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Here, the Court finds that the Freedman Appraisal is the most reliable of the competing appraisals submitted by the parties. The Court finds that the comparable

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CONT... Dicran Garo Kuftedjian and Linda Torikian Kuftedjian

Chapter 7

sales utilized by the Freedman Appraisal are more comparable to the Debtors' Property than the comparable sales utilized by the Baker Appraisal. Importantly, two out of the three comparable sales utilized by the Baker Appraisal are significantly larger than the Debtors' Property, which resulted in Mr. Baker making larger adjustments in value. The gross living area of the Debtors' Property is 1,720 square feet, whereas Baker Comparable #1, with a sale price of \$1,230,000.00, has a gross living area of 2,528 square feet as well as an additional bathroom, and Baker Comparable #3, with a sale price of \$970,000.00, has a gross living area of 2,397 square feet. In contrast, Freedman Comparable #'s 2 and 3, with sale prices of \$888,000.00 and \$857,000.00, respectively, have the same gross living area as the Debtors' Property, and are substantially similar to the Debtors' Property in other respects as well. Additionally, based on the Review Report, the Court finds that the Baker Appraisal is inferior in other respects, including but not limited to, the weight given by Mr. Baker to the comparable sales based on the date-of-sale, and the ambiguity with regards to the interior improvements noted and given value by Mr. Baker notwithstanding the fact that the Baker Appraisal was an "exterior only" appraisal. Therefore, for the purposes of calculating impairment, the Court finds that the fair market value of the Debtors' Property on the Petition Date was \$849,000.00.

Therefore, the threshold amount of impairment for the Property is \$830,000.00 (\$730,000.00 total senior liens + \$100,000.00 homestead exemption). Based on the foregoing, the Court finds that the non-exempt value of the Subject Lien is \$19,000.00. The amount of the Subject Lien in excess of the non-exempt value is avoided pursuant to 11 U.S.C. § 522(f).

The Debtors shall lodge a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Dicran Garo Kuftedjian and Linda Torikian Kuftedjian

Chapter 7

Debtor(s):

Dicran Garo Kuftedjian

Represented By
Edward C Tu

Joint Debtor(s):

Linda Torikian Kuftedjian

Represented By
Edward C Tu

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#101.00 Hearing re [635] Adequacy of the information contained in Debtor's (to be filed)
Disclosure Statement

Docket 0

***** VACATED *** REASON: CONTINUED 8-14-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

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Hearing Room 1568

11:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#102.00 HearingRE: [120] Motion Notice Of Motion And Motion For Order Approving Payment Of U.S. Trustee Fees From Trust Account; Declaration Of Robert P. Goe In Support Thereof with proof of service

Docket 120

Tentative Ruling:

7/17/2018

For the reasons set forth below, the Motion is GRANTED. The Debtor is authorized to pay the UST fees for the second quarter 2018 from the Trust Account.

Pleadings Filed and Reviewed:

- 1) Motion for Order Approving Payment of U.S. Trustee Fees from Trust Account (the "Motion") [Doc. No. 12]
- 2) As of the date of this tentative ruling, no opposition has been filed.

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") filed a voluntary Chapter 11 Petition on October 18, 2017 (the "Petition") [Doc. No. 1]. Currently, there are certain "Sale Proceeds" in the amount of approximately \$832,299.68 being held in the Debtor's attorney's trust account (the "Trust Account") following the sale of the Debtor's personal property and business to LB Denn, LLC for \$1,010,000.00 plus inventory of \$11,100.00.

On June 22, 2018, the Debtor filed the "Motion for Order Approving Payment of U.S. Trustee Fees from Trust Account" (the "Motion") [Doc. No. 12]. The Motion requests an order authorizing the Debtor to pay fees owing to the United States Trustee ("UST") for the second quarter 2018 in the amount of approximately \$325.00, which are due to be paid by July 31, 2018, from the Trust Account. The Debtor states that, now that the Debtor's business has been sold and substantially all estate funds are in the Trust Account, the Debtor lacks an alternative source of funds to pay the UST fees.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, July 18, 2018

Hearing Room 1568

11:00 AM

CONT... Beach Dans, Inc.

Chapter 11

No opposition to the Motion is on file.

II. Findings of Fact and Conclusions of Law

Section 363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. The Court approves the payment of the UST fees as requested in the Motion.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 19, 2018

Hearing Room 1568

10:00 AM

2:17-20920 Patricio Diaz Guevarra

Chapter 7

#1.00 HearingRE: [70] Motion RE: Objection to Claim Number 6,7,8 by Claimant Chase Bank USA, N.A.. (with proof of service) (Curlee, Brett)

Docket 70

Tentative Ruling:

7/18/2018

Tentative Ruling:

The Trustee's objection to claim numbers 6, 7, and 8 filed by Chase Bank USA, N.A., is SUSTAINED and the Claims, respectively, are DISALLOWED pursuant to 11 U.S.C. § 502(b)(9).

Pleadings Filed and Reviewed:

- 1) Motion by the Chapter 7 Trustee for Order Disallowing Unsecured Non-Priority Claims of Chase Bank USA, N.A., Claim Nos. 6, 7, and 8 in the Claims Register (the "Motion") [Doc. No. 70]
- 2) Notification of Asset Case and Request for Claims Bar Date [Doc. No. 19]
 - a) Notice of Possible Dividend and Order Fixing Time to File Claims (the "Bar Date Notice") [Doc. No. 20]
- 3) No opposition on file.

I. Facts and Summary of Pleadings

On September 6, 2017, Patricio Diaz Guevarra (the "Debtor") filed a voluntary Chapter 7 petition (the "Petition") [Doc. No. 1]. Wesley H. Avery was appointed as Chapter 7 Trustee (the "Trustee"). Among other creditors, the Debtor's "Schedule E/F" listed five claims for "Chase Cards," which claims included claims for \$6,023.00, \$8,787.00, and \$4,536.96.

On November 15, 2017, the Trustee filed the "Notification of Asset Case and Request for Claims Bar Date" [Doc. No. 19], and on November 17, 2017, the Clerk of the Court entered and issued the "Notice of Possible Dividend and Order Fixing Time

**United States Bankruptcy Court
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Thursday, July 19, 2018

Hearing Room 1568

10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

to File Claims" (the "Bar Date Notice") [Doc. No. 20]. The deadline for creditors to file proofs of claim was February 20, 2018. Doc. No. 20. The certificate of notice attached to the Bar Date Notice shows that the Bar Date Notice by electronic transmission was served by the Bankruptcy Noticing Center on "Chase Cards." *Id.*

The Motion

On June 18, 2018, the Trustee filed the "Motion by the Chapter 7 Trustee for Order Disallowing Unsecured Non-Priority Claims of Chase Bank USA, N.A., Claim Nos. 6, 7, and 8 in the Claims Register" (the "Motion") [Doc. No. 70]. The Motion requests that the Court enter an order disallowing the following claims filed by Chase Bank USA, N.A. on June 13, 2018 (collectively, the "Chase Claims"): (1) Claim No. 6 in the amount of \$6,023.00; (2) Claim No. 7 in the amount of \$8,787.85; and (3) Claim No. 8 in the amount of \$4,536.96. The Trustee contends that the Chase Claims should be disallowed on the basis that the Chase Claims were not timely filed. Section 502(a) provides that "A claim or interest, proof of which is filed under section 501 . . . is deemed allowed, unless a party in interest . . . objects." Pursuant to § 502(b)(9), when a claim objection is filed, "the court, after notice and a hearing, shall determine the amount of such claim . . . and shall allow such claim in such amount except to the extent that—(9) proof of such claim is not timely filed . . ." Under Bankruptcy Rule 3003(c)(2), "any creditor who fails to [file a proof of claim before the claim bar date set by the Court] shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." The Trustee contends that Chase Cards and Chase Bank USA, N.A., were served with the Bar Date Notice, but failed to timely file the Chase Claims. Therefore, the Trustee requests an order sustaining the Trustee's objection, and disallowing the Chase Claims as untimely.

No opposition is on file.

II. Findings of Fact and Conclusions of Law

A claim is deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). The term "party in interest" is not defined in the Code or the Federal Rules of Bankruptcy Procedure, but courts have held that standing in a bankruptcy context requires an "aggrieved person" who is directly and adversely affected pecuniarily by an order of the bankruptcy court. *In re Lona*, 393 B.R. 1, 3 (Bankr. N.D. Cal. 2008) (citing *Fondiller v. Robertson (In re Fondiller)*, 707 F.2d 441, 442-43 (9th Cir.

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Thursday, July 19, 2018

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10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

1983)). A chapter 11 debtor-in-possession has standing to object to a proof of claim because a trustee is considered a party-in-interest with standing to object. *See* 11 U.S.C. § 1107(a) (rights, powers, and duties of a debtor in possession); *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. 2000) (trustee has standing to object to a proof of claim under § 502(a) because a trustee is a "party in interest"); *In re Dominelli*, 820 F.3d 313, 317 (9th Cir. 1987).

Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. Section 502(b)(9) mandates disallowance of a claim where "proof of such claim is not timely filed . . ." 11 U.S.C. § 502(b)(9). Here, the Chase Claims were filed on June 13, 2018, almost four months after the February 20, 2018, bar date; thus, the Court finds that the Chase Claims should be disallowed under § 502(b)(9) because the Chase Claims were not timely filed.

III. Conclusion

Based on the foregoing, the Trustee's objection to the Chase Claims, and each of them, is SUSTAINED and the Chase Claims (Claim Nos. 6, 7, and 8, respectively) are DISALLOWED pursuant to 11 U.S.C. § 502(b)(9).

The Trustee shall lodge a conforming order incorporating the Court's tentative ruling within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, July 19, 2018

Hearing Room 1568

10:00 AM

CONT... Patricio Diaz Guevarra

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-14511 Rabenu Enterprises, LLC

Chapter 11

#100.00 HearingRE: [60] Motion to Dismiss Debtor "Notice Of Motion And Motion To Dismiss Chapter 11 Case; Memorandum Of Points And Authorities; Declaration(s) And Exhibit(s) In Support Thereof"

Docket 60

Tentative Ruling:

7/18/2018

Tentative Ruling:

For the reasons set forth below, the Debtor's Motion to Dismiss is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Dismiss Chapter 11 Case [Doc. No. 60] (the "Motion")
- 2) Limited Opposition of the United States Trustee to Debtor's Motion to Dismiss Chapter 11 Case [Doc. No. 63] (the "Opposition")

I. Facts and Summary of Pleadings

Rabenu Enterprises, LLC (the "Debtor") commenced a voluntary Chapter 11 petition on May 20, 2018. The Debtor's primary asset is commercial real property located at 751-757 Towne Avenue, Los Angeles, CA 90021 (the "Property"). On May 22, 2018, the Court authorized the Debtor to borrow \$3.8 million from The Evergreen Advantage, LLC ("Evergreen") to refinance the Property. *See* Doc. Nos. 46-47. The loan from Evergreen closed on May 25, 2018.

On June 6, 2018, the Court granted stay-relief to Logan Mortgage, Inc. ("Logan"), so that Logan could pursue a state court breach of contract action against the Debtor.

The Debtor moves to dismiss the case pursuant to §1112(b). The Debtor states that it sought bankruptcy protection primarily to prevent a foreclosure sale of the Property and to restructure the indebtedness against the Property. Now that those objectives have been achieved through the Court's approval of the Evergreen financing, the Debtor states that there is no reason for it to remain in bankruptcy. The Debtor notes that the automatic stay has been terminated as to Logan, the estate's only general

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11:00 AM

CONT... **Rabenu Enterprises, LLC**

Chapter 11

unsecured creditor. In the event dismissal is not granted under §1112(b), the Debtor seeks dismissal under §305(a)(1).

The United States Trustee (the "UST") does not oppose dismissal, provided that the Debtor pays all fees owed to the UST before the case is dismissed.

II. Findings and Conclusions

Section 1112(b) provides that the Court, upon request of a party in interest, "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

Here, the Court finds that cause exists for dismissal, and that dismissal is in the best interests of creditors and the estate. By restructuring the financing against the Property, the Debtor has accomplished the objective that motivated it to seek bankruptcy protection. No creditors have objected to dismissal. Conversion to Chapter 7 would not be in the interests of creditors, because the estate's only general unsecured creditor has already obtained stay-relief to pursue its remedies in the state court.

The Court will not dismiss the case until all fees owing to the UST have been paid. To ensure payment of UST fees, the proposed dismissal order shall be endorsed as to form by the UST, pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Within seven days of the hearing, the Debtor shall submit an order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rabenu Enterprises, LLC

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

CONT... Rabenu Enterprises, LLC

Raymond H. Aver

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 7

#101.00 HearingRE: [95] Application for Compensation of Final Fees and Expenses (11 U.S.C. § 330); Proof of Service; for Sheila Esmaili, Other Professional, Period: 1/9/2018 to 5/29/2018, Fee: \$32,648.00, Expenses: \$1,609.67.

Docket 95

Tentative Ruling:

See Cal. No. 102 below, incorporated by reference.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
David S Hagen

Joint Debtor(s):

Mira Vasandani

Represented By
David S Hagen

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-10258 Deepak B. Vasandani and Mira Vasandani

Chapter 7

#102.00 HearingRE: [95] Application for Compensation of Final Fees and Expenses (11 U.S.C. § 330); Proof of Service; for Sheila Esmaili, Other Professional, Period: 1/9/2018 to 5/29/2018, Fee: \$32,648.00, Expenses: \$1,609.67. WARNING: Correct courtroom is 1568. See docket entry #98 for corrective entry; Modified on 6/26/2018 (Evangelista, Maria).

Docket 95

Tentative Ruling:

7/18/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$32,648.00

Expenses: \$1,609.67

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Nathan Reinhardt, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Deepak B. Vasandani

Represented By
David S Hagen

Joint Debtor(s):

Mira Vasandani

Represented By
David S Hagen

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#103.00 HearingRE: [8] Emergency motion for Order Authorizing Use of Cash Collateral

Docket 8

Tentative Ruling:

7/18/2018

Hearing required.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#104.00 HearingRE: [7] Emergency motion for Order Authorizing Payment of Wages and Related Expenses

Docket 7

Tentative Ruling:

7/18/2018

Hearing required.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
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Thursday, July 19, 2018

Hearing Room 1568

11:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#105.00 HearingRE: [6] Emergency motion to Limit Notice of Certain Matters Requiring Notice to Creditors Pursuant to FRBP Rules 2002 and 9007

Docket 6

Tentative Ruling:

7/18/2018

Hearing required.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 23, 2018

Hearing Room 1568

10:00 AM

2:18-16652 Veronica Leggette-Holmes

Chapter 7

#1.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2008 Lexus IS250; VIN: JTHBK262182081693 .

Docket 9

Tentative Ruling:

7/19/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant. *See* Doc. No. 18.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Monday, July 23, 2018

Hearing Room 1568

10:00 AM

CONT... Veronica Leggette-Holmes

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Veronica Leggette-Holmes	Pro Se
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Trustee(s):

John J Menchaca (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 23, 2018

Hearing Room 1568

10:00 AM

2:18-16193 Jose Oracio Gastelum

Chapter 7

#2.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2016 Chevrolet Cruze Vin # 1G1BE5SM7G7262082) with Proof of Service. (Barasch, Adam)

Docket 8

Tentative Ruling:

7/19/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Monday, July 23, 2018

Hearing Room 1568

10:00 AM

CONT... Jose Oracio Gastelum Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Oracio Gastelum	Pro Se
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Trustee(s):

Rosendo Gonzalez (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 23, 2018

Hearing Room 1568

10:00 AM

2:18-16358 Donovan Jackson

Chapter 7

#3.00 Hearing

RE: [13] [16] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 228, 230, 230 1/2 and 230 1/4 E 119th Street Los Angeles, CA 90061 APN: 6083027005 . (Chandra, Sam)

Docket 13

Tentative Ruling:

7/19/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on December 21, 2017. The Movant filed an unlawful detainer action on January 17, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 23, 2018

Hearing Room 1568

10:00 AM

CONT...

Donovan Jackson

Chapter 7

change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Donovan Jackson

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 23, 2018

Hearing Room 1568

10:00 AM

2:18-16351 Jeffrey B. Cosby and Kristin Frances Orosa Cosby

Chapter 7

#4.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 HONDA ACCORD, VIN: JHMC R5F7 2EC0 00249 .

Docket 12

Tentative Ruling:

7/19/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 23, 2018

Hearing Room 1568

10:00 AM

CONT... Jeffrey B. Cosby and Kristin Frances Orosa Cosby Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jeffrey B. Cosby

Represented By
Steven B Lever

Joint Debtor(s):

Kristin Frances Orosa Cosby

Represented By
Steven B Lever

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, July 24, 2018

Hearing Room 1568

10:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

Adv#: 2:18-01082 Gardner v. Soo-Hoo et al

#1.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01082. Complaint by Tamara Nicole Gardner against Bryan J Soo-Hoo, Law Offices of Brian J Soo-Hoo, APC dba Bankruptcy Law Professionals. (Charge To Estate). Summons and Adversary Cover Sheet Nature of Suit: (91 (Declaratory judgment)) (Havkin, Stella)

fr: 6-5-18

Docket 1

***** VACATED *** REASON: DISMISSED 6-13-18**

Tentative Ruling:

6/4/2018

Plaintiff states that the parties have been discussing settlement and requests a one-month continuance of the status conference to see if the case can be settled. The Court will hold a continued status conference in one month as requested by the Plaintiff, but will maintain the previously ordered litigation deadlines. In the Court's experience, the maintenance of litigation deadlines is the best means of facilitating settlement.

Accordingly, the Court HEREBY ORDERS as follows:

- 1) The dates previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **7/12/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **10/30/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **11/29/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **12/19/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

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calendar.)

- e) The last day for dispositive motions to be heard is **12/26/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **12/29/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- g) A Pretrial Conference is set for **1/15/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed

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supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.

iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).

i) Trial is set for the week of **1/28/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Defendant(s):

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Bryan J Soo-Hoo Pro Se

Law Offices of Brian J Soo-Hoo, Pro Se

DOES 1 through 10 Pro Se

Plaintiff(s):

Tamara Nicole Gardner Represented By
Stella A Havkin

Trustee(s):

Timothy Yoo (TR) Represented By
Carmela Pagay

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2:18-16530 Universal Wellness Foundation, Inc.

Chapter 7

#2.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Inc. :Violeta Garcia, Bill Baker, Marianne White . (Fierro, Viridiana) Additional attachment(s) added on 6/6/2018 (Fierro, Viridiana).CORRECTION: Incorrect debtor's name entered at the time of filing. Debtor's name has been updated to reflect the PDF. Modified on 6/6/2018 (Fierro, Viridiana).

Docket 1

Tentative Ruling:

7/23/2018

Pleadings Filed and Reviewed:

- 1) Chapter 7 Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 4]
 - a) Certificate of Service by the Clerk of the Court of the Summons Upon the Petitioning Creditors [Doc. No. 6]

Local Bankruptcy Rule ("LBR") 1010-1 provides: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... serve the summons and petition within the time allowed by FRBP 7004 [and] file a proof of service of the summons and petition with the court." These requirements are prominently restated in bold type on the involuntary summons that is issued by the Clerk of the Court to the Petitioning Creditor:

To the Petitioning Creditor(s): If you fail to timely serve the summons and involuntary petition and/or to file proof of service ... thereof with the court or to appear at the status conference, this involuntary case may be dismissed in accordance with LBR 1010-1.

Here, Violeta Garcia, Bill Baker, and Marianne White (collectively, the "Petitioning Creditors") have failed to file a proof of service indicating that the summons and involuntary petition were served upon Universal Wellness Foundation, Inc. (the "Alleged Debtor"). Pursuant to LBR 1010-1, this involuntary petition is DISMISSED. The Court will prepare the order.

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Debtor(s):

Universal Wellness Foundation, Inc. Pro Se

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

#3.00 Hearing re [621] re The Official Committee Of Unsecured Creditors objection To Late-Filed Claim Number 39 Filed Tsai Luan Ho aka Shelby Ho, and James Hinds, Esq.

fr: 6-6-18

Docket 0

Tentative Ruling:

7/23/2018:

Tentative Ruling

For the reasons set forth below, the Committee's Claim Objection is SUSTAINED, and Claim No. 39 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) The Official Committee of Unsecured Creditors' Objection to Late-Filed Claim Number 39 Filed by Tsai Luan Ho aka Shelby Ho (the "Claim Objection") [Doc. No. 621]
 - a) Notice of Objection to Claim [Doc. No. 622]
 - b) Notice of Continued Hearing Regarding the Official Committee of Unsecured Creditors' Objection to Late-Filed Claim Number 39 Filed by Tsai Luan Ho aka Shelby Ho [Doc. No. 661]
- 2) Notice of Ruling Regarding the Official Committee of Unsecured Creditors' Objection to Claim Number 39 Filed by Tsai Luan Ho A/K/A Shelby Ho [filed by Shelby Ho] [Doc. No. 121, Adv. No. 2:16-ap-01374-ER]
- 3) Plan Administrator's Response to "Notice of Ruling Regarding the Official Committee of Unsecured Creditors' Objection to Claim Number 39 Filed by Tsai Luan Ho A/K/A Shelby Ho" [Doc. No. 124, Adv. No. 2:16-ap-01374-ER]
- 4) No opposition is on file

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CONT... Liberty Asset Management Corporation

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I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claims Filed or Asserted by Tsai Luan Ho aka Shelby Ho

On October 29, 2016, Tsai Luan Ho aka Shelby Ho filed Proof of Claim No. 30-2 on behalf of her wholly-controlled entity Great Vista Real Estate Corporation ("Great Vista"). On October 30, 2016, Ms. Ho filed Proof of Claim 33-1 on behalf of Washe LLC.

Approximately thirteen months later, on November 17, 2017, Ms. Ho filed Proof of Claim No. 39 ("Claim 39") on behalf of herself. Ms. Ho asserts a general unsecured claim, in the amount of \$11,503,387, on account of "commissions earned on real estate transactions."

D. Summary of the Committee's Objection to Claim No. 39 Filed by Ms. Ho

The Committee asserts that Claim No. 39, filed by Ms. Ho, should be disallowed for the following reasons:

- 1) Pursuant to §502(b)(9), the claim must be disallowed because it was filed almost a year after the claims bar date.

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- 2) Ms. Ho cannot escape application of the claims bar date by asserting that Claim No. 39 qualifies as an amended claim. There is no relationship between Claim No. 39 and the claims that Ms. Ho caused to be filed on behalf of Great Vista and Washe LLC.
- 3) Pursuant to the statute of frauds, codified at Cal. Civ. Code §1624(a)(4), the claim for real estate commissions is not enforceable because there is no written agreement supporting the claim.
- 4) Even if the statute of frauds did not bar the claim, the claim would still be time-barred because the statute of limitations applicable to enforcement of an oral contract is two years, and the majority of transactions supporting Claim 39 took place in 2011, five years prior to the petition date.
- 5) Pursuant to §502(d), the claim should be disallowed because the Committee is pursuing fraudulent transfer claims against Ms. Ho in a pending adversary proceeding.

E. Ms. Ho's Chapter 7 Petition

The initial hearing on the Claim Objection took place on June 6, 2018, at 10:00 a.m. On May 28, 2018, Ms. Ho commenced a voluntary Chapter 7 petition in the Northern District of California. The Court continued the hearing on the Claim Objection to allow the Trustee appointed in Ms. Ho's Chapter 7 case an opportunity to defend Ms. Ho's claim, which is now an asset of her Chapter 7 estate.

On June 11, 2018, the Committee provided notice of the continued hearing on the Claim Objection to the Trustee appointed in Ms. Ho's Chapter 7 case. The Trustee has not filed an papers in opposition to the Claim Objection. The Court takes judicial notice of papers filed by Ms. Ho's Trustee in opposition to an unrelated motion for stay-relief brought by the Committee in her case. The Trustee took the position that the Claim Objection was well-founded:

The Debtor [Ms. Ho] filed the proof of claim 13 months late and it is the subject of an objection in the Liberty Asset Management case. The objection was filed by the moving party [the Committee]. The Trustee believes the objection appears to be well taken. Whether there is a viable claim for legal malpractice [against the law firm responsible for the late filing of the Proof of Claim] is a different question that the Trustee will investigate in due course.

Opposition to Motion for Relief from Stay [Doc. No. 18, Case No. 18-30581, Bankruptcy Court for the Northern District of California].

On July 10, 2018, Ms. Ho filed a document captioned *Notice of Ruling Regarding*

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the Official Committee of Unsecured Creditors' Objection to Claim Number 39 Filed by Tsai Luan Ho A/K/A Shelby Ho [Doc. No. 121, Adv. No. 2:16-ap-01374-ER] (the "Notice"). The Notice requests that the Court take judicial notice of an order entered in Ms. Ho's Chapter 7 case on July 5, 2018. Although the caption of the Notice references the Claim Objection, the order that is actually attached to the Notice pertains to an unrelated motion for relief from the automatic stay.

On July 11, 2018, the Plan Administrator for Liberty's confirmed Chapter 11 Plan (which is the successor in interest to the Committee and is being represented by the same law firm that represented the Committee) filed a response to the *Notice*, pointing out the inconsistency identified above.

II. Findings and Conclusions

A. No Further Continuance of the Hearing is Required

Ms. Ho's commencement of a Chapter 7 petition vested the rights in Claim 39 in Ms. Ho's estate. The previous continuance of the hearing was appropriate to provide the Trustee appointed in Ms. Ho's case the chance to defend Claim 39. Ms. Ho's Trustee has received notice of the continued hearing and has not filed any papers in defense of Claim 39. Based on papers filed in an unrelated motion in Ms. Ho's Chapter 7 case, Ms. Ho's Trustee's position is that the Claim Objection is well taken. No further continuance of this hearing is required.

The Court takes judicial notice of the entire record of the proceedings in Ms. Ho's Chapter 7 case pending before Judge Montali. The Court has reviewed the audio recording of the proceedings on an unrelated lift-stay motion brought by the Committee in that case. There is no merit to Ms. Ho's position that Judge Montali's ruling on the lift-stay motion was a ruling on the Claim Objection. Adjudication of the Claim Objection will not interfere with the administration of Ms. Ho's Chapter 7 case in any manner. As noted, the Trustee appointed in Ms. Ho's case believes that the Claim Objection is well taken and does not intend to defend Claim 39.

B. The Claim Objection is Sustained

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient

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evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502(b)(9) requires the Court to disallow a claim if the "proof of such claim is not timely filed." Here, Ms. Ho filed Claim 39 approximately one year subsequent to the claims bar date. Notice of the claims bar date was provided to Ms. Ho and her attorney. In addition, Ms. Ho's awareness of the claims bar date is established by the fact that she caused proofs of claim to be filed on behalf of two other entities in which she held an interest. Because Claim No. 39 was not timely filed, it is DISALLOWED.

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." Here, the claim is unenforceable under California law and therefore must be disallowed for this additional reason. Specifically, Cal. Civ. Code §1624(a)(4) provides that an agreement employing an agent to purchase or sell real estate is not enforceable unless the agreement is "in writing and subscribed by the party to be charged by the party's agent." Here, Claim 39 is not supported by any written agreement.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 39, asserted by Ms. Ho (and now owned by Ms. Ho's Chapter 7 estate), is DISALLOWED in its entirety. The Committee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel

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Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01374 Official Unsecured Creditors Committee for Liberty v. Ho et al

#4.00 STATUS CONFERENCE

RE: [1] Adversary case 2:16-ap-01374. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Tsai Luan Ho, Benjamin Kirk. Gail)

fr. 3-21-17; 7-11-17; 2-26-18; 5-29-18; 5-29-18

Docket 1

Tentative Ruling:

7/23/2018: Tentative Ruling

Based on the existence of parallel litigation now pending in Ms. Ho's Chapter 7 case in the Northern District of California, the Court intends to dismiss this action without prejudice, unless an objection is filed by no later than **August 7, 2018**.

Pleadings Filed and Reviewed:

- 1) Order Setting Status Conference for July 24, 2018, at 10:00 a.m. [Doc. No. 119]
- 2) The Plan Administrator's Status Report [Doc. No. 123]

I. Facts and Summary of Pleadings

Trial in this matter was set to go forward on May 29, 2018. On May 28, 2018, Defendant Tsai Luan Ho aka Shelby Ho ("Ms. Ho") commenced a voluntary Chapter 7 petition in the Northern District of California, staying the trial.

To allow the trial to go forward, the Plaintiff sought stay-relief in Ms. Ho's Chapter 7 case. The Court takes judicial notice of all proceedings in that case. Judge Montali, who is presiding over Ms. Ho's Chapter 7 case, denied Plaintiff's motion to lift the stay. Judge Montali concluded that lifting the stay would waste judicial resources, because if the stay were lifted, two trials would have to take place—a trial to liquidate the amount of Plaintiff's claim against Ms. Ho conducted by this Court, followed by a trial to determine whether such claim was non-dischargeable conducted by Judge Montali. *See* Doc. No. 27, Case No. 18-bk-30581 (audio recording of hearing on Plaintiff's motion to lift the stay).

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On July 20, 2018, Plaintiff commenced a non-dischargeability action against Ms. Ho in the Northern District of California. That action largely mirrors the claims set forth in the instant complaint, but adds additional claims asserting that Ms. Ho's alleged indebtedness is non-dischargeable pursuant to §523(a)(4).

II. Findings and Conclusions

The Plaintiff's action pending in the Northern District of California will (1) establish the amount of the Plaintiff's claim, if any, against Ms. Ho, and will (2) establish whether any such claim is dischargeable. As a result of this parallel litigation, there is no longer any reason for the instant action to proceed. Unless an objection is filed by no later than **August 7, 2018**, the Court intends to dismiss this action without prejudice. In the event an objection is filed, the Court will determine whether a hearing is required, and the parties will be so notified.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Tsai Luan Ho

Represented By
Gregory K Jones

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Benjamin Kirk

Represented By
William Crockett

Plaintiff(s):

Official Unsecured Creditors

Represented By
Jeremy V Richards
Gail S Greenwood

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2:17-22974 Rideshare Port Management, LLC

Chapter 11

#5.00 RE: [53] Confirmation of the First Amended Plan

fr. 4-5-18

Docket 53

***** VACATED *** REASON: DISCLOSURE STATEMENT DENIED 7-16-18**

Tentative Ruling:

4/4/2018

For the reasons set forth below, the Court DENIES the Motion for Approval of the Disclosure Statement. The Disclosure Statement does not contain adequate information. The deadline for the Debtors to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtors to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. If the First Amended Disclosure Statement is approved at the above-referenced hearing, the Court will hold a hearing on confirmation of the First Amended Plan on **July 24, 2018 at 10:00 a.m.**, subject to the deadlines for solicitation of votes and plan confirmation that will be set forth in the Court's order after hearing on the First Amended Disclosure Statement.

Pleadings Filed and Reviewed:

- 1) Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors Rideshare Port Management, LLC and Red Booth, Inc. (the "Disclosure Statement") [Rideshare Doc. No. 53], [Red Booth Doc. No. 69]
- 2) Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management, LLC and Red Booth, Inc. (the "Plan") [Rideshare Doc. No. 54], [Red Booth Doc.

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No. 70]

- 3) Opposition to Joint Disclosure Statement Describing Plan of Reorganization (the "Opposition") [Rideshare Doc. No. 67]

I. Facts and Summary of Pleadings

Rideshare Port Management, LLC (Case No. 2:17-bk-22974-ER) and Red Booth, Inc. (Case No. 2:17-bk-22975-ER) (collectively, the "Debtors"), and each of them, seek approval of the "Joint Disclosure Statement Describing Plan of Reorganization Proposed by Debtors, Rideshare Port Management, LLC and Red Booth, Inc." (the "Disclosure Statement") [Rideshare Doc. No. 53], [Red Booth Doc. No. 69]. The Debtors', and each of them, concurrently filed the "Plan of Reorganization Proposed Jointly by Debtors Rideshare Port Management, LLC and Red Booth, Inc." (the "Plan") [Rideshare Doc. No. 54], [Red Booth Doc. No. 70].¹ [Note 1].

Description of the Plan and Disclosure Statement

The Plan will become effective (the "Effective Date") within 60 days after the date of entry of the Confirmation Order.

The Plan's includes "Unclassified Claims" as follows:

- 1) Administrative Priority Claims: these claims include (i) professional fees and costs; and (ii) United States Trustee's fees. Such claims shall be paid in full on, or as soon as practicable after the Effective Date or upon allowance of such claim, whichever is later.
- 2) Unclassified Priority Claims/Priority Tax Claims: Unsecured Claims of Governmental Units entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date unless the Debtor files an objection to such claim prior to the Effective Date. The Debtors are not aware of any Unclassified Priority Claims at this time.

The Plan's classification scheme for Claims and Interests is as follows:

- 1) Class 1: Secured Tax Claims Against the Rideshare Debtor: this class includes allowed secured tax claims against the Rideshare Debtor. Class

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- 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.
- 2) Class 2: Secured Tax Claims Against the Rideshare Debtor: this class includes allowed secured tax claims against the Rideshare Debtor. Class 1 is unimpaired. Each holder of a Class 1 Claim will be paid in the amount of the allowed claim pursuant to one of the three alternative treatments set forth in the Plan.
 - 3) Class 3: Convenience Claims: Class 3 consists of Convenience Claims (as that term is defined in the Plan and Disclosure Statement) against the Debtors. Class 3 is impaired under the Plan and entitled to vote on the Plan.
 - 4) Class 4: Allowed Claims of the Holders of General Unsecured Claims Against the Rideshare Debtor: Class 4 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 5, 6, and/or 7. The Debtors' estimate of the amount of the Class 4 Claims is \$277,057.00. Holders of Class 4 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 4 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 4 Plan Reserve Account; or (d) liquidation value/final payment.
 - 5) Class 5: Allowed Claims of the Holders of General Unsecured Claims Against the Red Booth Debtor: Class 5 excludes (i) disputed employment claims; (ii) general unsecured claims that qualify and elect treatment in Class 3; and/or (iii) general unsecured claims that qualify for treatment in Classes 4, 6, and/or 7. The Debtors' estimate of the amount of the Class 5 Claims is \$31,275.00. Holders of Class 5 Claims are impaired under the Plan. After the Effective Date, the Holders of Class 5 Claims will receive one of either: (a) net proceeds of the New Value Contribution; (b) quarterly plan payments; (c) unused proceeds of the Class 5 Plan Reserve Account; or (d) liquidation value/final payment.

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- 6) Class 6: Disputed Employment Claims: Class 6 consists of the Disputed Employment Claims. Class 6 is impaired under the Plan and entitled to vote on the Plan. The Holders of Class 6 Claims may select one of two options under the Plan.
- 7) Class 7: Allowed Subordinated Claims for Penalties and All Other Subordinated Allowed Claims: Class 7 consists of allowed subordinated claims for penalties, if any, and all other allowed subordinated claims. Class 7 is impaired under the Plan and entitled to vote on the Plan.
- 8) Class 8: Interests in the Rideshare Debtor: Class 8 consists of the Interests in the Rideshare Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Rideshare Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.
- 9) Class 9: Interests in the Red Booth Debtor: Class 9 consists of the Interests in the Red Booth Debtor. The Interests are impaired under the Plan and entitled to vote on the Plan. The Interests in the Red Booth Debtor shall be deemed not to receive any distribution under the Plan on account of their Interests, and instead the Interests of the Rideshare Debtor shall be retained on account of the New Value Contribution.

The Disclosure Statement states that the Plan will be funded by the (i) revenue generated by the Reorganized Debtors; (ii) the New Value Contribution; and (iii) net recoveries from Rights of Action, if any. The Debtors anticipate that there will have approximately \$44,281.21 in unrestricted cash on the Effective Date.

The plan's risk factors, as detailed in the Disclosure Statement, include the risk that the Debtor's projections of its income and expenses between the date of the Disclosure Statement and the date of the proposed distributions may prove to be overly optimistic.

The Disclosure Statement does not contain the exhibit designated by the Disclosure Statement as containing the Debtors' Liquidation Analysis.

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Opposition

On March 22, 2018, Kaushaal Laxmee, Gary Oganesian, Alex Licterman and Howard Miller (collectively, the "Creditors") filed the "Opposition to Joint Disclosure Statement Describing Plan of Reorganization" (the "Opposition") [Rideshare Doc. No. 67]. The Opposition contends that the Disclosure Statement is inadequate in the following respects:

- (1) The Disclosure Statement does not provide any information as to the amount or source of the New Value Contribution;
- (2) The Disclosure Statement does not provide information as to the procedure for determining disputed claims, including Creditors' claims;
- (3) The Disclosure Statement references exhibits which have not been filed;
- (4) The Disclosure Statement separately classifies unsecured "Disputed Employment Claims" from other general unsecured claims, which is impermissible gerrymandering;
- (5) The Plan provides for an impermissible waiver of creditor rights against non-debtor parties; and
- (6) The Disclosure Statement, as a whole, lacks material information for unsecured creditors to make an informed judgment on whether to vote for or against the Plan; the Disclosure Statement's description of the class treatments is ambiguous and renders it impossible for the Creditors to know what the payout will be or the source of funds, and it is thus impossible to determine whether the treatment of insider unsecured claims will violate the absolute priority rule.

Therefore, the Opposition request that the Court deny approval of the Disclosure Statement.

II. Findings of Fact and Conclusions of Law

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Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19)

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the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

Here, the Court finds that the Disclosure Statement fails to satisfy the following relevant *Metrocraft* factors: (2) a description of the available assets and their value; (4) the source of information stated in the disclosure statement; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; and (15) information relevant to the risks posed to creditors under the Plan.

Among other deficiencies, the Disclosure Statement: (a) does not provide adequate information regarding the specific identities of the "Plan Funders," the amount of the contemplated New Value Contribution, or state whether the New Value Contribution has been exposed to the market; (b) provides for interest holders in Class 8 to retain their interests due to the New Value Contribution, but does not provide a valuation offered for those interests; (c) does not specify the interest rate that is being used to bring the present value equal to the liquidation value, where applicable; (d) references omitted exhibits which are material to the adequacy of the Disclosure Statement (*e.g.*, the procedure for estimating or allowing disputed claims) and which, contrary to their stated intent in the Disclosure Statement, the Debtors have not filed prior to this hearing; (e) does not adequately describe the class treatments or detail the anticipated pay outs to respective classes, which makes it impossible for voting claimholders to assess whether the treatment of insider unsecured claims will violate the absolute priority rule; and (f) does not adequately detail the effect of, among other things, election to participate in the Plan Trust.

The Court notes that, in other filings in their respective cases and in the related Rideshare Adversary Proceeding (Adv. Case. No. 2:17-ap-01530-ER), the Debtors have stated their intent to file a First Amended Joint Plan and Joint Disclosure Statement. *See, e.g.*, "Motion to Extend Exclusivity Period" [Rideshare Doc. No. 66]; "Reply to Defendant's Opposition to the Motion to Extend the Preliminary Injunction" [Adv. Doc. No. 40]. In these filings, the Debtors have averred that the Debtors are negotiating with certain of the unsecured creditors, including the Creditors, towards a

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consensual resolution of their claims, and that the Amended Joint Plan and Joint Disclosure Statement will address the deficiencies identified with respect to the current Plan and Disclosure Statement.

III. Conclusion

For the reasons set forth above, the Court DENIES the Motion for Approval of the Disclosure Statement. The Disclosure Statement does not contain adequate information. The deadline for the Debtors to file and serve the First Amended Plan and First Amended Disclosure Statement is **May 11, 2018**. The Court will hold a hearing on the adequacy of the First Amended Disclosure Statement on **June 21, 2018 at 10:00 a.m.** The deadline for the Debtors to obtain confirmation and approval of the First Amended Plan and First Amended Disclosure Statement is **July 24, 2018**. If the First Amended Disclosure Statement is approved at the above-referenced hearing, the Court will hold a hearing on confirmation of the First Amended Plan on **July 24, 2018 at 10:00 a.m.**, subject to the deadlines for solicitation of votes and plan confirmation that will be set forth in the Court's order after hearing on the First Amended Disclosure Statement.

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtors have both filed the Joint Disclosure Statement and the Plan in their respective cases. For the purposes of this tentative ruling, the Court will cite the Disclosure Statement and Plan filed in the Rideshare Debtor's case (2:17-bk-22974-ER), Doc. Nos. 53 & 54, respectively. The Disclosure Statement and Plan filed in the Red Booth Debtor's case (2:17-bk-22975-ER) are located at Doc. Nos. 69 & 70, respectively.

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Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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2:17-22975 Red Booth, Inc.

Chapter 11

#6.00 *Hearing* RE: [69] Confirmation of the First Amended Plan

fr. 4-5-18

Docket 69

*** VACATED *** REASON: DISCLOSURE STATEMENT DENIED 7-16-18

Tentative Ruling:

4/4/2018

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thornton-Illar

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2:17-18394 Marco Antonio Cueto

Chapter 11

#7.00 HearingRE: [108] Application for Compensation for legal services rendered and reimbursement of expenses; declaration of Onyinye Anyama in Support thereof for Onyinye N Anyama, Debtor's Attorney, Period: 7/14/2017 to 6/28/2018, Fee: \$8,745.00, Expenses: \$765.00.

Docket 108

Tentative Ruling:

7/23/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,745.00

Expenses: \$765.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

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2:16-25050 Larry Mark Oneal and Susan A Oneal

Chapter 7

#100.00 APPLICANT: Bond Payments - International Sureties

Hearing re [82] and [83] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/23/2018

See Cal. No. 104 below, incorporated by reference.

Party Information

Debtor(s):

Larry Mark Oneal

Represented By
Eric A Mitnick

Joint Debtor(s):

Susan A Oneal

Represented By
Eric A Mitnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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Chapter 7

**#101.00 APPLICANT: Other State or Local Taxes (post-petition) - Los Angeles County
Tax Collector**

Hearing re [82] and [83] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/23/2018

See Cal. No. 104 below, incorporated by reference.

Party Information

Debtor(s):

Larry Mark Oneal

Represented By
Eric A Mitnick

Joint Debtor(s):

Susan A Oneal

Represented By
Eric A Mitnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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#102.00 APPLICANT: Attorney - Law Offices of Zamora and Hoffmeier

Hearing re [82] and [83] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/23/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,000.00

Expenses: \$1,698.27

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Larry Mark Oneal

Represented By
Eric A Mitnick

Joint Debtor(s):

Susan A Oneal

Represented By
Eric A Mitnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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#103.00 APPLICANT: Accountant - Menchaca & Company

Hearing re [82] and [83] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/23/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$4,949.50

Expenses: \$50.50

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Larry Mark Oneal

Represented By
Eric A Mitnick

Joint Debtor(s):

Susan A Oneal

Represented By
Eric A Mitnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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#104.00 APPLICANT: Trustee - Wesley H Avery

Hearing re [82] and [83] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/23/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$10,000.00

Total Expenses: \$274.77

International Sureties: All amounts previously paid to this applicant on an interim basis are approved as final.

Los Angeles Tax: All amounts previously paid to this applicant on an interim basis are approved as final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Larry Mark Oneal

Represented By
Eric A Mitnick

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Joint Debtor(s):

Susan A Oneal

Represented By
Eric A Mitnick

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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2:18-11909 Raymond Express International,LLC

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#105.00 HearingRE: [22] Motion For Summary Judgment - Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor (with proof of service)

Docket 22

Tentative Ruling:

7/23/2018

For the reasons set forth below, the Motion is GRANTED, and the Court will enter an order for relief against Raymond Express.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) [Amended] Involuntary Petition Against a Non-Individual [amended to correct amounts allegedly owed by the Petitioning Creditors] [Doc. No. 6] (the "Involuntary Petition")
 - a) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 7] (the "Summons")
 - i) [Proof of Service] of Summons [Doc. No. 9]
- 3) Answer and Affirmative Defenses of Raymond Express International, LLC to Involuntary Petition [Doc. No. 10] (the "Answer")
- 4) Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor [Doc. No. 22] (the "Motion")
 - a) Notice of Motion For: Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor [Doc. No. 23]
 - b) Supplemental Notice of Hearing Re: Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 34]
 - i) Amended Proof of Service Re: Supplemental Notice of Hearing Re: Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 35]
 - c) Proposed Statement of Uncontroverted Facts and Conclusions of Law in

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Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 24] (the "SUF")

- d) Declaration of Scott Lee in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 25] (the "Scott Lee Decl.")
 - e) Declaration of Jee-Woon Lee in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 26] (the "Jee-Woon Lee Decl.")
 - f) Declaration of Chang Hoon Kim in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 27] (the "Kim Decl.")
 - g) Declaration of Michelle Chon in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 28] (the "Chon Decl.")
 - h) Declaration of Hyundo Park in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 33] (the "Park Decl.")
 - i) Request for Judicial Notice in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto [Doc. No. 29] (the "RJN")
- 5) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

On February 21, 2018 (the "Petition Date"), Korean Airlines Co., Ltd. ("Korean Airlines"), Asiana Airlines, Inc. ("Asiana Airlines"), and Sunjin Logistics Co., Ltd. ("Sunjin Logistics") (collectively, the "Petitioning Creditors") commenced this involuntary Chapter 7 petition against Raymond Express International, LLC ("Raymond Express"). The Involuntary Petition alleges that the Petitioning Creditors are indebted to Raymond Express in the total amount of \$2,630,313, as follows:

- 1) Korean Airlines—owed \$1,104,655 on account of freight charges.
- 2) Asiana Airlines—owed \$1,441,566 on account of freight charges.
- 3) Sunjin Logistics—owed \$84,082 on account of freight charges.

On March 16, 2018, Raymond Express answered the Involuntary Petition. In its Answer, Raymond Express asserted that (1) the Petitioning Creditors were ineligible

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to file the Involuntary Petition because the Petitioning Creditors' claims were contingent as to liability and/or the subject of a bona fide dispute as to liability and amount; that (2) Raymond Express was generally paying its undisputed debts as they became due as of the Petition Date; and that (3) the interests of creditors and Raymond Express would be better served by dismissal or suspension of the case.

On April 10, 2018, after having conducted a Status Conference, the Court entered a *Scheduling Order* [Doc. No. 12] setting litigation deadlines governing trial on the Involuntary Petition, and ordered the parties to mediation. On April 27, 2018, the Court entered an order assigning the matter to the Mediation Panel. Doc. No. 20. The parties scheduled mediation for June 14, 2018, *see* Scott Lee Decl. at ¶11; the record does not reflect whether the mediation took place or what the results were.

Petitioning Creditors move for summary judgment, contending that the undisputed facts necessitate entry of an order for relief against Raymond Express. Raymond Express has not filed an Opposition to the Motion.

II. Findings and Conclusions

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

A. Material Facts as to Which There is No Genuine Dispute

Having reviewed the Motion, the declarations and evidence submitted in support

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thereof, and the pleadings on file, the Court finds that there is no genuine dispute as to the following material facts [**Note 1**]:

- 1) Raymond Express is a broker in the business of providing logistics services to clients in need of transportation, supply chain distribution, and shipping services. Raymond Express' services help its clients ship produce and other perishable items. Raymond Express conducts business in the United States, Australia, and Asia. Scott Lee Decl. at ¶14 and Ex. 9.
- 2) The Petitioning Creditors are Korean businesses operating in the United States and in South Korea who have provided cargo and freight services to Raymond Express for many years. Scott Lee Decl. at ¶2.
- 3) From about 1983 to the Petition Date, Raymond Express retained Korean Airlines to transport goods (primarily produce products). Chon Decl. at ¶5.
- 4) Until August 2017, Raymond Express paid Korean Airlines for the transportation services that Korean Airlines provided. Chon Decl. at ¶6.
- 5) As of September 28, 2017, Raymond Express owed Korean Airlines \$1,104,655.05, evidenced by outstanding cargo sales invoices. Chon Decl. at ¶¶8–12, Exs. 14–17. Such indebtedness is not in bona fide dispute as to liability or amount, and is not contingent as to liability. Raymond Express' indebtedness, and the absence of any bona fide dispute with respect thereto, is established by the invoices authenticated by Michelle Chon, Deputy General Manager of Cargo Revenue Accounting at Korean Airlines, as well as the following facts:
 - a) In September 2017, Korean Airlines contacted Raymond Express regarding its past-due balances. Raymond Express indicated that it was experiencing financial difficulties. Subsequent to September 2017, Raymond Express ignored Korean Airlines' requests for payment, and failed to remit payment. Chon Decl. at ¶¶13–14.
 - b) On September 20, 2017, Chang Hoon Kim, the General Manager of Accounting & Financing at Korean Airlines, attended a meeting at Raymond Express' Los Angeles branch office. At the meeting, Dave Moore, Raymond Express' Executive Vice President, stating that Raymond Express was in the process of shutting down and terminating all employees, and intended to proceed with self-liquidation using the services of a liquidation company called Realization Services, Inc. Kim Decl. at ¶4.
 - c) On September 21, 2017, Mr. Kim attended a meeting at the San Francisco offices of Realization Services, Inc. Greg Bosler, a representative of

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Realization Services, Inc., stated that Raymond Express would be liquidating its assets. Kim Decl. at ¶5.

- d) Prior to the filing of the Answer to the Involuntary Petition, Raymond Express did not inform Mr. Kim, Korean Airlines, or any of Korean Airlines' employees that the amounts due and owing were either contingent or disputed.
- 6) As of February 21, 2018, Raymond Express owed Sunjin Logistics \$84,082 on account of outstanding freight charges. Park Decl. at ¶¶ 7–11. Such indebtedness is not in bona fide dispute as to liability or amount, and is not contingent as to liability. Raymond Express' indebtedness, and the absence of any bona fide dispute with respect thereto, is established by the invoices authenticated by Hyundo Park, a senior staff member of Sunjin Logistics, as well as the following facts:
 - a) On August 23, 2017, Mr. Park e-mailed Raymond Express regarding its outstanding indebtedness. Steve Shao of Raymond Express responded, indicating that it would review the invoices and pay the amount due as soon as possible. Park Decl. at ¶7.
 - b) Prior to the filing of the Answer to the Involuntary Petition, Raymond Express did not inform Mr. Park that the amounts due and owing were either contingent or disputed. Park Decl. at ¶9.
- 7) As of February 21, 2018, Raymond Express owed Asiana Airlines \$1,441,556 on account of outstanding freight charges. Jee-Woon Lee Decl. at ¶10 and Ex. 13. Such indebtedness is not in bona fide dispute as to liability or amount, and is not contingent as to liability. Raymond Express' indebtedness, and the absence of any bona fide dispute with respect thereto, is established by the invoices authenticated by Jee-Woon Lee, Deputy General Manager for the Regional Headquarters-The Americas for Asiana Airlines, as well as the following facts:
 - a) On September 20, 2017, Jee-Woon Lee e-mailed John Tree, David Moore, and Steve Shao of Raymond Express regarding the outstanding past due amounts owed to Asiana Airlines. Raymond Express responded only that the e-mail account would be suspended and that future inquiries should be directed to a person named Autum. Jee Woon-Lee Decl. at ¶9.
 - b) On several occasions between June 16, 2017 and October 16, 2017, Jee-Woon Lee contacted Barry Kasoff of Raymond Express regarding the outstanding indebtedness. At no time during these communications did

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Mr. Kasoff dispute that the amounts due and owing were either contingent or disputed. Jee-Woon Lee Decl. at ¶11.

- 8) As of the commencement of the Involuntary Petition, Raymond Express was not generally paying its debts as such debts became due. This is established by the fact that in addition to the indebtedness owed to the Petitioning Creditors of approximately \$2.5 million, four other creditors have filed Proofs of Claim since the commencement of the case. Scott Lee Decl. at ¶12; RJN at Ex. 6. The aggregate debt owed to claimants who have filed proofs of claim is \$934,515. Scott Lee Decl. at ¶13; RJN at Ex. 6. Raymond Express' non-payment of its debts is further established by its decision to inform Korean Airlines that it intended to liquidate. *See* ¶5(b)–(c), above.

B. Based Upon the Undisputed Facts, Petitioning Creditors are Entitled to Entry of an Order for Relief Against Raymond Express

Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Where a petition is timely controverted, the court must enter an order for relief against the alleged debtor if, after trial, the court determines that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." § 303(h).

As set forth above, there is no genuine dispute that Raymond Express is indebted to Korean Airlines, Asiana Airlines, and Sunjin Logistics in the aggregate approximate amount of \$2.6 million. The indebtedness owed to these three Petitioning Creditors is not contingent as to liability, and is not subject to a bona fide dispute as to liability or amount. Although Raymond Express asserted in its Answer that the debts were contingent and/or subject to a bona fide dispute, Raymond Express has asserted no specific facts in support of this position. Further, prior to the filing of the Answer, Raymond Express never advised any of the Petitioning Creditors that the debts were disputed. The Court finds that there is no genuine dispute that the indebtedness owed

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the Petitioning Creditors is not contingent or subject to a bona fide dispute.

In addition, based upon the indebtedness owed to the Petitioning Creditors, as well as the claims in the amount of \$934,515 asserted by four additional creditors subsequent to the commencement of the case, there is no genuine dispute that Raymond Express is generally not paying its debts as they become due. The fact that Raymond Express advised Korean Airlines that it intended to liquidate its operations is further evidence that it is not paying its debts as they become due.

The Petitioning Creditors have established that they are entitled to entry of an order for relief against Raymond Express. Within fourteen days of the entry of the order for relief, Raymond Express shall file the schedules, documents, and statements set forth in Bankruptcy Rule 1007.

The Court will sign the proposed judgment that has already been lodged by the Petitioning Creditors.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The Court has reviewed the *Proposed Statement of Uncontroverted Facts and Conclusions of Law in Support of Petitioning Creditors' Motion for Summary Judgment for the Entry of an Order for Relief Against the Alleged Debtor and Exhibits Thereto* [Doc. No. 24] (the "SUF"). The Court finds that all statements of undisputed fact set forth in the SUF are adequately established by the exhibits and declaration testimony submitted in connection with the Motion. It being the intent of the Court to find that there is no genuine dispute as to any of the facts set forth in the SUF, no negative inference shall be derived from the omission of any such facts from the abbreviated summation set forth herein.

Party Information

Debtor(s):

Raymond Express International,LLC

Represented By

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Jose-Manuel A DeCastro
Jonathan N Helfat

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2:11-60846 Anne Lan Peterson

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Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#1.00 Show Cause Hearing

re [69] Why The Court Should Not Construe Ronald Petersons Purported Cross-Complaint As A Counter-Complaint, Find That The Claims Asserted In The Counter-Complaint Are Compulsory, And Dismiss The Counter-Complaint As Untimely RE: [66] Crossclaim by Ronald Peterson against Anne Lan Peterson, Brad D. Krasnoff, Chapter 7 Trustee (Ham, Yoon)

Docket 66

Tentative Ruling:

7/24/2018: Tentative Ruling

For the reasons set forth below, the Court construes the Purported Cross-Complaint as a Counter-Complaint, finds that the claims asserted in the Counter-Complaint are compulsory, and dismisses the Counter-Complaint as untimely.

Pleadings Filed and Reviewed:

- 1) Cross-Complaint for (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; [and] (4) Negligence [Bankr. Doc. No. 64; Adv. Doc. No. 66] (the "Purported Cross-Complaint")
- 2) Order Requiring Ronald Peterson to Appear and Show Cause Why the Court Should Not Construe Ronald Peterson's Purported Cross-Complaint as a Counter-Complaint, Find that the Claims Asserted in the Counter-Complaint are Compulsory, and Dismiss the Counter-Complaint as Untimely [Adv. Doc. No. 69] (the "Order to Show Cause")
- 3) Ronald Peterson's Response to Order to Show Cause RE: Dismissal of Cross-Complaint as Untimely [Adv. Doc. No. 89] (the "Response")
- 4) Trustee's Opposition to Response [Adv. Doc. No. 89] of Ronald Peterson to [Order to Show Cause] [Adv. Doc. No. 94] (the "Opposition")

I. Facts and Summary of Pleadings

On January 22, 2018, the Chapter 7 Trustee (the "Trustee") filed the *Trustee's*

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First Amended Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Violation of Automatic Stay; and (5) For Dissolution of Limited Liability Company [Adv. Doc. No. 21] [**Note 1**] (the "Complaint") against Ronald Peterson ("Ronald") [**Note 2**] and two limited liability companies—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Complaint sought (1) a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of Anne Lan Peterson (the "Debtor") and Ronald, and therefore property of the estate pursuant to §541(a)(2); (2) turnover of the Property; (3) avoidance of the post-petition transfer of the Property to Maitreya Arizona; and (4) dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as Maitreya Nevada's sole owner, is entitled to liquidate the entity.

On February 26, 2018, Ronald, Maitreya Nevada, and Maitreya Arizona filed an Answer to the Complaint. Adv. Doc. No. 42. The Answer asserted four affirmative defenses but did not assert any counterclaims.

On June 6, 2018—the day prior to the hearing on the Trustee's Motion for Summary Judgment with respect to the Complaint's first, third, and fifth claims for relief (the "Motion")—the Court posted, at 12:20 p.m., a tentative ruling indicating its intent to grant the Motion. Approximately eleven hours later, at 11:03 p.m., Ronald filed a *Cross-Complaint for (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; [and] (4) Negligence* [Bankr. Doc. No. 64] (the "Purported Cross-Complaint") against the Trustee and the Debtor.

On June 14, 2018, the Court entered summary judgment, in the Trustee's favor, on the Complaint's first, third, and fifth claims for relief (the "Judgment"). The Court found that the filing of the Purported Cross-Complaint was not cause to delay entry of the Judgment. The Court ordered the Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m.

Defendants failed to turnover the Property to the Trustee as ordered by the Court. On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment. Adv. Doc. Nos. 96–97. On that same date, the Court directed the Clerk of the Court to issue a Writ of Possession to enforce the Judgment. Adv. Doc. No. 98.

The Purported Cross-Complaint alleges that the Trustee breached his fiduciary duties to Ronald by failing to adequately investigate the Debtor's assets at the time the petition was filed in 2011. The Purported Cross-Complaint alleges that had the

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Trustee conducted an adequate investigation, he would have discovered the undisclosed Property much sooner, before it had appreciated in value. The Purported Cross-Complaint alleges that this breach of fiduciary duty harmed Ronald by preventing him from negotiating a purchase of the estate's interest in the Property at a lower price. Finally, the Purported Cross-Complaint alleges that the Debtor breached her fiduciary duties to Ronald, and was negligent, by failing to disclose the Property in her bankruptcy schedules; and that the Trustee was negligent by failing to timely discover the undisclosed Property. The Purported Cross-Complaint seeks damages in the amount of \$300,000.

On June 18, 2018, the Court issued an order requiring Ronald to appear and show cause why the Court should not (1) construe the Purported Cross-Complaint as a Counter-Complaint, (2) find that the claims asserted in the Counter-Complaint are compulsory, and (3) dismiss the Counter-Complaint as untimely. Adv. Doc. No. 69 (the "Order to Show Cause"). In its *Preliminary Findings and Conclusions*, the Court first found that the Purported Cross-Complaint was more properly characterized as a Counter-Complaint, because it sought relief against an opposing party (the Trustee), not a co-party. The Court next found that the claims asserted in the Purported Cross-Complaint are compulsory counterclaims, because they arose from the same set of operative facts as the claims asserted in the Complaint.

A. Ronald's Response to the Order to Show Cause

Ronald makes the following arguments in his Response to the Order to Show Cause:

The claims asserted in the Purported Cross-Complaint are not compulsory, because they do not arise from the same set of operative facts as the claims asserted in the Complaint. The Purported Cross-Complaint alleges that (1) the Trustee breached his fiduciary duties to Ronald by failing to conduct an adequate investigation into the Debtor's financial affairs; that (2) the Debtor breached her fiduciary duties to Ronald by disclosing the Property in the divorce proceedings but not disclosing the Property in her bankruptcy schedules; that (3) the Trustee and the Debtor committed gross negligence for the same reasons; and that (4) the Trustee breached a contract between the Trustee and Ronald to sell the Property to Ronald.

The Trustee's Complaint does not rely upon any facts regarding the Trustee's investigation into the Debtor's financial affairs, because these events occurred before the Trustee took any action to administer the Property. The Complaint, unlike the

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Purported Cross-Complaint, contains no claims against the Debtor, notwithstanding the Debtor's falsification of her bankruptcy schedules. The Purported Cross-Complaint does not seek to challenge the Trustee's administration of estate assets; rather, it challenges the Trustee for his failures during the investigative phase of the Debtor's bankruptcy. These failures occurred before the Trustee decided to administer the Property.

B. The Trustee's Opposition to Ronald's Response

The Trustee makes the following arguments in his Opposition to Ronald's Response:

First, the Response was untimely and should be deemed waived. The Court ordered Ronald to respond to the Order to Show Cause by no later than July 5, 2018; Ronald did not file the Response until July 9, 2018, at 9:50 p.m. This delay reduced the Trustee's time to file an Opposition to the Response from seven days to two days.

Second, the Trustee's Complaint and Ronald's Purported Cross-Complaint are based upon the same aggregate set of operative facts. A counterclaim is compulsory if the facts are "logically related" to the underlying complaint, *Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992); it is not necessary that the facts be identical. A complaint and counterclaim will "rarely, if ever," involve exactly the same facts. *See Aetna U.S. Healthcare, Inc. v. Madigan (In re Madigan)*, 270 B.R. 749, 755 (B.A.P. 9th Cir. 2001).

The logical relationship test is satisfied here. The facts underlying the Complaint may be briefly summarized as follows: The Debtor and Ronald were married and are now in dissolution proceedings. The Debtor and Ronald acquired the Property, among other assets, during marriage. When the Debtor filed for bankruptcy protection in 2011 she failed to disclose the existence of the Property, among other community property assets, and the bankruptcy case was closed in 2012 without administration of those assets. In 2016, the bankruptcy case was reopened to allow the Trustee to administer the assets. The Trustee's administration led to the filing of this action for declaratory relief that the Property is community property and, therefore, property of the estate, and for turnover thereof. *See generally* Amended Complaint [Adv. Doc. No. 21].

In the Purported Cross-Complaint, Ronald admits that the Debtor failed to list the Property. Ronald contends that the Trustee's actions in administration of the Debtor's assets resulted in harm to Ronald, arising from alleged breach of contract, breach of

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fiduciary duty and negligence. Ronald attempts to argue that certain of the Trustee's alleged actions, or alleged inaction, at issue occurred when the Trustee did not discover the community property interests in 2011-2012, before the case was closed, while other alleged faults arose when the Trustee allegedly failed to perform on the purported contract in 2017.

Notwithstanding Ronald's attempt to separate these events, the fact that these assets, particularly the Property, existed as disputed community property interests of the Debtor and Ronald, serve as the fundamental basis, the factual "core," for both the Complaint and the Purported Cross-Complaint. It is because of these basic operative facts that there is a Complaint and a Purported Cross-Complaint. It is the Trustee's effort to administer the assets that resulted in the Complaint, while it is Ronald's allegations regarding the Trustee's administration that give rise to his Purported Cross-Complaint. First to occur was the acquisition of the assets during marriage, next was the Debtor's dissolution proceeding, then her bankruptcy filing, and then subsequently the Trustee's administration, followed by Ronald's claims criticizing that very administration. These facts are clearly and logically related.

Further, the Purported Cross-Complaint is frivolous and was filed in bad faith. Prior to entry of the Order to Show Cause, the Trustee considered seeking sanctions against Ronald pursuant to Bankruptcy Rule 9011 and 28 U.S.C. §1927. Presently, in light of the Order to Show Cause, the Trustee does not seek sanctions, but reserves his right to do so.

The Purported Cross-Claim's allegation that the Trustee breached his fiduciary duties to Ronald in his administration of the Debtor's case is frivolous. *See Wolf v. Kupetz (In re Wolf & Vine, Inc.)*, 118 B.R. 761, 771 (Bankr. C.D. Cal. 1990) (holding that a breach of fiduciary claim against a bankruptcy trustee for bringing a fraudulent transfer action was frivolous). Any suggestion that the Trustee breached any duties by relying upon the Debtor's bankruptcy schedules and sworn testimony at the §341(a) meeting is frivolous on its face because: (1) the Trustee is entitled to rely on the Debtor's sworn testimony; (2) if that were not true, trustees could not fulfill their duties in the numerous cases assigned to them; (3) Ronald had knowledge of the Debtor's nondisclosure for years before notifying the Trustee as a last ditch ploy to gain a tactical advantage the family court; and (4) the Trustee is protected by the doctrine of derived quasi-judicial immunity.

The breach of contract claim is frivolous because it fails to allege acceptance or the exchange of consideration, two basic elements of any contract. The exhibit attached to the Purported Cross-Complaint is itself clear evidence that Ronald never

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signed the contract, and that the contract expired by its own terms on January 23, 2017 absent Ronald's signature.

The negligence claim is frivolous because to prove negligence, Ronald must show that the Trustee owed him a duty and that the Trustee's breach proximately damaged Ronald. None of these elements are met. The Trustee did not owe a duty to Ronald to investigate the Debtor's assets on his behalf. The Trustee did not breach any duty by relying on the Debtor's schedules and sworn testimony.

II. Findings and Conclusions

At the outset, the Court will consider Ronald's Response, even though was filed four days late. Although the Court does not strike the Response, the untimely filing demonstrates a lack of diligence, imposed an additional burdening upon the Trustee by severely reducing his time to respond, and is not acceptable.

Turning to the merits, Civil Rule 13(g) provides in relevant part (emphasis added):

A pleading may state as a crossclaim any claim by one party against a *coparty* if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action.

The Court finds that the Purported Cross-Complaint is more properly characterized as a Counter-Complaint, because the Purported Cross-Complaint seeks relief against the Chapter 7 Trustee. As to Ronald, the Trustee is an opposing party, not a coparty, because Ronald is named as a defendant in the Trustee's Complaint.

The Court finds that the claims asserted in the Purported Cross-Complaint are compulsory counter-claims, because the claims arise from the same transaction or occurrence as the claims asserted in the Complaint. *See Pinkstaff v. United States (In re Pinkstaff)*, 974 F.2d 113, 115 (9th Cir. 1992) (stating that a counterclaim is compulsory if it arises from the same transaction or occurrence as the claims in the underlying complaint). To determine whether claims arise from the same transaction or occurrence, courts rely upon the "logical relationship" test. *Id.* As the Ninth Circuit has held:

A logical relationship exists when the counterclaim arises from the same aggregate set of operative facts as the initial claim, in that the same operative facts serve as the basis of both claims or the aggregate core of facts upon

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which the claim rests activates additional legal rights otherwise dormant in the defendant.

Pinkstaff, 974 F.2d at 115.

The Ninth Circuit Bankruptcy Appellate Panel has explained that under the "logical relationship" test, "the word 'transaction' is given a liberal and flexible construction" and "is a word of flexible meaning." *Aetna U.S. Healthcare, Inc. v. Madigan (In re Madigan)*, 270 B.R. 749, 755 (B.A.P. 9th Cir. 2001). A "transaction" may "comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." *Id.* (citing *Moore v. New York Cotton Exchange*, 270 U.S. 593, 610 (1926)). Further, the phrase "same aggregate set of operative facts" does not mean that there must be identical facts, "since the facts relied upon the plaintiff rarely, if ever, are, in all particulars, the same as those constituting the defendant's counterclaim." *Id.* (citing *Moore*, 270 U.S. at 610).

Here, the Trustee's Complaint and Ronald's Purported Cross-Complaint arise from the same set of operative facts and satisfy the logical relationship test. Both the Complaint and Purported Cross-Complaint assert allegations involving the Property and the Debtor and Ronald's interest in the Property. For example, the Complaint alleges that the Trustee is entitled to turnover of the Real Property because it is community property of Ronald and the Debtor. The Purported Cross-Complaint asserts that the Trustee breached his fiduciary duties to Ronald by failing to timely discover the Debtor's undisclosed interest in the Property, even though the Debtor had disclosed a marital dissolution proceeding and had claimed, in the dissolution proceeding, that the Property was community property.

Ronald argues that no logical relationship exists, because the counterclaims he asserts are based upon the Trustee's alleged failures during the investigative phase of the Debtor's bankruptcy, not the Trustee's activities while administering the Property. Ronald's argument overlooks the fact that a transaction may "comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." *Aetna*, 270 B.R. at 755.

All actions taken by the Trustee with respect to the Property—the Trustee's initial investigation into the Debtor's financial affairs, the Trustee's ultimate discovery of the Property, and the Trustee's decision to administer the Property—were done pursuant to the Trustee's statutory obligation to "collect and reduce to money the property of the estate" §704(a). Under the "liberal" and "flexible" scope afforded to a

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transaction pursuant to the "logical relationship" test, *Aetna*, 270 B.R. at 755, all these activities were part of the same transaction—namely, the Trustee's discharge of his obligations to investigate and administer the Debtor's estate. The distinction Ronald draws between the investigative and administrative phases of the Trustee's work disregards the reality that both phases are directed toward the same objective, liquidating the property of the estate. As such, the Trustee's activities are logically related and thus part of the same transaction for purposes of Civil Rule 13.

Because the Purported Cross-Complaint is logically related to the Complaint, the claims asserted in the Purported Cross-Complaint are compulsory counterclaims that Ronald was required to plead at the time he answered the Complaint. *See* Civil Rule 13(a) (requiring that a compulsory counterclaim be pleaded concurrently with the Answer). Ronald answered the Complaint on February 26, 2018, but did not assert the compulsory counterclaims until June 6, 2018. Consequently, the compulsory counterclaims are untimely and must be dismissed. *See Kuschner v. Nationwide Credit, Inc.*, 256 F.R.D. 684, 689 (E.D. Cal. 2009) ("When a counterclaim is compulsory, it is forfeited if it is not included in the party's pleading, including its answer to a complaint.").

The Court does not address the Trustee's allegations that the Purported Cross-Complaint is frivolous. The Order to Show Cause did not raise these issues; addressing them here would prejudice Ronald.

III. Conclusion

Based upon the foregoing, the Court construes the Purported Cross-Complaint as a Counter-Complaint, finds that the claims asserted in the Counter-Complaint are compulsory, and dismisses the Counter-Complaint as untimely. The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

Unless otherwise indicated, "Adv. Doc." citations are to Adv. No. 2:17-ap-01505-ER and "Bankr. Doc." citations are to Case No. 2:11-bk-60846-ER.

Note 2

A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:17-20906 Magdy Fayez Ragheb

Chapter 7

#2.00 APPLICANT: Accountant for Trustee - Menchaca & Company, LLP

Hearing re [32] and [33] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/24/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,537.50

Expenses: \$20.45

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Magdy Fayez Ragheb

Represented By
Marvin Jarrett Mann

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:17-20906 Magdy Fayez Ragheb

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#3.00 APPLICANT: Attorney for Trustee - Menchaca & Company, LLP

Hearing re [32] and [33] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 2 above, incorporated by reference.

Party Information

Debtor(s):

Magdy Fayez Ragheb

Represented By
Marvin Jarrett Mann

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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#4.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing re [32] and [33] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

7/24/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,750.00

Total Expenses: \$16.17

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Magdy Faye Ragheb

Represented By
Marvin Jarrett Mann

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#5.00 Hearing re [213] Post-Confirmation Status Conference re Debtor's Chapter 11 Plan

Docket 0

***** VACATED *** REASON: CONTINUED 7-26-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan

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Courtroom 1568 Calendar**

Wednesday, July 25, 2018

Hearing Room 1568

10:00 AM

2:11-26508 Don Chente Inc., a California Corporation

Chapter 7

#6.00 APPLICANT: Other Expenses: State Board of Equalization

Hearing re [136] and [137] Trustee's Final Report and Applications for
Compensation Status Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 below, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, July 25, 2018

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10:00 AM

2:11-26508 Don Chente Inc., a California Corporation

Chapter 7

#7.00 APPLICANT: Other Expenses: Internal Revenue Service

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 below, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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#8.00 APPLICANT: Other Expenses: International Sureties, LTD

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 below, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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2:11-26508 Don Chente Inc., a California Corporation

Chapter 7

#9.00 APPLICANT: Other Fees: John A Baer

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 below, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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#10.00 APPLICANT: Accountant - LEA ACCOUNTANCY, LLP

Hearing re [136] and [137] Trustee's Final Report and Applications for Compensation Status Hearing

Docket 0

Tentative Ruling:

7/24/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,413.00

Expenses: \$1,065.01

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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#11.00 APPLICANT: Trustee - ELISSA D MILLER

Hearing re [136] and [137] Trustee's Final Report and Applications for Compensation Status Hearing

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Tentative Ruling:

7/24/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,250.00

Total Expenses: \$59.93

United States Trustee Fees: \$9,751.07

Other, John A. Baer: amounts previously paid on an interim basis are now deemed final.

Other, Franchise Tax Board: \$1,728.35

Other, International Sureties LTD: amounts previously paid on an interim basis are now deemed final.

Prior Chapter Fees and Administrative Expenses:

Other, Employment Development Department: \$33,526.43 (to be paid \$1,617.95 pursuant to Trustee's Final Report).

Other, Franchise Tax Board (pre-conversion): \$3,370.38 (to be paid \$162.65 pursuant to Trustee's Final Report).

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CONT... Don Chente Inc., a California Corporation

Chapter 7

Other, Internal Revenue Service: \$15,731.80 (to be paid \$759.20 pursuant to Trustee's Final Report).

Other, State Board of Equalization: \$53,536.50 (to be paid \$2,583.62 pursuant to Trustee's Final Report).

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:00 AM

2:11-26508 Don Chente Inc., a California Corporation

Chapter 7

#12.00 APPLICANT: Fees, UNITED STATES TRUSTEE

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 above, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

2:11-26508 Don Chente Inc., a California Corporation

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#13.00 APPLICANT: Other Expenses: Franchise Tax Board

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 above, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:11-26508 Don Chente Inc., a California Corporation

Chapter 7

#14.00 APPLICANT: Other Expenses: Employment Development Department

Hearing re [136] and [137] Trustee's Final Report and Applications for
CompensationStatus Hearing

Docket 0

Tentative Ruling:

7/24/2018

See Cal. No. 11 above, incorporated by reference.

Party Information

Debtor(s):

Don Chente Inc., a California

Represented By
Robert M Yaspan

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, July 25, 2018

Hearing Room 1568

11:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#100.00 Hearing [1040] Objection to Claim #9,28 by Claimant Los Angeles County Treasurer and Tax Collector. in the amount of \$ \$240,532.03

Docket 1040

Tentative Ruling:

7/24/2018

Tentative Ruling:

For the reasons set forth below: (1) the Trustee's objection to Claim 9 is SUSTAINED, and Claim 9 is DISALLOWED in its entirety; and (2) the Trustee's objection to Claim 28 is SUSTAINED, and Claim 28 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Objection to Claim Nos. 9-2 and 28-2 Filed By Los Angeles County Treasurer and Tax Collector (the "Objection") [Doc. No. 1040]
- 2) No opposition on file.

I. Facts and Summary of Pleadings

Jayampath Dharmasuriya (the "Debtor") filed a voluntary Chapter 11 petition on July 20, 2009 (the "Petition") [Doc. No. 1]. On September 9, 2011, pursuant to the "Order Approving Appointment of a Chapter 11 Trustee" [Doc. No. 186], Jeffrey Golden was appointed as Chapter 11 Trustee (the "Trustee"). On November 2, 2011, upon motion by the Trustee, the Debtor's case was converted to one under Chapter 7 pursuant to the "Order Converting Case to Chapter 7" [Doc. No. 213]. The Trustee accepted appointment as the Chapter 7 Trustee on November 9, 2011. Doc. No. 215.

The Debtor originally scheduled seventeen pieces of real property in which title was held in his name or that of his revocable living trust. Certain of the properties lacked equity and were abandoned by the Trustee, and others were sold by the Trustee.

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The following properties were abandoned by the Trustee (collectively, the "Abandoned Properties"):

- (1) 4053 W. 23rd St., Los Angeles, CA 90018, *see* Doc. No. 255;
- (2) 3637-3639 9th Ave., Los Angeles, CA 90018, *see* Doc. No. 272;
- (3) 2327 246th Place, Lomita, CA 90717, *see id.*;
- (4) 3123-25 Vernon Ave., Los Angeles, CA 90008, *see* Doc. No. 381;
- (5) 7051 S. La Cienega Blvd., Los Angeles, CA 90045, *see* Doc. No. 539;
- (6) 4467 W. 11th St., Inglewood, CA 90304, *see* Doc. No. 544;
- (7) 818 E. 65th St., Inglewood, CA 90302, *see id.*;
- (8) 8317-8325 S. Western Ave., Los Angeles, CA 90047, *see id.*; and
- (9) 29315 Stadia Hill Ln., Rancho Palos Verdes, CA 90275, *see* Doc. No. 553.

The following properties were sold by the Trustee and any amounts owed to the Los Angeles County Treasurer and Tax Collector ("LATTTC") were paid in full through escrow (collectively, the "Sold Properties"):

- (1) 4358 Berryman Ave. #12, Los Angeles, CA 90066, *see* Doc. No. 357;
- (2) 824 S. Grevillea Ave., Inglewood, CA 90301, *see* Doc. No. 387;
- (3) 5265 Fountain Ave., Hollywood, CA 90029, *see* Doc. No. 388;
- (4) 1616 N. Wilmington Ave., Compton, CA 90222, *see* Doc. No. 444;
- (5) 546 W. 15th St., San Pedro, CA 90731, *see* Doc. No. 480;
- (6) 3877 Denker Ave., Los Angeles, CA 90018, *see* Doc. No. 559; and
- (7) 3409 W. 111th St., Inglewood, CA 90303, *see* Doc. No. 641.

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Chapter 7

Additionally, there are two of the Debtor's properties where relief from stay was granted or the property was foreclosed on:

(1) 11526 Simms Ave., Inglewood, CA 90303 was foreclosed on at a trustee's sale held on November 7, 2011; and

(2) Relief from stay was granted as to the real property located at 504 E. Arbor Vitae St., Nos. 1-4, Inglewood, CA 90301, *see* Doc. No. 144.

On January 3, 2012, LATTC filed the following proofs of claim: (1) Claim No. 9-2 in the fully secured amount of \$240,532.03 ("Claim 9"); and (2) Claim No. 28-2 in the fully secured amount of \$240,532.03 ("Claim 28").

The Objection

On June 25, 2018, the Trustee filed the "Objection to Claim Nos. 9-2 and 28-2 Filed By Los Angeles County Treasurer and Tax Collector" (the "Objection") [Doc. No. 1040]. The Trustee contends that Claim 9 should be disallowed on the grounds that it is duplicative of Claim 28 and was amended and superseded by Claim 28. The Objections states that: the Claims were filed by the same creditor; the amount of the Claims, the basis of the Claims, and the classification of the Claims is identical; and the Claims attach the same supporting evidence. With respect to Claim 28 (and for the reasons stated above, Claim 9), the Trustee contends that Claim 28 should be disallowed because the properties upon which Claim 28 is based have been abandoned, sold, or otherwise disposed of. Insofar as Claim 28 relates to certain of the Abandoned Properties and/or properties that the secured lender obtained relief from stay on, the Trustee did not administer the properties, and Claim 28 is not secured by a lien on property in which the Estate has an interest. Insofar as Claim 28 relates to the Sold Properties, the LATTC was paid in full from escrow; therefore, the LATTC does not have an enforceable claim against the Estate. In sum, the Trustee requests that Claim 28 be disallowed because it is not a secured claim pursuant to 11 U.S.C. § 506(a), no unsecured deficiency claim was filed, and certain of the liens were paid in full through sales; therefore, the LATTC does not have an enforceable claim against the Estate pursuant to 11 U.S.C. § 502(b)(1).

No opposition is on file.

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CONT... Jayampath P Dharmasuriya

Chapter 7

II. Findings of Fact and Conclusions of Law

Pursuant to LBR 9013-1(h), LBR 3007-1(b)(3)(B), and LBR 3007-1(b)(6), the failure of the Claimant to file a timely response to the Objection is grounds for granting the relief requested by the Movant. Given the Claimant's failure to file a response, the Court treats this as consent to granting the relief requested by the Movant.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the *prima facie* validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299-301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. Under § 502(b) (1), the court shall disallow a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured[.]"

Here, the Court finds that Claim 9 and Claim 28 were sufficiently filed in accordance with FRBP 3001; therefore, the Claims are presumed valid. The Court finds, however, that the Trustee has satisfied his burden of presenting factual evidence that defeats the presumption of validity of the Claims.

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Chapter 7

The Court finds that Claim 9 is duplicative of, and was superseded by Claim 28; therefore, the Trustee's objection to Claim 9 is SUSTAINED, and Claim 9 is DISALLOWED in its entirety.

Furthermore, the Court finds that Claim 28 is not an enforceable claim against the Estate pursuant to § 502(b)(1) because, insofar as the Claim relates to the Abandoned Properties, the Sold Properties, or the property on which relief from stay was granted the secured lender, Claim 28 is not a secured claim pursuant to 11 U.S.C. § 506(a), no unsecured deficiency claim was filed, and certain of the liens upon which Claim 28 is based were paid in full through sales. Therefore, the Trustee's objection to Claim 28 is SUSTAINED, and Claim 28 is DISALLOWED in its entirety.

III. Conclusion

Based on the foregoing: (1) the Trustee's objection to Claim 9 is SUSTAINED, and Claim 9 is DISALLOWED in its entirety; and (2) the Trustee's objection to Claim 28 is SUSTAINED, and Claim 28 is DISALLOWED in its entirety.

The Trustee shall lodge a conforming order incorporating this tentative ruling within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

**United States Bankruptcy Court
Central District of California
Los Angeles
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Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

**United States Bankruptcy Court
Central District of California
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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#101.00 HearingRE: [1032] Motion RE: Objection to Claim Number 14 by Claimant Jayantha Sunila Rillagodage. Objection to Claim No. 14 (Gaschen, Beth)

Docket 1032

Tentative Ruling:

7/24/2018: Tentative Ruling

For the reasons set forth below, the Trustee's objection to Claim 14 is SUSTAINED, and Claim 14 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Objection to Claim No. 14 Filed By Jayantha Sunila Rillagodage (the "Objection") [Doc. No. 1032]
- 2) Motion to Approve Compromise of Controversy [Doc. No. 67]
 - a) Order Granting Motion to Approve Compromise [Doc. No. 90]
- 3) No opposition on file.

I. Facts and Summary of Pleadings

Jayampath Dharmasuriya (the "Debtor") filed a voluntary Chapter 11 petition on July 20, 2009 (the "Petition") [Doc. No. 1]. On September 9, 2011, pursuant to the "Order Approving Appointment of a Chapter 11 Trustee" [Doc. No. 186], Jeffrey Golden was appointed as Chapter 11 Trustee (the "Trustee"). On November 2, 2011, upon motion by the Trustee, the Debtor's case was converted to one under Chapter 7 pursuant to the "Order Converting Case to Chapter 7" [Doc. No. 213]. The Trustee accepted appointment as the Chapter 7 Trustee on November 9, 2011. Doc. No. 215.

Pre-Petition, the Debtor was involved in litigation against Jayantha Sunila Rillagodage (the "Claimant") and her husband Kithsiri Kodituwakku ("Kodituwakku"), which litigation included a cross claim by the Claimant and

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Chapter 7

Kodituwakku against the Debtor, among other cross-defendants. On November 16, 2009, the Claimant filed Claim No. 14 in the amount of \$95,000.00 ("Claim 14"). On December 24, 2009, the Debtor filed the "Motion to Approve Compromise of Controversy" [Doc. No. 67], which sought approval of a settlement agreement entered into between the Debtor, the Claimant, and Kodituwakku (the "Settlement Agreement"). On March 12, 2010, the terms of the Settlement Agreement were approved pursuant to "Order Granting Motion to Approve Compromise" (the "Settlement Order") [Doc. No. 90]. Pursuant to the Settlement Order, the Claimant released all of her claims against the Debtor under the terms of the Settlement Agreement.

The Objection

On June 19, 2018, the Trustee filed the "Objection to Claim No. 14 Filed By Jayantha Sunila Rillagodage" (the "Objection") [Doc. No. 1032]. The Trustee contends that Claim 14 should be disallowed on the grounds that, pursuant to the Settlement Order and the terms of the Settlement Agreement, the Claimant released all her claims against the Debtor, and, therefore, the Claimant does not have an enforceable claim against the Estate pursuant to 11 U.S.C. § 502(b)(1).

No opposition is on file.

II. Findings of Fact and Conclusions of Law

Pursuant to LBR 9013-1(h), LBR 3007-1(b)(3)(B), and LBR 3007-1(b)(6), the failure of the Claimant to file a timely response to the Objection is grounds for granting the relief requested by the Movant. Given the Claimant's failure to file a response, the Court treats this as consent to granting the relief requested by the Movant.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the

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Chapter 7

proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the prima facie validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. *See In re Circle J Dairy, Inc.*, 112 B.R. 297, 299–301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these paragraphs, upon proper objection, the Court will disallow the claim. Under § 502(b) (1), the court shall disallow a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured[.]"

Here, the Court finds that Claim 14 was sufficiently filed in accordance with FRBP 3001; therefore, Claim 14 are presumed valid. The Court finds, however, that the Trustee has satisfied his burden of presenting factual evidence that defeats the presumption of validity of Claim 14.

The Court finds that, pursuant to the Settlement Order and the terms of the Settlement Agreement, the Claimant released all her claims against the Debtor, and, therefore, the Claimant does not have an enforceable claim against the Estate pursuant to 11 U.S.C. § 502(b)(1). The Trustee's objection to Claim 14 is SUSTAINED, and Claim 14 is DISALLOWED in its entirety.

III. Conclusion

Based on the foregoing, the Trustee's objection to Claim 14 is SUSTAINED, and Claim 14 is DISALLOWED in its entirety.

The Trustee shall lodge a conforming order incorporating this tentative ruling within seven (7) days of the hearing.

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Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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#102.00 HearingRE: [1035] Motion RE: Objection to Claim Number 10,16 by Claimant Citimortgage, Inc.. Objection to Claim Nos. 10-1 and 16-1 (Gaschen, Beth)

Docket 1035

Tentative Ruling:

7/24/2018: Tentative Ruling

For the reasons set forth below, the Trustee's objections to Claim 10 and Claim 16, respectively, are SUSTAINED, and the Claims are DISALLOWED in their entirety.

Pleadings Filed and Reviewed:

- 1) Objection to Claim Nos. 10-1 and 16-1 Filed By CitiMortgage, Inc. (the "Objection") [Doc. No. 1035]
- 2) Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and Donald H. Eller [Doc. No. 577]
 - a) Order Granting Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and Donald H. Eller (the "Settlement Order") [Doc. No. 600]
- 3) Motion for Order Authorizing Abandonment of Real Property of the Estate Pursuant to 11 U.S.C. § 554 and Retention of Rents (the "Motion to Abandon") [Doc. No. 501]
 - a) Order Granting Motion to Abandon [Doc. No. 544]
- 4) No opposition on file.

I. Facts and Summary of Pleadings

Jayampath Dharmasuriya (the "Debtor") filed a voluntary Chapter 11 petition on July 20, 2009 (the "Petition") [Doc. No. 1]. On September 9, 2011, pursuant to the "Order Approving Appointment of a Chapter 11 Trustee" [Doc. No. 186], Jeffrey Golden was appointed as Chapter 11 Trustee (the "Trustee"). On November 2, 2011,

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upon motion by the Trustee, the Debtor's case was converted to one under Chapter 7 pursuant to the "Order Converting Case to Chapter 7" [Doc. No. 213]. The Trustee accepted appointment as the Chapter 7 Trustee on November 9, 2011. Doc. No. 215.

The Debtor originally scheduled seventeen pieces of real property in which title was held in his name or that of his revocable living trust. Certain of the properties lacked equity and were abandoned by the Trustee, and others were sold by the Trustee.

One of the properties owned by the Debtor was located at 6476 W. 81st Street, Los Angeles, CA 90045 (the "81st Street Property"), although as of the Petition Date, title was held by Donald Eller ("Eller") pursuant to a grant deed recorded on June 25, 2009. A dispute between Eller and the Trustee emerged regarding ownership of the 81st Street Property. The Trustee and Eller eventually agreed to the terms of a settlement agreement (the "Settlement Agreement"), and on April 26, 2013, the Trustee filed the "Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and Donald H. Eller" [Doc. No. 577]. On June 7, 2013, the terms of the Settlement Agreement were approved pursuant to the "Order Granting Motion to Approve Settlement Agreement Between the Chapter 7 Trustee and Donald H. Eller" (the "Settlement Order") [Doc. No. 600]. Pursuant to the Settlement Order, and under the terms of the Settlement Agreement, the Trustee waived and released all ownership claims of the Estate to the 81st Street Property.

The Debtor's Schedules additionally listed certain real property located at 818 E. 65th St., Inglewood, CA 90302 (the "65th Street Property," and together with the 81st Street Property, the "Properties"). On October 23, 2012, the Trustee filed the "Motion for Order Authorizing Abandonment of Real Property of the Estate Pursuant to 11 U.S.C. § 554 and Retention of Rents" (the "Motion to Abandon") [Doc. No. 501]. On January 7, 2013, pursuant to the "Order Granting Motion to Abandon" [Doc. No. 544], the Trustee received authorization to abandon the 65th Street Property.

On November 5, 2009, CitiMortgage, Inc. (the "Claimant") filed Claim No. 10 in the amount of \$73,749.65 ("Claim 10"), which claim was purportedly secured by the 81st Street Property. On December 11, 2009, the Claimant filed Claim No. 16 in the amount of \$77,210.61 ("Claim 16," and together with Claim 10, the "Claims"), which claim was purportedly secured by the 61st Street Property.

The Objection

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CONT... Jayampath P Dharmasuriya

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On June 20, 2018, the Trustee filed the "Objection to Claim Nos. 10-1 and 16-1 Filed By CitiMortgage, Inc." (the "Objection") [Doc. No. 1035]. The Trustee contends that the Claims should be disallowed on the grounds that, pursuant to the Settlement Order, the terms of the Settlement Agreement, and the Order Granting Motion to Abandon, the Claims are not secured by property of the Estate, and, therefore, the Claimant does not have any enforceable claims against the Estate pursuant to 11 U.S.C. § 502(b)(1).

No opposition is on file.

II. Findings of Fact and Conclusions of Law

Pursuant to LBR 9013-1(h), LBR 3007-1(b)(3)(B), and LBR 3007-1(b)(6), the failure of the Claimant to file a timely response to the Objection is grounds for granting the relief requested by the Movant. Given the Claimant's failure to file a response, the Court treats this as consent to granting the relief requested by the Movant.

A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure constitutes *prima facie* evidence of the validity and amount of the claim. Fed. R. Bankr. P. 3001(f). "The filing of an objection to a proof of claim 'creates a dispute which is a contested matter' within the meaning of Bankruptcy Rule 9014 and must be resolved after notice and opportunity for hearing upon a motion for relief." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing Adv. Comm. Notes to Fed. R. Bankr. P. 9014). Upon objection, the proof of claim provides "some evidence as to its validity and amount" and carries over a "mere formal objection." *Id.* The objector must produce sufficient evidence "tending to defeat the claim by probative force equal to that of the allegations in the proofs of claim themselves." *Id.* (quoting *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir.1991)). The claim itself can be used as evidence to rebut the *prima facie* validity where the objector's contention is that the claim is facially defective and insufficient as a matter of law. See *In re Circle J Dairy, Inc.*, 112 B.R. 297, 299-301 (Bankr. W.D. Ark. 1989). The claimant must "prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* Bankruptcy Code § 502(b) sets forth nine bases for a claim to be disallowed. To the extent that a claim falls within any of these

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paragraphs, upon proper objection, the Court will disallow the claim. Under § 502(b) (1), the court shall disallow a claim if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured[.]"

Here, the Court finds that the Claims were sufficiently filed in accordance with FRBP 3001; therefore, the Claims are presumed valid. The Court finds, however, that the Trustee has satisfied his burden of presenting factual evidence that defeats the presumption of validity of the Claims.

The Court finds that, pursuant to the Settlement Order, the terms of the Settlement Agreement, and the Order Granting Motion to Abandon, the Claims are not secured by property of the Estate, and, therefore, the Claims are not enforceable claims against the Estate pursuant to 11 U.S.C. § 502(b)(1). The Trustee's objections to Claim 10 and Claim 16, respectively, are SUSTAINED, and the Claims are DISALLOWED in their entirety.

III. Conclusion

Based on the foregoing, the Trustee's objections to Claim 10 and Claim 16, respectively, are SUSTAINED, and the Claims are DISALLOWED in their entirety.

The Trustee shall lodge a conforming order incorporating this tentative ruling within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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2:16-11563 Elma Fernandez

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Adv#: 2:16-01217 Garcia et al v. Fernandez

#1.00 HearingRE: [69] Motion For Summary Judgment; memorandum of point and authorities in support; exhibits; and declaration of Adrian M. Baca.

Docket 69

Tentative Ruling:

7/25/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

1) Plaintiff's Motion for Summary Judgment [Doc. No. 69] (the "Motion")

I. Facts and Summary of Pleadings

Zeferino Garcia and Maria Francisco (the "Plaintiffs") move for summary judgment against Elma Fernandez ("Defendant"). After the Court lifted the automatic stay in Defendant's bankruptcy case, Plaintiffs obtained a judgment against Defendant in the Los Angeles Superior Court (the "State Court Judgment"). The State Court Judgment provides in relevant part:

The court found plaintiffs were libeled, by defendant Elma Fernandez, on the following causes of action: 3rd, 6th, 7th, 11th, 13th and 15th. The court found that Elma Fernandez acted willfully and with oppression.

The court found in favor of plaintiffs against Elma Fernandez and awarded damages to Plaintiffs as follows:

Zeferino Garcia, non-economic damages: \$25,000.00

Zeferino Garcia, punitive damages: \$1,000.00

Maria Francisco, non-economic damages: \$25,000.00

Maria Francisco, punitive damages: \$1,000.00

Total award of Damages against Elma Fernandez: **\$52,000.00**

Judgment on General Verdict [Doc. No. 69, Ex. A].

The State Court found that Defendant libeled Plaintiffs by publishing various false statements on Facebook. As to Plaintiff Maria Francisco, those statements included that Ms. Francisco had committed immigration and Medi-Cal fraud, and had

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defrauded the State of California by obtaining benefits to which she was not entitled under the Women, Infants, and Children ("WIC") program (WIC provides food aid to new mothers, infants, and children under age five). As to Plaintiff Zeferino Garcia, those statements included that Mr. Garcia forced his female employees to work late at night and early in the morning so that he could sexually abuse them and embezzled funds that had been raised to support the local community.

Plaintiffs now seek summary judgment in this §523(a)(6) dischargeability action. Plaintiffs assert that Defendant is precluded from contesting the findings made by the State Court, and that those findings establish Defendant's liability under §523(a)(6).

No opposition to the Motion is on file.

II. Findings and Conclusions

A. Defendant Has Received Adequate Notice of the Motion

Plaintiffs served Defendant at her last known address. On April 11, 2018, the Court granted Defendant's counsel's motion to withdraw from representation. *See* Order Granting Counsel's Motion to Withdraw From Representation [Doc. No. 67] (the "Withdrawal Order"). In the Withdrawal Order, the Court found that service upon Defendant's last known address "shall be deemed to constitute adequate notice and service of the MSJ." Withdrawal Order at ¶2. The Court reiterates its previous findings concerning service:

The Court acknowledges that counsel's attempts to communicate with Defendant at her last known address have been unsuccessful.

However, as the Ninth Circuit has held, "[a] party, not the ... court, bears the burden of keeping the court apprised of any changes in his mailing address." *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1998). A party's obligation to keep the Court apprised of her current address is reiterated in the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules ("LBR"). Specifically, Bankruptcy Rule 4002(a)(5) provides that the Debtor "shall file a statement of any change of the debtor's address." Local Bankruptcy Rule ("LBR") 1002-1(a)(2) reiterates this obligation: "Using the court-approved form, pursuant to FRBP 4002(a)(5), a debtor must file and serve a change of address each time a debtor's street address or post office box changes."

Here, the Debtor chose to voluntarily subject herself to the Bankruptcy Court's jurisdiction in order to obtain a Chapter 7 discharge. Despite receiving the benefits of the discharge, the Debtor has failed to comply with her

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corresponding obligation to keep the Court apprised of her current address. The Debtor cannot invoke the Court's jurisdiction, obtain the benefit of the discharge injunction, but then escape liability in the instant non-discharge ability action by failing to update her address. Therefore, notwithstanding the fact that mail sent to the Debtor's most recent address has been returned as undeliverable, the Court will deem service of process upon that address as sufficient for purposes of this action.

Withdrawal Order at ¶2.

B. Plaintiffs Are Entitled to Summary Judgment

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

- 1) The issue sought to be precluded from relitigation is identical to that decided in a former proceeding;
- 2) The issue was actually litigated in the former proceeding;
- 3) The issue was necessarily decided in the former proceeding;
- 4) The decision in the former proceeding is final and on the merits; and

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- 5) The party against whom preclusion is sought was the same as, or in privity with, the party to the former proceeding.

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

As set forth below, the Court finds that all five elements of issue preclusion are satisfied.

Element 1: The Issues Are Identical

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and 'malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of her actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted). "Within the plain meaning of this definition, it is the wrongful act that must be committed intentionally rather than the injury itself." *Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1106 (9th Cir. 2005).

The State Court Judgment precludes Defendant from contesting that she committed "willful and malicious injury" to Plaintiffs within the meaning of §523(a)(6). The State Court found that Defendant knowingly published on Facebook false statements with respect to the Plaintiffs, and that in publishing these statements, Defendant "acted willfully and with oppression." The State Court found that

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Defendant's conduct was sufficiently egregious to support an award of punitive damages.

As to Plaintiff Maria Francisco, the false statements included that Ms. Francisco had committed immigration and Medi-Cal fraud, and had defrauded the State of California by obtaining benefits to which she was not entitled under the Women, Infants, and Children ("WIC") program (WIC provides food aid to new mothers, infants, and children under age five). As to Plaintiff Zeferino Garcia, the false statements included that Mr. Garcia forced his female employees to work late at night and early in the morning so that he could sexually abuse them and embezzled funds that had been raised to support the local community.

Defendant is precluded from contesting that in publishing these statements, she intended to inflict injury upon the Plaintiffs, or knew that injury was substantially certain. As noted, in determining intent, there is a presumption that the Defendant knows the natural consequences of her actions. *See Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010) (explaining that the defendant "is charged with the knowledge of the natural consequences of [her] actions"). The Defendant's decision to publish, in a tight-knit community, accusations that Plaintiff Francisco committed various types of fraud and accusations that Plaintiff Zeferino sexually abused employees and embezzled fundraising proceeds, establishes that Defendant held a subjective intent to inflict reputational, emotional, and psychological injury upon the Plaintiffs, or at the very least, knew that such injury was substantially certain.

This determination is not inconsistent with *Carrillo v. Sue (In re Su)*, 290 F.3d 1140 (9th Cir. 2002). In *In re Su*, the debtor/defendant sped into an intersection against a red light, traveling 37 miles per hour in a 25-mile-per-hour zone, nearly five seconds after the light had turned red. *Id.* at 1141. The debtor/defendant crashed into a car and then careened into a pedestrian, severely injuring her. *Id.* After the debtor/defendant sought bankruptcy protection, the injured pedestrian sued for a determination that the damages arising from the crash were non-dischargeable. The bankruptcy court determined that the debtor/defendant had acted willfully because there was, by an objective standard, a substantial certainty of harm when the debtor/defendant drove his van through a red light at an intersection known to be heavily congested with traffic. *Id.* at 1142.

Reversing and remanding, the Ninth Circuit held that the bankruptcy court erred by applying an objective standard to determine "willfulness." The Ninth Circuit held:

By its very terms, the objective standard disregards the particular debtor's state

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of mind and considers whether an objective, reasonable person would have known that the actions in question were substantially certain to injure the creditor. In its application, this standard looks very much like the "reckless disregard" standard used in negligence. That the Bankruptcy Code's legislative history makes it clear that Congress did not intend § 523(a)(6)'s willful injury requirement to be applied so as to render nondischargeable any debt incurred by reckless behavior, reinforces application of the subjective standard. The subjective standard correctly focuses on the debtor's state of mind and precludes application of § 523(a)(6)'s nondischargeability provision short of the debtor's actual knowledge that harm to the creditor was substantially certain.

Su, 290 F.3d at 1145–46.

The *Su* court stated that in assessing the debtor/defendant's state of mind, it was "not suggesting that a court must simply take a debtor's word for his statement of mind." *Id.* at 1145, n. 6. Rather, the court was free to "consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action." *Id.*

Here, it is clear that in publishing the libelous statements, the Defendant intended to injure the Plaintiffs, or at the very least knew that injury to the Plaintiffs was substantially certain. As noted previously, Plaintiffs and Defendant both lived in a small, tight-knit community. Defendant published on Facebook accusations that Plaintiff Francisco defrauded the government and that Plaintiff Zeferino sexually abused his employees, when Defendant knew these accusations were false. The circumstantial evidence is sufficient to show that Defendant intended to inflict reputational, emotional, and psychological injury upon the Plaintiffs, or was substantially certain that such injury would occur. The State Court Judgment precludes Defendant from arguing otherwise.

Elements 2–3: The Issues Were Actually Litigated and Necessarily Decided

The State Court issued its judgment after conducting a trial at which witnesses testified. This establishes that the issues were actually litigated and necessarily decided.

Element 4: The State Court Judgment is Final

The State Court Judgment was entered on March 22, 2018. Plaintiffs served a *Notice of Entry of Judgment* on the same date. An Amended State Court Judgment

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was entered on May 22, 2018; Plaintiffs again served a *Notice of Entry of Judgment* on that same date. Pursuant to Cal. Rule of Court §8.104(a)(1)(B), Defendant had until 60 days after service of the *Notice of Entry of Judgment* to file an appeal. Defendant's deadline to appeal the Amended State Court Judgment expired on July 23, 2018. The state court docket indicates that no timely appeal has been filed. The Amended State Court Judgment is now final.

Element 5: The Party Against Whom Preclusion is Sought is the Same as the Party to the State Court Proceeding

Elma Fernandez, the Defendant in the instant action, is the same person against whom Plaintiffs obtained the State Court Judgment.

Public Policy Supports Preclusion

Having found that all five elements of issue preclusion are satisfied, the Court must determine whether the "application of preclusion furthers the public policies underlying the doctrine," *Harmon*, 250 F.3d at 1245—namely, “preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation,” *Lucido*, 795 P.2d at 1227. Applying preclusion law preserves the integrity of the judicial system by giving full effect to a judgment that was obtained after both parties were afforded full opportunity to litigate the matter. Preclusion promotes judicial economy by obviating the need for a duplicative and unnecessary trial. The avoidance of an unnecessary trial promotes the public policy against vexatious litigation.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. All future hearings and litigation deadlines in this action are VACATED. Within seven days of the hearing, Plaintiffs shall submit (1) a proposed order incorporating this tentative ruling by reference and (2) a proposed judgment. (For purposes of the separate document rule, set forth in Civil Rule 58(a), both an order and a judgment must be submitted.)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Elma Fernandez

Represented By
Juan Castillo-Onofre
Alla Tenina

Defendant(s):

Elma Fernandez

Pro Se

Plaintiff(s):

Zeferino Garcia

Represented By
Adrian M Baca

Maria Francisco

Represented By
Adrian M Baca

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:18-17390 Teri Breier

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#2.00 HearingRE: [5] Motion for Turnover of Property ; Declaration of Debtor in support;
Notice of Motion; proof of service (Sawdayi, Devin)

Docket 5

Tentative Ruling:

7/25/2018

For the reasons set forth below, the Motion is DENIED, without prejudice to the Debtor's ability to bring a renewed motion for possession of the funds that cures the defects identified herein.

Pleadings Filed and Reviewed:

- 1) Notice of Motion for Turnover of Estate Property Pursuant to 11 U.S.C. §542 [Doc. No. 5] (the "Motion")
 - a) Amended Proof of Service of Motion [Doc. No. 6]
- 2) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

On April 25, 2018, Citibank, N.A. ("Citibank") obtained a judgment against Teri Breier (the "Debtor") in the amount of \$21,170.73 (the "Judgment"). To enforce the Judgment, Citibank obtained a *Writ of Execution*. On June 21, 2018, the Santa Barbara County Sheriff's Office (the "Sheriff"), acting as the levying officer, levied upon the Debtor's deposit account at Chase Bank, N.A. ("Chase"). See Motion at Ex. A (Notice of Levy Under Writ of Execution). At the time of the levy, the Debtor's deposit account contained approximately \$19,000. Decl. of Debtor at ¶3.

Debtor commenced a voluntary Chapter 7 petition on June 27, 2018 (the "Petition Date"). Debtor claimed an exemption in all \$19,000 of the funds in the Chase deposit account. Debtor now moves for an order requiring Chase to turnover the funds, pursuant to §542, on the ground that the funds are property of the estate, and that the Debtor is entitled to the funds as a result of her claim of exemption. The premise of the Motion is that Chase has not transferred the funds to the Sheriff pursuant to the levy, and that the funds remain under Chase's control; however, no specific evidence in support of this premise has been submitted.

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No Opposition to the Motion is on file.

II. Findings and Conclusions

Numerous defects require the Court to deny the Motion, without prejudice to the Debtor's ability to file a renewed motion to obtain possession of the funds that corrects the defects identified herein.

First, the Debtor seeks turnover of the funds pursuant to §542. In support of her position that she is entitled to turnover, the Debtor cites *United States v. Whiting Pools Inc.*, 462 U.S. 198 (1983). However, a Chapter 7 debtor lacks standing to move for turnover:

Section 542(a) enables the bankruptcy trustee, or the debtor-in-possession in a reorganization case to seek turnover of the debtors' assets, for the benefit of the estate. Indeed, in *Whiting Pools*, it was the debtor-in-possession in a reorganization case that sought turnover. Under the statute, a chapter 7 debtor is not mentioned and generally has no standing to bring an action for turnover. See *In re Freeman*, 331 B.R. 327, 329 (Bankr.N.D. Ohio 2005) (the general provision in the Bankruptcy Code governing turnover, confers this right upon the trustee); *Price v. Gaslowitz (In re Price)*, 173 B.R. 434, 440 (Bankr.N.D. Ga. 1994) (turnover action is one facet of a chapter 7 trustee's general duties under § 704(1)).

Collect Access LLC v. Hernandez (In re Hernandez), 483 B.R. 713, 725 (B.A.P. 9th Cir. 2012).

The Debtor lacks standing to seek turnover even where the Debtor claims an exemption in the funds sought to be turned over. That was the relief the Debtor sought in *In re Hernandez*. The *Hernandez* court held that seeking the exempt funds under § 542 was a "procedural irregularity" and observed that the appropriate procedure would have been for the Debtor to exercise the trustee's avoiding powers under §522(h). *Id.*

Second, because the deadline to object to the Debtor's exemptions has not elapsed, it has not yet been established that the funds at issue are exempt. Under Bankruptcy Rule 4003(b), interested parties may object to a claimed exemption within 30 days after the conclusion of the §341(a) meeting of creditors. Here, the meeting of creditors is set for July 30, 2018. Assuming that the meeting is concluded on that date, interested parties have until August 29, 2018, to object to the exemption claimed by the Debtor.

Third, the Debtor has failed to show that she is entitled to possession of the funds. On June 21, 2018 (prior to the Petition Date), the Sheriff, at Citibank's direction,

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Teri Breier

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levied upon the Debtor's Chase deposit account. As provided by Cal. Code Civ. P. § 697.710, a "levy on property under a writ of execution creates an execution lien on the property from the time of levy until the expiration of two years after the date of issuance of the writ unless the judgment is sooner satisfied." The execution lien in favor of the judgment creditor does not arise until all acts necessary to levy on the property are completed. *See Grover v. Bay View Bank*, 87 Cal. App. 4th 452, 459, 104 Cal. Rptr. 2d 677, 682 (2001). On the present incomplete record, the Court cannot determine whether a valid levy occurred, and therefore whether Citibank holds an execution lien against the funds. To obtain possession of the funds, the Debtor must show either that the funds are not encumbered by an execution lien in favor of Citibank, or that the Debtor is entitled to avoid any execution lien Citibank may have. For example, it might be possible for the Debtor to avoid an execution lien (if one exists) under §522(h), or under some other provision of the Bankruptcy Code.

Fourth, the Court cannot order turnover of the funds unless the Debtor submits evidence clearly establishing who controls the funds. The premise of the Motion is that Chase retains control of the funds. This may be correct; the Debtor sought bankruptcy protection shortly after the levy, possibly before Chase had transferred the funds to the Sheriff. But such assumptions cannot support issuance of a turnover order. An indispensable predicate for issuance of a turnover order is that the Movant clearly establish that the entity to whom the order is directed is in possession of the relevant property. Haphazard issuance of a turnover order against an entity, based only upon the suspicion that such entity controlled the relevant property, would cause confusion.

Finally, service upon Citibank was not sufficient. The Debtor served the Motion upon Hunt & Henriques, the law firm responsible for the levy. Under Bankruptcy Rule 7004(h), an insured depository institution such as Citibank must be served by certified mail, unless the institution has appeared by its attorney. Citibank has not appeared in the Debtor's bankruptcy case, so service upon Hunt & Henriques alone was inadequate. If the Debtor brings a renewed motion, such motion must be served upon (1) Citibank by certified mail pursuant to Bankruptcy Rule 7004(h) and upon (2) Hunt & Henriques.

III. Conclusion

Based upon the foregoing, the Motion is DENIED, without prejudice to the Debtor's ability to bring a renewed motion for possession of the funds that cures the defects identified herein. The Court will prepare and enter an appropriate order.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

CONT... Teri Breier

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Teri Breier

Represented By
Devin Sawdayi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#3.00 HearingRE: [1236] Motion Notice Of Joint Motion And Joint Motion Of The Debtor And Official Committee Of Unsecured Creditors For Entry Of An Order (I) Fixing A Bar Date For Filing Certain Postpetition Administrative Expense Claims, (II) Approving Administrative Expense Proof Of Claim Form And (III) Approving The Form And Manner Of Notice Of The Administrative Expense Claims Bar Date; Memorandum Of Points And Authorities

Docket 1236

Tentative Ruling:

7/25/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1)** Notice of Joint Motion and Joint Motion of the Debtor and Official Committee of Unsecured Creditors for Entry of an Order (I) Fixing a Bar Date for Filing Certain Postpetition Administrative Expense Claims, (II) Approving Administrative Expense Proof of Claim Form and (III) Approving the Form and Manner of Notice of the Administrative Expense Claims Bar Date [Doc. No. 1236] (the "Motion")
 - a)** Errata to [the Motion] [Doc. No. 1239]
 - b)** Declaration of Kathryn Howard Regarding Service of [the Motion] [Doc. No. 1258]
- 2)** No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

Gardens Regional Hospital and Medical Center, Inc. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") jointly move for entry of an order (1) establishing August 24, 2018 as the bar date for filing requests for the allowance of post-petition administrative expenses against the Debtor under §§503(b) and 507(a)(2) (the "Administrative Expense Claims Bar Date"), (2) approving the Administrative Expense Proof of Claim Form, and (3) approving the form and manner of notice of the Administrative Expense Claims Bar Date. A hearing to approve the

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Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

CONT... **Gardens Regional Hospital and Medical Center, Inc.** Chapter 11

adequacy of the Disclosure Statement filed in support of the *Joint Chapter 11 Plan of Liquidation* filed by the Debtor and the Committee is set for August 9, 2018.

No opposition to the Motion setting the Administrative Expense Claims Bar Date is on file.

II. Findings and Conclusions

Having reviewed the form of notice of the Administrative Expense Claims Bar Date, the Administrative Expense Proof of Claim Form, and the proposed procedures for providing notice thereof, the Court finds that the proposed form and manner of notice are reasonably calculated to provide appropriate notice to all potential holders of administrative expense claims against the estate. The Motion is GRANTED in its entirety. Pursuant to Bankruptcy Rule 3003(c)(3), **August 24, 2018, at 4:00 p.m. Pacific Daylight Time** is fixed as the Administrative Expense Claims Bar Date. The Administrative Expense Proof of Claim Form is approved. The form and manner of notice of the Administrative Expense Claims Bar Date is approved.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

2:18-11284 Damu Vusha and Akiba Vusha

Chapter 11

#4.00 HearingRE: [57] Application for Compensation First Interim Application for Compensation and Reimbursement of Expenses of Michael Jay Berger; Declarations of Michael Jay Berger and Damu and Akiba Vusha in Support Thereof for Michael Jay Berger, Debtor's Attorney, Period: 2/6/2018 to 6/15/2018, Fee: \$20,304.50, Expenses: \$1,717.49.

Docket 57

Tentative Ruling:

7/25/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$20,304.50

Expenses: \$1,171.49

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Damu Vusha

Represented By
Michael Jay Berger

Joint Debtor(s):

Akiba Vusha

Represented By
Michael Jay Berger

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#5.00 HearingRE: [238] Application for Compensation Second And Final Application Of Hiramatsu & Associates, Inc., Financial Consultant To Debtor, For Allowance And Payment Of Compensation For The Period From February 21, 2017 Through March 29, 2018; Declarations Of Matthew Alderson And Bette Hiramatsu In Support for Hiramatsu & Associates, Inc., Financial Advisor, Period: 2/21/2017 to 3/29/2018, Fee: \$103045.25, Expenses: \$0.00. WARNING: Incorrect courtroom on PDF. Correct courtroom is courtroom 1568. Matter is not on calendar for 7-25-18. See docket entry #240 for corrective entry; Modified on 7/5/2018 (Evangelista, Maria).

Docket 238

Tentative Ruling:

7/25/2018

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis are now deemed final):

Fees: \$57,170.25

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan
Richard W Brunette

**United States Bankruptcy Court
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Thursday, July 26, 2018

Hearing Room 1568

10:00 AM

2:17-12054 Radiology Support Devices, Inc.

Chapter 11

#6.00 Hearing re [213] Post-Confirmation Status Conference re Debtor's Chapter 11 Plan

FR. 7-25-18

Docket 0

Tentative Ruling:

7/25/2018

The Court has reviewed the post-confirmation report filed in connection with this hearing.

No appearances are required. A further post-confirmation status conference will held January 15, 2019 at 10:00 a.m. A post-confirmation report must be filed no later than 14 days prior to the hearing.

Party Information

Debtor(s):

Radiology Support Devices, Inc.

Represented By
Daniel J Weintraub
Elaine Nguyen
James R Selth
Nina Z Javan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, July 30, 2018

Hearing Room 1568

9:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02616 RUND v. UNION BANK, N.A., a national association f/k/a UNI

#1.00 Trial Date Set: [1] Adversary case 2:12-ap-02616. Complaint by JASON M. RUND against UNION BANK, N.A., a national association f/k/a UNION BANK OF CALIFORNIA, N.A.. (Charge To Estate). Complaint To Avoid And Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(A) and (B), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Abrams, Ronald)

fr: 8-26-13; 3-27-17; 7-31-17; 9-25-17, 11-27-17; 2-26-18; 5-29-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

UNION BANK, N.A., a national	Pro Se
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Plaintiff(s):

JASON M. RUND	Represented By Ronald P Abrams
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Trustee(s):

Jason M Rund (TR)	Pro Se
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Jason M Rund (TR)	Represented By Corey R Weber Robert A Hessling Richard K Diamond Daniel H Gill
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CONT... EPD Investment Co., LLC

Chapter 7

Michael W Davis

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

9:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (91 (Declaratory judgment)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))(Shechtman, Zev)

Docket 1

***** VACATED *** REASON: CONTINUED 10-29-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Pro Se

Maitreya, LLC, a Nevada limited

Pro Se

Maitreya, LLC, an Arizona limited

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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9:00 AM

CONT... Anne Lan Peterson

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, July 30, 2018

Hearing Room 1568

9:00 AM

2:12-22639 Claire Levine

Chapter 7

#3.00 TRIAL

RE: [275] Motion RE: Objection to Claim Number by Claimant Gerald Goldstein.
Claim Number 10

FR. 6-4-14; 8-6-14; 9-17-14; 10-22-14; 1-7-15; 4-21-15; 6-17-15; 1-6-116; 3-15-16;
7-13-16; 11-9-16; 1-25-17; 4-12-17; 6-14-17

Docket 275

Tentative Ruling:

7/27/2018

Appearances required. Notwithstanding Goldstein's filing of a *Notice of Withdrawal* of the Goldstein Claim on July 27, 2018, the trial will proceed as scheduled.

As set forth below, the Court is prepared to find that Goldstein has failed to carry his burden establishing the validity of his claim, and is prepared to enter judgment in favor of the Debtor disallowing the Goldstein Claim in its entirety.

Pleadings Filed and Reviewed:

- 1) Trial Brief of Debtor-Objector Claire Levine in Support of Objection to Claim #10 [Doc. No. 609]
- 2) Debtor's Objection to Gerald Goldstein Claim Number 10 Memorandum of Points and Authorities [Doc. No. 275]
- 3) Order After Pretrial Conference [Doc. No. 606]
 - a) Levine Objection to Claim #10 Pretrial Statement [Doc. No. 596]
- 4) Order (1) Finding that PWB Holds the Right to Receive Any Funds or Property Distributed from the Estate on Account of the Goldstein Claim and (2) Requiring PWB to Participate in the Claim Objection Trial to the Extent Set Forth Herein [Doc. No. 591]

I. Facts and Summary of Pleadings

Claire Levine (the "Debtor") objects to Proof of Claim 10-1, asserted by Gerald Goldstein (the "Goldstein Claim"). Goldstein asserts an unsecured claim of "not less than \$5,571,022.62." Goldstein Claim at Main Document p. 1, ¶1. **[Note 1]** The Debtor asserts that the Goldstein Claim should be disallowed in its entirety.

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CONT...

Claire Levine

Chapter 7

The Debtor and Goldstein are the settlors and co-trustees of the Amadeus Trust dated January 24, 2000 (the “Amadeus Trust”). The Amadeus Trust was created to hold title to multiple parcels of real property. Goldstein asserts that as the co-trustee and co-owner of the properties held in the Amadeus Trust, the Debtor was responsible for 50% of the expenses of the properties. Goldstein Claim at Main Document p. 4. Goldstein alleges that he has paid all expenses associated with such properties, in the total amount of \$11,142,045.42. *Id.* According to Goldstein, the Debtor’s 50% share of these expenses is \$5,571,022.62. *Id.*

Pursuant to Bankruptcy Rule 3001(e)(4), the Court has issued an order specifying the division of rights associated with Proof of Claim No. 10, asserted by Gerald Goldstein (the “Goldstein Claim”). *See* Order (1) Finding that PWB Holds the Right to Receive Any Funds or Property Distributed From the Estate on Account of the Goldstein Claim and (2) Requiring PWB to Participate in the Claim Objection Trial to the Extent Set Forth Herein [Doc. No. 591] (the “Rule 3001 Order”). As set forth in the Rule 3001 Order, Pacific Western Bank (“PWB”) “is entitled to receive any distribution from the estate that would otherwise be paid to Goldstein on account of the Goldstein Claim.” Rule 3001 Order at 2. As further provided in the Rule 3001 Order:

Goldstein remains responsible for defending the Goldstein Claim against the Debtor’s claim objection. Placing such responsibility with Goldstein is appropriate given that he has greater knowledge of the transactions underlying the Goldstein Claim than PWB. Nonetheless, PWB shall appear at the Pretrial Conference and trial and shall advise the Court in the event Goldstein’s actions in defending the Goldstein Claim prejudice PWB’s economic interest in that claim. Any objections of PWB to actions taken by Goldstein in connection with the prosecution and/or settlement of the Goldstein Claim that are not presented to the Court at the Claim Objection Trial shall be deemed to have been waived.

Id. at 2.

On July 24, 2018, the Court granted seven Motions *in Limine* filed by the Debtor. *See* Doc. Nos. 599–605 (final rulings granting the Motions *in Limine*) and 611–18 (orders granting the Motions *in Limine*). As a result, Goldstein is precluded from introducing the following evidence at trial:

- 1) Evidence of debts allegedly accrued prior to December 3, 2008, as those debts are time barred under Cal. Code Civ. P. §337(a).
- 2) Any written documents in support of the Goldstein Claim, other than the documentation attached to the claim itself that has not otherwise been excluded.
- 3) The tabular compilation of the amounts allegedly owed by the Debtor that are attached to the Goldstein Claim at Part 2, pp. 1–78 and Part 3, pp. 1–2.

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CONT...

Claire Levine

Chapter 7

- 4) Any writings purporting to evidence payments made by Goldstein lacking sufficient indicia of reliability to evidence both tender by Goldstein and receipt by the payee.
- 5) Any evidence of expenditures made by Goldstein if such expenditures were not made in accordance with the contractual provisions of the Amadeus Trust.
- 6) Any evidence of expenditures made by Goldstein related to properties held by the Amadeus Trust that were sold at a loss.
- 7) The *Second Amendment and Restatement of the Gerald Goldstein Revocable Trust* (the "Goldstein Revocable Trust"). (The Goldstein Revocable Trust is a completely different trust from the Amadeus Trust that is at issue, and is therefore irrelevant.)

The Debtor argues that, as a result of the Court's granting of the seven Motions *in Limine*, Goldstein has failed to establish the validity of his claim. Goldstein has not timely opposed the Debtor's claim objection, and has failed to timely submit any briefing, exhibits, or other materials in support of his claim.

On July 26, 2018, the Court struck from the record the purported *Substitution of Attorney* form [Doc. No. 619] (the "Purported Substitution") filed by Jonathan B. Cole. The Court noted that Jonathan B. Cole and his colleague Lucy H. Mekhael (collectively, "Counsel") had appeared in this case on Goldstein's behalf in connection with multiple hearings. *See, e.g.*, Doc. Nos. 390, 402, and 462. The Court further noted the Goldstein Claim was filed by Lucy Mekhael. The Court found that the filing of the Purported Substitution was an improper attempt to circumvent Local Bankruptcy Rule 2091-1, which requires Counsel to obtain leave of Court to withdraw from representing Goldstein. *See generally* Order Striking from the Record Purported *Substitution of Attorney Form Filed by Attorney Jonathan B. Cole* [Doc. No. 621].

On July 27, 2018, Counsel filed, on Goldstein's behalf, a *Notice of Withdrawal of Claim No. 10 by Jerry Goldstein* (the "Notice of Withdrawal"). [Note 2]

II. Findings and Conclusions

A. The Trial Will Proceed Notwithstanding the Filing of the Notice of Withdrawal

Where, as here, an objection to a proof of claim has been filed, "the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession" Bankruptcy Rule 3006.

Goldstein's attempt to withdraw his claim on the eve of trial was not procedurally proper. Goldstein should have filed a noticed motion seeking an order permitting him to withdraw the claim, and he should have done so well in advance of the trial. Goldstein

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Chapter 7

has been aware of the trial date since January 30, 2018. Since July 2, 2018—the date upon which the Court disapproved a stipulation between the Debtor and Goldstein seeking a continuance of the trial—

Goldstein has been aware that no continuances of the trial date would be authorized. Goldstein has had more than sufficient time to move to withdraw the Goldstein Claim or to negotiate some other resolution of the Debtor’s claim objection.

Any motion to withdraw the claim that Goldstein may now attempt to present would come far too late. If Goldstein filed such a motion, the Court would be required to provide an opportunity to respond to Pacific Western Bank (“PWB”), which holds the right to any funds or property distributed on account of the Goldstein Claim. *See* Order (1) Finding that PWB Holds the Right to Receive Any Funds or Property Distributed from the Estate on Account of the Goldstein Claim and (2) Requiring PWB to Participate in the Claim Objection Trial to the Extent Set Forth Herein [Doc. No. 591]. Pursuant to Bankruptcy Rule 3006, the Court would also be required to provide an opportunity to respond to the Chapter 7 Trustee. This would require delaying the trial. The Court has previously made it abundantly clear that delay of the trial would not be permitted. *See* Doc. No. 583 (order disapproving stipulation to continue the trial, based in part upon a finding that the Debtor and Goldstein had failed to diligently pursue a contemplated settlement); Doc. No. 591 at p. 3 (order setting shortened deadlines with respect to the determination of issues arising under Bankruptcy Rule 3001(e)(4), “to prevent any delays in the trial”); Doc. No. 592 (order setting deadlines for the parties to comply with their obligations in connection with the Pretrial Conference, issued after the parties failed to comply with previously ordered deadlines); and Doc. No. 611 (order setting deadlines for the parties to submit required trial materials, issued after the parties failed to comply with previously ordered deadlines).

B. The Court is Prepared to Disallow the Goldstein Claim in Its Entirety

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to

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CONT...

Claire Levine

Chapter 7

its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Here, the Debtor has overcome the Goldstein Claim's presumption of validity by obtaining orders precluding Goldstein from introducing the vast majority of evidence attached to the Proof of Claim. As a result, the burden has shifted to Goldstein to provide the validity of the claim by a preponderance of the evidence. Goldstein has failed to carry this burden.

Goldstein alleges that the Debtor, as a co-trustee of the Amadeus Trust, was responsible for 50% of the expenses associated with the real properties held in the Amadeus Trust. Goldstein Claim at Main Document p. 4. Goldstein further alleges that he has paid all expenses associated with the properties held in the Amadeus Trust, in the total amount of \$11,142,045.42. According to Goldstein, the Debtor's 50% share of these expenses is \$5,571,022.62. *Id.*

As a result of the Court's rulings on the Debtor's seven Motions *in Limine*, there is no evidence before the Court substantiating Goldstein's allegation that he paid expenses of \$11,142,045.42 in connection with properties held by the Amadeus Trust. The Court has excluded the tabular compilation of expenses allegedly paid by Goldstein as hearsay. *See* Doc. Nos. 601 and 618. In addition to the tabular compilation, Goldstein has also submitted various real estate transactional documents which purport to show that Goldstein contributed or borrowed funds to purchase properties now held in the Amadeus Trust. None of these transactional documents are admissible, because the Court has ruled that Goldstein's claim for indebtedness allegedly accrued prior to December 3, 2008 is barred by the relevant statute of limitations, Cal. Code Civ. Proc. §337(a). Specifically, the following transactional documents are irrelevant because they purport to evidence alleged indebtedness that is beyond the limitations period:

- 1) Settlement Statement for 40 Bond Street Unit 4, New York, NY 10003, dated January 24, 2008. Goldstein Claim at Part 3, pp. 4-5.
- 2) Settlement Statement for 3800 Wailea Alanui Dr, Unit #201, Kihei, HI 96732, dated May 10, 2006. Goldstein Claim at Part 3, pp. 6-9.
- 3) Loan Agreement purporting to evidence secured borrowing by Goldstein in connection with the purchase of 888 Napoli, Pacific Palisades, CA 90272. The

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CONT...

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Chapter 7

- Loan Agreement is dated April 12, 2005. Goldstein Claim at Part 3, pp. 10–61.
- 4) Settlement Statement for 3800 Wailea Alanui Dr., Unit B101, Kihei, HI 96732, dated January 22, 2007. Goldstein Claim at Part 3, pp. 62–68.
 - 5) Settlement Statement for 11847 Gorham, Unit 303, Los Angeles, CA 90049, dated June 18, 2003. Goldstein Claim at Part 3, pp. 69–74.
 - 6) Settlement Statement for 1027 Napoli, Pacific Palisades, CA 90272 ("1027 Napoli"), purporting to evidence a refinancing that occurred in June 2004. Goldstein Claim at Part 3, pp. 75–81.
 - 7) Documents purporting to evidence the purchase of 1027 Napoli, dated April 14, 2000, February 10, 2000, February 8, 2000, January 26, 2000, and January 21, 2000. Goldstein Claim at Part 3, pp. 82–96.
 - 8) A promissory note purporting to evidence borrowing by Goldstein in connection with the purchase of 1027 Napoli, dated May 10, 2000. Goldstein Claim at Part 3, pp. 97–99.
 - 9) A loan application purporting to evidence borrowing by Goldstein to purchase 1027 Napoli, dated July 22, 2004. Goldstein Claim at Part 3, pp. 100–105.
 - 10) A loan application purporting to evidence borrowing by Goldstein to purchase 15 East 69th Street, Unit 4D, New York, New York, dated August 30, 1999. Goldstein Claim at Part 3, pp. 106–121.

Even if Goldstein had furnished admissible evidence corroborating the expenses he claims to have paid, Goldstein has failed to identify any provision of the Amadeus Trust supporting his contention that he and the Debtor “are each 50% responsible for all expenses concerning” properties held by the Trust. Goldstein Claim at Main Document, p. 4. The Court has reviewed the Declaration of Trust for the Amadeus Trust and can find no provision therein supporting Goldstein’s theory regarding the allocation of expenses related to properties held by the trust. The Amadeus Trust provides for the recovery of certain trust-related expenses during the settlor’s lifetimes from the trust’s principal and net income, but does not impose an unsecured personal obligation upon the Debtor in her capacity as the co-trustee.

III. Conclusion

Based upon the foregoing, the Court is prepared to DISALLOW the Goldstein Claim in its entirety.

Note 1

Unless otherwise indicated, all page number citations to the Goldstein Claim refer to

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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9:00 AM

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Claire Levine

Chapter 7

the page numbers automatically affixed to each page by the Electronic Case Filing (ECF) system. Technical limitations on the file size of electronically filed documents required the Goldstein Claim to be filed in three parts. Where multipart documents are filed, in addition to the page number, the ECF system automatically affixes a description of each part to the top of the page; this description precedes the page number. The Court has preserved these descriptions in its citations to the Goldstein Claim. Consistent with the ECF descriptions, the first 63 pages of the Goldstein Claim are designated as "Main Document"; the next 78 pages are designated as "Part 2"; and the final 121 pages are designated as "Part 3."

Note 2

The Notice of Withdrawal was signed by Lucy Mekhael but was filed using Jonathan Cole's CM/ECF login. Pursuant to Local Bankruptcy Rule ("LBR") 9011-1(b), Jonathan Cole is also deemed to have filed the Notice of Withdrawal based upon the fact that his CM/ECF login was used to file the document. See LBR 9011-2(b)(1) ("The electronic filing or lodging of a document by a Filer through the CM/ECF, ePOC, LOU or other system, constitutes a signature on that document by such Filer and shall subject the Filer to the same consequences as if the Filer had signed such document by hand, including sanctions under FRBP 9011 and liability for perjury. When a password is required to electronically file or lodge a document, the Filer whose password is used to effectuate such filing shall be deemed to be a Filer of the document.").

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Movant(s):

Claire Levine

Represented By
Dennis E Mcgoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

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Howard M Ehrenberg (TR)

Daniel A Lev

Asa S Hami

Jennifer M Hashmall

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2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#4.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18; 5-29-18

Docket 0

***** VACATED *** REASON: CONTINUED 9-12-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

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CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

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9:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

***** VACATED *** REASON: CONTINUED 8-27-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

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9:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

Docket 1

***** VACATED *** REASON: CONITNUED 9-24-18 AT 9:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

Docket 1

***** VACATED *** REASON: CONITNUED 9-24-18 AT 9:00 A.M**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby

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Green Jane Inc

Keith Patrick Banner
C John M Melissinos

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9:00 AM

2:17-17843 Berger Bros., Inc.

Chapter 7

Adv#: 2:17-01510 Berger Bros., Inc. v. Oltmans Construction Co., Inc. et al

#8.00 Trial Date Set

RE: [10] Counterclaim by Oltmans Construction Co., Inc. against Berger Bros., Inc.
Counterclaims of Oltmans Construction Co. (Polard, Steven)

Docket 10

***** VACATED *** REASON: REMANDED TO STATE COURT ON 3-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Berger Bros., Inc.

Represented By
Dean G Rallis Jr

Defendant(s):

Oltmans Construction Co., Inc.

Represented By
Steven G Polard

Westside Family YMCA aka YMCA

Pro Se

DOES 1 through 30, inclusive

Pro Se

Plaintiff(s):

Berger Bros., Inc.

Pro Se

Trustee(s):

Heide Kurtz (TR)

Represented By
Timothy J Yoo

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9:00 AM

2:17-18077 Tamara Ann Lopez

Chapter 7

Adv#: 2:17-01489 Lopez v. U.S. Department of Education

#9.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01489. Complaint by Tamara Ann Lopez against U.S. Department of Education. (Charge To Estate). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Kingston, Christine)

Docket 1

***** VACATED *** REASON: DISMISSED 6-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Defendant(s):

U.S. Department of Education

Pro Se

Plaintiff(s):

Tamara Ann Lopez

Represented By
Christine A Kingston

Trustee(s):

Sam S Leslie (TR)

Pro Se

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9:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#10.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01512. Complaint by Fred Rosenberg against ROBERT MARK CARPENTER. fraud as fiduciary, embezzlement, larceny)) (Ure, Thomas)

Docket 1

***** VACATED *** REASON: TRIAL VACATED AT 7/17/18 PRETRIAL
CONFERENCE**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Thomas B Ure

FRIENDGIFTR, INC

Represented By
Thomas B Ure

Trustee(s):

Timothy Yoo (TR)

Pro Se

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9:00 AM

2:17-20655 Brandon J Duley

Chapter 7

Adv#: 2:17-01513 Duley v. Navient Corporation et al

#11.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01513. Complaint by Brandon J Duley against Navient Corporation, Department of Education. (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Raba, Claire)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED ON 6-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brandon J Duley

Represented By
Claire J Raba

Defendant(s):

Navient Corporation

Pro Se

Department of Education

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Brandon J Duley

Represented By
Leigh E Ferrin
Claire J Raba

Trustee(s):

Elissa Miller (TR)

Pro Se

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9:00 AM

2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01507 Yoo v. Tan et al

#12.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01507. Complaint by Timothy J Yoo against Tran Hung Tan. (Charge To Estate). Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)),(11 (Recovery of money/property - 542 turnover of property)),(31 (Approval of sale of property of estate and of a co-owner - 363(h)))(Avery, Wesley)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Tran Hung Tan

Pro Se

DOES 1-20

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:17-20784 Hiep Tan Tran

Chapter 7

Adv#: 2:17-01508 Yoo v. Tran

#13.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01508. Complaint by Timothy J Yoo against Hiep Tan Tran. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) (Avery, Wesley)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hiep Tan Tran

Represented By
Nguyen H Nguyen

Defendant(s):

Hiep Tan Tran

Pro Se

Plaintiff(s):

Timothy J Yoo

Represented By
Wesley H Avery

Trustee(s):

Timothy Yoo (TR)

Pro Se

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9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#14.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

fr. 3-26-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-29-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford Frey

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Pro Se

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

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CONT... Liberty Asset Management Corporation Chapter 11

Sunshine Valley, LLC Pro Se

California International Bank, N.A. Pro Se

All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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Monday, July 30, 2018

Hearing Room 1568

10:00 AM

2:18-15625 Marina Guadalupe Rivera

Chapter 7

#100.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1298 Becket Drive, San Jose, CA 95121 . (Castle, Caren)

Docket 10

Tentative Ruling:

7/26/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on October 18, 2017. The Movant filed an unlawful detainer action on February 6, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

Furthermore, the Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to

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CONT... Marina Guadalupe Rivera

Chapter 7

delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Kayo Manson-Tompkins in support of Motion at paragraph 18.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Marina Guadalupe Rivera

Represented By
Theresa Hana

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Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

2:18-15223 Dayra Ofelia Olivares-Beltran

Chapter 7

#101.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 38288 County Line Road, Yucaipa, CA . (Long, Helen)

Docket 12

Tentative Ruling:

7/26/2018

The Motion is DENIED without prejudice. Pursuant to the Court's "Self-Calendaring Instructions" for residential unlawful detainer motions for relief from stay on shortened notice, no later than 7-days prior to the hearing, the motion and supporting documents are required to be served by posting or personal service on the Debtor. Here, the proof of service attached to the Motion indicates that the Debtor was served via overnight delivery on July 18, 2018, which method of service does not comply with the Court's Self-Calendaring Instructions. The Movant may refile the Motion with service upon the Debtor in a manner consistent with the Court's Self-Calendaring Instructions.

Party Information

Debtor(s):

Dayra Ofelia Olivares-Beltran Pro Se

Trustee(s):

Howard M Ehrenberg (TR) Pro Se

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Tuesday, July 31, 2018

Hearing Room 1568

10:00 AM

2:10-43268 PAUL BERGERON

Chapter 7

#100.00 Status Conference on settled matters

FR. 4-10-18

Docket 20

***** VACATED *** REASON: PER ORDER ENTERED 7-27-18**

Party Information

Debtor(s):

PAUL BERGERON

Represented By
Michael J Jaurigue
Kerry P Zeiler

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, August 8, 2018

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#1.00 Hearing

RE: [4] Debtor's Motion For An Order: (1) Authorizing Debtor Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (2) Granting Adequate Protection To Prepetition Senior CBT Pursuant To 11 U.S.C. §§ 361, 362, And 363, (3) Scheduling A Continued Hearing Pursuant To Bankruptcy Rule 4001; And (4) Granting Related Relief

FR. 7-17-18

Docket 4

Tentative Ruling:

For the reasons set forth below, the Court GRANTS the Continued Cash Collateral Motion. The Debtor is authorized to use the Cash Collateral in accordance with the terms of the Interim Cash Collateral Stipulation, the Continued Cash Collateral Stipulation, and the Revised Budget. The Court will conduct a further hearing on the use of cash collateral on **October 10, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **September 26, 2018**. Any opposition to the continued use of cash collateral must be submitted by no later than **October 3, 2018**.

Pleadings Filed and Reviewed:

- 1) Debtor's Supplemental Brief: (A) In Support of Debtor's Continued Use of Cash Collateral; and (B) In Opposition to the Limited Objection of Aaron's, Inc. to Debtor's Emergency [Motion] For Use of Cash Collateral (the "Continued Cash Collateral Motion") [Doc. No. 67]
- 2) Supplemental Objection of Aaron's, Inc. to the Continued Cash Collateral Motion (the "Supplemental Objection") [Doc. No. 79]
- 3) Stipulation Regarding (I) Debtor's Motion Authorizing Debtor's Use of Cash Collateral and (II) Standstill Agreement (the "Continued Cash Collateral Stipulation") [Doc. No. 80]
- 4) Debtor's Emergency Motion for an Interim Order: Authorizing Debtor Use of

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Sultan Financial Corporation

Chapter 11

- Cash Collateral Pursuant to 11 U.S.C. § 363; (2) Granting Adequate Protection to Prepetition Senior CBT Pursuant to 11 U.S.C. §§ 361, 362, and 363; (3) Scheduling a Continued Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief (the "Emergency Cash Collateral Motion") [Doc. No. 4]
- 5) Omnibus Declaration of Randall C. Sultan in Support of Debtor's "First-Day" Motions (the "Sultan Declaration") [Doc. No. 10]
 - 6) Order Setting hearing on First Day Motions [Doc. No. 2]
 - a) Proof of Service for First Day Motions and Related Documents [Doc. No. 24]
 - 7) Limited Objection of Aaron's, Inc. to Debtor's Emergency Motion For Use of Cash Collateral [Doc. No. 34]

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. Randall C. Sultan is the Chief Executive Officer of the Debtor. "Omnibus Declaration of Randall C. Sultan in Support of Debtor's 'First-Day' Motions" (the "Sultan Declaration") [Doc. No. 10] at ¶ 2. Other members of the Debtor's senior management include Zackary Vandenberg, President, and Gregg Sultan, Vice President and General Counsel. *Id.* at ¶ 5. The Debtor was incorporated in the State of California on January 27, 1986. *Id.* at ¶ 4. The "Randall and Patricia Sultan Family Revocable Trust" (the "Sultan Family Trust") owns all the stock in the Debtor, and Randall Sultan is the sole member of the Debtor's board of directors. *Id.* Since 1997, the Debtor has developed and operated Aaron's Sales & Lease Stores ("Aaron's"), and currently operates sixteen Aaron's stores throughout Southern California (the "Stores"). *Id.* at ¶ 6. The Debtor and Aaron's have executed a separate "Franchise Agreement" for each of the Stores that are currently open (collectively, the "Franchise Agreements"). *Id.* at ¶ 27. In exchange for the Debtor's use (as a franchisee) of the "Aaron's System"¹ [Note 1], each of the Franchise Agreements, as modified by the Settlement Agreement between the parties (the "Settlement Agreement"), provide that, for the period commencing August 1, 2018 through July 31, 2020, the Debtor is required to pay a weekly fee to Aaron's of either 5% or 6%² [Note 2] of the Debtor's gross revenues (the "Royalty Fee" or "License Fee"). *See id.* at ¶¶ 27–28; "Declaration of Christopher Kelly Wall" (the "Wall Declaration") [Doc. No. 79] at ¶ 6. The Debtor states that the Petition was precipitated by changes to the Franchise Agreements, which caused the Debtor's

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CONT... Sultan Financial Corporation

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profits to decline, and a subsequent dispute between the Debtor and Aaron's related to these changes. *See id.* at ¶¶ 29–35. The Debtor is in the "rent-to-own industry" ("RTO"). *Id.* at ¶ 7. RTO stores, including the Debtor's, rent household goods such as appliances, consumer electronics, and furniture to customers on a weekly or monthly basis. *Id.* After a prescribed period of months of continuous rental payments by the customer, the merchandise automatically passes to the customer. *Id.* Approximately 35% of all rental contracts go to term. *Id.* As of July 2, 2018, the total value of the Debtor's inventory for the Stores was \$1,255,700.00. *Id.* at ¶ 9. The Debtor has approximately 13,040 customers with active contracts, and approximately 20,500 total contracts. *Id.* at ¶ 10. The aggregate value of the remaining payments due under these contracts is approximately \$26,63,000.00. *Id.* Based on past performance, the Debtor collects approximately 55% of the outstanding lease value, which yields an estimated value for all outstanding contracts of \$14,647,000.00. *Id.* The Debtor typically writes 1,700 new contracts each month. *Id.*

The Debtor's primary secured creditor is ZB, N.A., successor by merger to California Bank & Trust ("CBT" or the "Lender"). *Id.* at ¶ 12. On January 4, 2012, the Debtor and CBT entered into a Commercial Loan Agreement (the "CLA"), which provided for a revolving line of credit loan to the Debtor and term loans made by CBT to the Debtor (collectively, the "CBT Loans"). *Id.* The CLA has been amended fifteen times since January 2012. *Id.* To secure the payments of all amounts due under the CBT Loans as well as all other obligations to the Lender, the Debtor executed a Security Agreement whereby the Debtor granted the Lender a lien and security interest in all its assets. *Id.* at ¶ 13. As of July 13, 2018, the total amount owing on the CBT Loans is \$15,556,285.54. *Id.* at ¶ 15.

The Debtor does not own any real estate; however, the Debtor leases its corporate headquarters and its sixteen Stores (the "Real Estate Leases"). *Id.* at ¶ 19. Six of the Real Estate Leases are with entities in which Randall Sultan has an ownership interest, while the remaining eleven Real Estate Leases are with unrelated parties. *Id.* The Debtor also leases thirty vehicles that are used at the Stores for customer deliveries and returns (the "Vehicle Leases"). *Id.* at ¶ 20.

The Sultan Declaration states that, in addition to the CBT Loans, there are multiple pre-petition unsecured claims against the Debtor. *See id.* at ¶ 25. As of the Petition Date the Debtor owes the following amounts to its franchisor, Aaron's: (1) \$1,457,497.00 for inventory purchases; and (2) amounts due under the certain 2016

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promissory note in favor of Aaron's which amounts total approximately \$3,214,000.00 (the "Aaron's Note"). *Id.* at ¶ 21. The Debtor also leases certain equipment and signage from Aaron's. *Id.* The Debtor has general unsecured non-insider trade claims totaling approximately \$282,509.00. *Id.* at ¶ 22. Additionally, Randall Sultan has, on multiple occasions, loaned personal funds to the Debtor for general corporate purposes, which loans were evidenced by promissory notes (the "Shareholder Notes"). *Id.* at ¶ 23. The aggregate principal amount due under the Shareholder Notes is \$950,000.00. *Id.*

The Emergency Cash Collateral Motion

On the Petition Date, the Debtor filed the "Emergency Motion for an Interim Order: Authorizing Debtor Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (2) Granting Adequate Protection to Pre-petition Senior CBT Pursuant to 11 U.S.C. §§ 361, 362, and 363; (3) Scheduling a Continued Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief" (the "Emergency Cash Collateral Motion") [Doc. No. 4]. On July 17, 2018, Aaron's filed the "Limited Objection of Aaron's, Inc. to Debtor's Emergency Motion For Use of Cash Collateral" (the "Limited Objection") [Doc. No. 34]. The Court held a hearing on the Emergency Cash Collateral Motion July 17, 2018. Counsel for the Debtor and counsel for Aaron's, among others, appeared at the hearing.

There is a dispute between the Debtor and Aaron's regarding the terms a certain settlement agreement entered into between the Debtor and Aaron's related to the payment of royalties by the Debtor to Aaron's (the "Settlement Agreement"), which dispute includes the timing of the Royalty Fee payments and whether the Debtor should be required to make continuing Royalty Fee payments as adequate protection for the Debtor's use of Aaron's trademarks and other intellectual property. The Court stated that based on the record, from which it appeared to the Court that the Debtor may be using the bankruptcy as a tactic to get a better negotiating footing in its dispute with Aaron's, the Court would be inclined to require the Debtor to pay Aaron's what it was due under the Settlement Agreement and the related Franchise Agreements. Counsel for the Debtor noted that pre-petition, the Debtor had downsized from 26 stores to 16, and that the Petition was also necessary because the CBT Loans matured on June 15, 2018. The Debtor's counsel further noted the pending adversary proceeding by the Debtor against Aaron's, Case No. 2:18-ap-01225-ER (the "Adversary Proceeding"), in which the Debtor asserts claims against Aaron's based on

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Aaron's alleged wrongful conduct related to the Franchise Agreements and the Settlement Agreement. After considering the arguments raised by the parties at the hearing, the Court granted the Emergency Cash Collateral Motion, and authorized the use of cash collateral on an interim basis, scheduled a continued hearing on the use of cash collateral for August 8, 2018, and set a briefing schedule for the continued use of cash collateral, including the issue of payment of the Royalty Fees to Aaron's. On July 18, 2018, the Debtor and CBT filed the "Stipulation Between ZB, N.A. dba California Bank & Trust and the Debtor for Authorization to Use Cash Collateral under 11 U.S.C. § 363 on an Interim Basis" (the "Interim Cash Collateral Stipulation") [Doc. No. 48]. On July 19, 2018, the Court entered the Interim Order Granting the Emergency Cash Collateral Motion (the "Interim Cash Collateral Order") [Doc. No. 53], which authorizes the use of cash collateral consistent with the terms of the Interim Cash Collateral Stipulation.

The Continued Cash Collateral Motion and Opposition to Aaron's Limited Objection

On July 24, 2018, the Debtor filed the "Supplemental Brief: (A) In Support of Debtor's Continued Use of Cash Collateral; and (B) In Opposition to the Limited Objection of Aaron's, Inc. to Debtor's Emergency [Motion] For Use of Cash Collateral" (the "Continued Cash Collateral Motion") [Doc. No. 67].

The Continued Use of Cash Collateral

Pursuant to the Interim Cash Collateral Order, and in support of the Debtor's continued use of cash collateral, the Debtor submits a thirteen-week proposed budget commencing on August 5, 2018 (the "Budget") [Doc. No. 67, Ex. A].

The Opposition to Aaron's Limited Objection

The Debtor opposes Aaron's Limited Objection to the use of cash collateral, and asserts that Aaron's seeks to: (1) deprive the Debtor of the "breathing space" afforded to Chapter 11 debtors under § 365; (2) relieve itself of its burden to demonstrate that its ongoing performance under the Franchise Agreements is providing an "actual" and "necessary" benefit to the Estate under § 503(b)(1)(A); (3) strip the Debtor of its rights to setoff and recoupment under § 558; and (4) utilize a strategy that ignores available statutory remedies and, instead, seeks to exploit the Debtor's need to continue use of

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cash collateral based on the premise that Aaron's has standing to challenge such use of cash collateral on adequate protection grounds.

The Debtor contends that the Franchise Agreements are executory contracts under § 365, and that the Interim Cash Collateral Stipulation provides the Debtor with the "breathing space" under § 365 to properly evaluate whether to assume or reject its existing Franchise Agreements with Aaron's. The Debtor argues that, under § 365, during the period from the Petition Date through confirmation of a plan the Debtor may decide whether to assume or reject an executory contract (the "breathing space"), and that during this period, "executory contracts may be enforced by, *but not against*, a [Chapter 11] debtor." Continued Cash Collateral Motion at 6 (quoting *In re BCE West, L.P.*, 257 B.R. 304, 307 (Bankr. D. Ariz. 2000) (emphasis added)). Furthermore, that until the executory contracts are assumed or rejected, Aaron's is either barred from enforcing the contract, or may perform the executory contract post-petition and seek a post-petition administrative claim for the reasonable value of such performance. *See id.* (quoting *In re El Paso Refinery, L.P.*, 220 B.R. 37 (Bankr. W.D. Tex. 1998)). Thus, the Debtor argues that during the breathing space afforded by § 365, the Debtor is not bound by any duty to make ongoing Royalty Fee payments or otherwise perform under the Franchise Agreements. *Id.* at 7.

Additionally, the Debtor contends that by insisting that the Debtor make ongoing Royalty Fee payments during the period under § 365, Aaron's is attempting to relieve itself of its statutory burden under § 503(b)(1)(A), which provides that a non-debtor counterparty to an executory contract may be entitled to receive an "allowed administrative expense" to the extent that the non-debtor party can demonstrate that its post-petition performance under the contract during the breathing space conferred an "actual" and "necessary" benefit upon the Estate. *Id.* at 8.

The Debtor further argues that Aaron's Limited Objection seeks to strip the Debtor of its statutory rights under § 558, which permits a Chapter 11 debtor to offset a pre-petition claim against a post-petition, administrative liability. *Id.* at 11. The Debtor contends that if Aaron's were to properly proceed under § 503(b)(1)(A) such that it is awarded an administrative priority claim for its ongoing performance under the Franchise Agreements during the breathing space, the Debtor would be entitled to assert a right of set-off against such administrative claim for any pre- and/or post-petition claims that the Debtor has against Aaron's, including those claims being

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asserted by the Debtor in the Adversary Proceeding.

Lastly, the Debtor states that to the extent Aaron's maintains it is being prejudiced as a result of the Debtor's use of cash collateral without being conditioned upon payment of post-petition Royalty Fees to Aaron's, Aaron's should seek relief with respect to one or more of the executory contracts under § 365(d)(2).

The Supplemental Objection

On July 31, 2018, Aaron's filed the "Supplemental Objection of Aaron's, Inc. to the [Continued Cash Collateral Motion]" (the "Supplemental Objection") [Doc. No. 79]. The Supplemental Objection advances three arguments in opposition to the Continued Cash Collateral Motion: (1) that Aaron's is entitled to post-petition payment of the License Fees; (2) the Debtor cannot rely on § 365 to avoid paying the License Fees; and (3) the Debtor may not seek to set-off current debts against potential future claims. Aaron's argues that it is beyond dispute that the Debtor's current business would not exist without the Debtor's ability to use the Franchisor's Marks and the Aaron's System on a daily basis. *Id.* at 4.

In arguing that it is entitled to post-petition payment of the License Fees, Aaron's cites multiple cases which have held that franchisors are entitled to be compensated for continuing to provide access to their trademarks and franchise systems to debtors during the post-petition period. *See id.* at 4–5. Aaron's further argues that it has a property interest in the Aaron's System and the intellectual property rights which it licensed to the Debtor under the Franchise Agreements, and that it is entitled to adequate protection in the form of post-petition payments equal to the License Fees because of the value of Aaron's trademark, service marks, and reputation to the general public. *Id.* at 5 (citing *In re Tudor Motor Lodge Assocs., Ltd. P'Ship.*, 102 B.R. 936, 954 (Bankr. D.N.J. 1989)). Thus, the failure of the Debtor to pay the License Fees would be sufficient cause for Aaron's to seek relief from stay to proceed with the termination of the Franchise Agreements, and Aaron's proposes that the Budget be amended to provide for such adequate protection, rather than wait for the issue to be raised in the context of a motion for relief from stay. Additionally, while Aaron's asserts that the issue of adequate protection is the central issue in connection with the Continued Cash Collateral Motion, Aaron's contends that the Debtor's continued use of the Franchisor's Marks and the Aaron's System post-petition under § 365 without payment of the License Fees provides continuing value to the Estate, and,

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therefore, would be an "actual" and "necessary" expense under § 503(b)(1)(A).

The Continued Cash Collateral Stipulation

On August 7, 2018, the Debtor filed the "Stipulation Regarding (I) Debtor's Motion Authorizing Debtor's Use of Cash Collateral and (II) Standstill Agreement" (the "Continued Cash Collateral Stipulation") [Doc. No. 80], entered into between the Debtor, Randall and Patricia Sultan, and Aaron's (collectively, the "Parties"). The Parties entered into the Continued Cash Collateral Stipulation in order to avoid unnecessary motion practice and expense to the Parties. The Parties have agreed to maintain the status quo for a period of sixty days while the Parties negotiate toward a global resolution (the "Standstill Period"). Among other terms, the Parties agree as follows: (1) the Parties will submit to mediation; (2) the License Fee shall be paid to Aaron's by the Debtor commencing August 1, 2018 through the Standstill Period at a rate of 6%, and any cash collateral budget submitted by the Debtor for approval will include the License Fee; (3) all other payments due to Aaron's under the Franchise Agreements from the Petition Date through the Standstill Period shall be paid by the Debtor in accordance with the terms of the Franchise Agreements; (4) the hearing on the Cash Collateral Motion shall be continued to a date agreed upon by the Parties and approved by the Court; and (5) all litigation activities between the Parties shall be stayed during the Standstill Period, except for the Debtor being permitted to file an application to employ special counsel in connection with the Adversary Proceeding. A revised thirteen-week cash collateral budget is attached as "Exhibit A" to the Continued Cash Collateral Stipulation (the "Revised Budget").

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368–69 (9th Cir. 1987).

Here, the Court finds that the terms of the Interim Cash Collateral Stipulation comply with §§ 361 and 363. Furthermore, the Court finds that the Continued Cash

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Collateral Stipulation temporarily resolves the Supplemental Objection by Aaron's. Because the Interim Cash Collateral Stipulation constitutes "affirmative express consent" by CBT to the Debtor's use of the Cash Collateral, the Court GRANTS the Continued Cash Collateral Motion. The Debtor is authorized to use the Cash Collateral in accordance with the terms of the Interim Cash Collateral Stipulation, the Continued Cash Collateral Stipulation, and the Revised Budget.

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Continued Cash Collateral Motion. The Debtor is authorized to use the Cash Collateral in accordance with the terms of the Interim Cash Collateral Stipulation, the Continued Cash Collateral Stipulation, and the Revised Budget. The Court will conduct a further hearing on the use of cash collateral on **October 10, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **September 26, 2018**. Any opposition to the continued use of cash collateral must be submitted by no later than **October 3, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Aaron's System includes: common use of the service mark "Aaron's Sales & Lease Ownership," and certain other service marks, trade names, trademarks, logos, and unique signs (collectively, the "Franchisor Marks"); centralized advertising programs; leased signage and computer equipment; e-commerce sales referral

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programs; use of Aaron's proprietary point of sale software system; and centralized support functions.

Note 2: The percentage due to be paid under the Franchise Agreements, as modified by the Settlement Agreement, is disputed by the parties. The Debtor asserts that, subject to the dispute regarding post-petition payments discussed in more detail herein, the Debtor is only required to pay a 5% Royalty Fee pursuant to the terms of the Settlement Agreement. *See* Sultan Declaration at ¶¶ 27–28. Aaron's asserts that the Debtor is in breach of the Settlement Agreement based upon its failure to pay the amounts owing under the Aaron's Note, and that under applicable law such breach negates Aaron's agreement to accept a 5% License Fee instead of the 6% License Fee provided for pursuant to the Franchise Agreements. *See* "Declaration of Christopher Kelly Wall" (the "Wall Declaration") [Doc. No. 79] at ¶ 6.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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#1.00 HearingRE: [67] Motion RE: Objection to Claim Number 2 by Claimant Kathy Kay Settle.

Docket 67

Tentative Ruling:

8/8/2018

For the reasons set forth below, the Claim Objections are OVERRULED.

Pleadings Filed and Reviewed:

- 1) Ronald Peterson's Objection to Shaco, Inc.'s Filed Proof of Claim, No. 1-1 Pursuant to 11 U.S.C. §502(b) and Bankruptcy Rule 3007 [Doc. No. 66]
- 2) Ronald Peterson's Objection to Kathy K. Settle's Filed Proof of Claim, No. 2-1 Pursuant to 11 U.S.C. §502(b) and Bankruptcy Rule 3007 [Doc. No. 67]
- 3) Trustee's Notice of Opposition and Opposition to Ronald Peterson's Objection to Claim No. 2-1 Filed by Shaco, Inc. [Doc. No. 74]
- 4) Trustee's Notice of Opposition and Opposition to Ronald Peterson's Objection to Claim No. 2-1 Filed by Kathy K. Settle [Doc. No. 73]
- 5) Shaco, Inc.'s Opposition to "Ronald Peterson's Objection to Shaco, Inc.'s Filed Proof of Claim, No. 1-1 Pursuant to 11 U.S.C. §502(b) and Bankruptcy Rule 3007" [Doc. No. 76]
- 6) Reply to Opposition to Shaco, Inc.'s Filed Proof of Claim, No. 1-1 Pursuant to 11 U.S.C. §502(b) and Bankruptcy Rule 3007 [Doc. No. 77]
- 7) Reply to Opposition to Shaco, Inc.'s Filed Proof of Claim, No. 1-1 Pursuant to 11 U.S.C. §502(b) and Bankruptcy Rule 3007 [Doc. No. 78]

I. Facts and Summary of Pleadings

A. Background

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

The Debtor was married to Ronald Peterson ("Ronald") from 1997 to 2010.

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Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Trustee of undisclosed assets, and the Debtor's case was reopened.

On October 19, 2017, the Trustee initiated a Complaint against Ronald and two LLCs—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Complaint sought a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Complaint sought turnover of the Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

On June 14, 2018, the Court entered final judgment (the "Judgment") in favor of the Trustee, and against the Defendants, on the Trustee's first, third, and fifth claims for relief. The Judgment ordered Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Defendants failed to comply with the Court's order and did not turnover the Property by the July 6 deadline.

On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment (the "Motion for Reconsideration"). In the Motion for Reconsideration, Defendants asserted that the only claims filed in the Debtor's bankruptcy case were on account of debts the Debtor incurred after she separated from Ronald. Defendants maintained that as a result, the claims are not payable from property of the estate because they do not qualify as "community claims" within the meaning of §101(7). Defendants' theory was that the absence of any creditors entitled to receive a distribution from the estate precluded the Trustee from administering estate property. In denying the Motion for Reconsideration, the Court noted that Defendants had been provided an opportunity to present their arguments before the Court entered the Judgment, but had failed to do so. Observing that Defendants had offered no explanation whatsoever for their failure to timely raise these arguments, the Court determined that the "extraordinary circumstances" necessary to support reconsideration were not present. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Defendants have appealed the denial of the Motion to Reconsideration to the District Court.

Concurrently with the denial of the Motion for Reconsideration, the Court directed the Clerk of the Court to issue a Writ of Possession, authorizing the United

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States Marshal to enforce the Judgment by placing the Trustee in possession of the Property. The United States Marshal has served the Writ of Possession and has advised Defendants that the Property must be turned over to the Trustee by no later than August 31, 2018, at 12:00 p.m. *See* Adv. Doc. No. 105 at ¶2c.

B. Ronald's Claim Objections, the Trustee's Opposition, Shaco's Opposition, and Ronald's Replies in Support of the Objections

Ronald objects to Proofs of Claim filed by Shaco, Inc. and Kathy K. Settle. Ronald raises the same arguments that he raised in the Motion for Reconsideration—he contends that the claims do not qualify as "community claims," and therefore are not payable from the estate's community property, because the claims arose after Ronald and the Debtor separated.

The Trustee opposes both of Ronald's Claim Objections. Claimant Shaco, Inc. also opposes Ronald's objection to its claim. Claimant Settle has not filed any papers. The Trustee first argues that Ronald lacks standing to object to other creditor's claims. According to the Trustee, Ronald has improperly interposed the claim objections as part of a broader litigation strategy to defeat the Trustee's attempt to gain possession of the Property. Next, the Trustee disputes Ronald's contention that no distribution may be made from the estate on account of the claims. According to the Trustee, §726(c) dictates the following distribution scheme:

- 1) The estate's community assets, including the Property, will first be liquidated to cash.
- 2) Pursuant to §726(c), all costs of administration will be paid from funds on hand.
- 3) After payment of costs of administration, the remaining funds will be divided in half, one half allocable to the Debtor, and the other allocable to Ronald.
- 4) In the event the Trustee determines that the claims filed by Shaco and Settle are the separate debts of the debtor, those claims will be paid from the Debtor's half of the remaining funds.

Shacos' arguments in opposition to Ronald's objection to its claim generally parallel those of the Trustee. Like the Trustee, Shaco asserts that Ronald lacks standing to object to its claim. Shaco further asserts that there is no merit to Ronald's contention that Shaco's claims cannot be paid from estate assets.

In Reply to the Trustee's Opposition, Ronald reiterates his assertion that because both claims were incurred by the Debtor post-separation, the claims are not community claims and therefore cannot receive a distribution from the estate's

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community property assets.

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II. Findings and Conclusions

A. Ronald's Arguments Are Not Properly Before the Court

Ronald's motivation in objecting to the claims is to gain a litigation advantage in the related adversary proceeding. In his Claim Objections, Ronald asserts that the claims do not qualify as "community claims" and therefore may not be paid from the estate's community property. The estate's primary community property asset is the Property. As discussed above, Ronald has vigorously contested the Trustee's attempts to enforce the Judgment and gain possession of the Property. Ronald's objective in prosecuting the Claim Objections is to prevent the Trustee from enforcing the Judgment.

Ronald raised the arguments he asserts now in his motion for Reconsideration of the Judgment. In denying Ronald's Motion for Reconsideration, the Court found that Ronald had failed to show that "extraordinary circumstances" excused his failure to timely raise his arguments regarding the allowability of the claims. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Based upon this finding, the Court refused to consider the arguments. Ronald cannot procedurally circumvent the Court's determination by now seeking to present these identical arguments in a different context.

The Court declines to find that Ronald lacks standing to object to the claims. It would be more precise to say that the Ronald has interposed the Claim Objections for the improper purpose of attempting to escape the consequences of his failure to timely raise the arguments he now presents. Had Ronald timely raised these arguments in opposition to the Trustee's motion for summary judgment, they would have been properly before the Court. But raising the arguments now—after the Court's express determination that the arguments would not be considered because they were untimely—is not proper.

Because Ronald's arguments are not properly before the Court, the Court will deny the Claim Objections solely on that basis. However, even if Ronald's arguments were properly before the Court, they lack merit. In the context of Claim Objections which are not properly before it, the Court declines to make any findings regarding the nature of the claims. However, as discussed below, assuming *arguendo* that the claims are not community claims, the claimants would still be entitled to a distribution from the estate. Consequently, there is no merit to Ronald's contention that the Trustee's administration of the property would serve no purpose other than compensating the Trustee's professionals.

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B. Even if Ronald's Arguments Were Properly Before the Court, They Lack Merit

Where an estate includes community property, distribution of such property is governed by §726(c). Section 726(c) provides a framework for the distribution of community property to holders of community claims.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [community property of the estate], whether or not there is any such property at the time of the commencement of the case." §101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Court assumes without deciding that the indebtedness asserted by the claimants was incurred by the Debtor after she separated from Ronald. As such, the claims would not constitute community claims.

To provide for the distribution of community property, §726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

The distribution contemplated by the Trustee is consistent with the §726(c). First, the Trustee will liquidate the Property, the estate's primary community asset. Once the Property has been liquidated, costs of administration will be paid from cash on hand. Subsequent to the payment of costs of administration, the remaining funds will be divided in half, with one half allocable to the Debtor, and the other allocable to Ronald. Once the remaining funds have been divided, the Debtor's share of such funds will no longer constitute community property. Instead, such funds will be property of the estate liable for separate property claims against the Debtor—such as

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the claims asserted by Shaco and Settle (provided that such claims are in fact properly characterized as separate property claims). Such funds may be distributed to the claimants pursuant to §726(c)(2)(C).

Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), *aff'd sub nom. Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10. The Trustee proposes adopting the same process here—that is, the Trustee will pay the Debtor's post-separation debts only after Ronald has received his half of the proceeds of the estate's community property.

III. Conclusion

Because the Claims Objections are not properly before the Court, they are **OVERRULED** in their entirety. The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Trustee(s):

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

CONT... **Anne Lan Peterson**
Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#2.00 HearingRE: [66] Motion RE: Objection to Claim Number 1 by Claimant SHACO INC.

Docket 66

Tentative Ruling:

8/8/2018

See Cal. No. 1, incorporated in full by reference.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#3.00 Hearing
RE: [84] Motion to Reconsider (related documents 49 Motion for Summary Judgment) with proof of service

Docket 84

***** VACATED *** REASON: CALENDARED IN ERROR.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

- #4.00** Hearing
RE: [242] Motion and Memorandum of Points and Authorities in Support of Motion for Attorneys Fees; Declaration of Timothy L. Neufeld with Proof of Service (Shikai, Yuriko)

Docket 242

Tentative Ruling:

8/8/2018

For the reasons set forth below, the Motion is GRANTED, but the fee requested is reduced from \$27,122.50 to \$16,000.00.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Memorandum of Points and Authorities in Support of Motion for Attorneys' Fees [Doc. No. 242] (the "Motion")
- 2) JL AM Plus, LLC's Response to Morad Nemans' Motion for Attorneys' Fees [Notice of Motion for Attorneys' Fees (the "Opposition")] [Doc. No. 255]
- 3) Defendant Morad Neman's Reply Brief in Support of Motion for Attorneys' Fees (the "Reply") [Doc. No. 257]

I. Facts and Summary of Pleadings

On August 29, 2016, the Court approved the sale of the estate's interest in this litigation to Defendants Morad Neman ("Mr. Neman") and MBN Real Estate, LLC ("MBN") for \$1 million. Bankr. Doc. No. 130. [Note 1] After Mr. Neman failed to complete the purchase, backup bidder Accessories Mart, LLC purchased the litigation for \$905,000 on October 20, 2016. Adv. Doc. No. 57. Accessories Mart subsequently assigned its interest in the litigation to JL AM Plus, LLC ("JLAMP"). On September 2, 2016, the Court entered a preliminary injunction, barring Mr. Neman and MBN Real Estate from transferring or encumbering the assets which are the subject of this litigation. Bankr. Doc. No. 138.

On May 25, 2017, the Court entered final judgment in Mr. Neman's favor (the "Judgment"). See Judgment in Favor of Defendant Morad Neman [Doc. No. 138];

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Chapter 7

Memorandum of Decision Finding that Morad Neman is Entitled to Summary Judgment in His Favor [Doc. No. 136] (the “Memorandum of Decision”). The Court found that there was no genuine dispute that Mr. Neman was not the alter ego of MBN. Having found that Mr. Neman was not MBN’s alter ego, the Court found that Mr. Neman was entitled to judgment in his favor, and that there was no just reason to delay the entry of judgment.

On July 17, 2017, the Court found that Mr. Neman was entitled to attorneys’ fees, in the amount of \$74,366.50, as the prevailing party in the adversary proceeding. Adv. Doc. No. 150.

On July 20, 2018, the Court conducted a hearing on JLAMP’s motion to set aside the Judgment in Mr. Neman’s favor. The Court denied the motion. The Court found that JLAMP had not obtained judgment in his favor by stonewalling JLAMP’s discovery; instead, judgment was entered in Mr. Neman’s favor largely as a result of JLAMP’s failure to allege or show any specific facts substantiating its alter ego theory.

Mr. Neman now seeks an award of attorneys’ fees in the amount of \$27,122.50, in connection with work performed litigating JLAMP’s motion to set aside the Judgment. Mr. Neman’s counsel seeks reimbursement for 68.8 hours of work. The hourly rates for Mr. Neman’s counsel range between \$380 to \$475.

JLAMP does not dispute that Mr. Neman is entitled to attorney’s fees, and does not dispute the reasonableness of counsel’s billing rates. JLAMP asserts that the amount of time billed (68.8 hours) to oppose a single motion is not reasonable. JLAMP further notes that the Court significantly discounted the fees awarded to JLAMP in connection with discovery motions, and that the same discount should be applied to Mr. Neman’s request.

In Reply, Mr. Neman states that the amount of time spent by counsel was reasonable, because (1) counsel had to familiarize itself with events that took place a year ago in order to oppose the motion; (2) the stakes involved in the motion were high; and (3) the motion was not routine.

II. Findings and Conclusions

The Court agrees with JLAMP that the fee request of \$27,122.50 is excessive. It is true that the motion to set aside the Judgment was not routine and required counsel to familiarize itself with a complicated set of events. However, having thoroughly reviewed the papers filed by both sides when it adjudicated the motion, the Court cannot find that Mr. Neman’s counsel deserves \$27,122.50 in fees for the work that it performed.

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CONT... Morad Javedanfar

Chapter 7

In this litigation, the Court has previously awarded JLAMP \$16,000 in connection with three motions that JLAMP brought to compel discovery. The amount of work those three motions would have reasonably required is roughly commensurate with the amount of work Mr. Neman's counsel would have reasonably have been required to perform to oppose JLAMP's motion to set aside the Judgment. The Court will limit Mr. Neman's counsel's fees to \$16,000.

Mr. Neman shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn
Yuriko M Shikai

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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CONT... Morad Javedanfar

Chapter 7

Plaintiff(s):

JL AM Plus, LLC

Represented By
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#4.10 HearingRE: [253] Motion Notice of Motion and Motion to Continue Trial Until October 15, 2018 (Shikai, Yuriko)

Docket 253

Tentative Ruling:

8/8/2018

For the reasons set forth below, the trial is continued from **September 12, 2018 to Tuesday, October 9, 2018 at 9:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Continue Trial Until October 15, 2018 [Doc. No. 253]
- 2) JL Am Plus, LLC's Opposition to Defendant MBN's Motion to Continue Trial Until October 15, 2018 [Doc. No. 256]

I. Facts and Summary of Pleadings

Trial in this matter is currently set for September 12, 2018, at 9:00 a.m. MBN moves to continue the trial until October 15, 2018. MBN's principal, Morad Neman, is scheduled to be sentenced in a criminal proceeding on October 4, 2018. Neman is one of the principal witnesses who will testify concerning the transactions at issue in this litigation.

On December 21, 2017, Neman pleaded guilty to conspiracy to structure cash deposits, conspiracy to impede the Internal Revenue Service, subscribing to a false tax return, and procuring the filing of a false tax return. Neman was initially scheduled to be sentenced on July 19, 2018. The sentencing date has been continued to October 4, 2018.

Neman's Motion for a Continuance

Neman's criminal defense counsel asserts that if trial in this matter occurs prior to Neman's sentencing, Neman will be required to assert his Fifth Amendment rights against self-incrimination. MBN argues that if Neman, its primary witness, is required

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CONT... Morad Javedanfar

Chapter 7

to assert his Fifth Amendment rights at trial, MBN will be unable to adequately defend itself. On this basis, MBN requests that the trial be continued from September 12, 2018 to October 15, 2018.

JLAMP's Opposition

JLAMP opposes any continuance. JLAMP makes the following arguments and representations in support of its opposition:

The Ninth Circuit has adopted a five-factor test to determine whether civil proceedings should be continued pending completion of criminal proceedings. That standard requires the Court to consider:

- 1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- 2) the burden which any particular aspect of the proceedings may impose on defendants;
- 3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- 4) the interests of persons not parties to the civil litigation; and
- 5) the interest of the public in the pending civil and criminal litigation.

Fed. Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 903 (9th Cir. 1989).

Here, all factors weigh strongly in JLAMP's favor. With respect to factor one, in May 2017, the Court denied JLAMP's request for a continuance of Neman's motion for summary judgment. JLAMP had sought a continuance so that it would have additional time to conduct discovery. The Court also denied JLAMP's request for leave to amend its complaint. The Court found that leave to amend would cause undue delay, and noted that the case had at that time been pending for almost two years. The case has now been pending for three years, and trial still has not taken place. The same considerations that compelled the Court to deny JLAMP's request for leave to amend also compel the Court to deny MBN's request for a continuance.

With respect to factor two, trial of this case in September will not impose an undue burden upon MBN. Neman's counsel has not adequately explained why Neman's testimony will affect his criminal sentencing. None of the properties or transactions in this case are at issue in the criminal matter. Even MBN acknowledges that "the civil and criminal actions are distinct (fraudulent transfer v. structuring and a tax issue." Doc. No. 253 at p. 4.

Factors three and four support having this case heard as soon as possible. Quick disposition of this matter will free the Court to hear other matters. The public interest

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CONT... Morad Javedanfar

Chapter 7

weighs against delay, as delay of the trial would reward MBN and Neman's gamesmanship.

With respect to factor five, there will be no prejudice to the criminal proceedings as a result of litigation of this matter.

MBN's Reply

MBN makes the following arguments in its Reply to JLAMP's Opposition:

The five-factor test set forth in *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989) does not apply. MBN is seeking only a brief continuance of the trial date, not a stay of the litigation proceedings. However, even if the *Molinaro* factors did apply, they weigh heavily in MBN's favor. JLAMP has offered absolutely no evidence of prejudice that would result from a delay of approximately one month. By contrast, MBN will suffer substantial prejudice absent a continuance. The fact that the civil and criminal matters do not involve the same properties or transactions is immaterial. The issue is that Neman will be prevented from fully testifying as to the details of the transactions because he will be required to invoke his Fifth Amendment rights.

Finally, Neman's counsel has a case in the Los Angeles Superior Court that is set for trial from September 4–14, 2018. A recent settlement conference was unsuccessful, and it appears the trial will go forward. Therefore, the September 12 trial date is untenable.

II. Findings and Conclusions

As a preliminary matter, the Court overrules MBN's evidentiary objections to the declaration of John S. Purcell, JLAMP's counsel. The Purcell Declaration is intended to provide general background and context regarding the case to assist the Court in evaluating the merits of MBN's motion for a continuance. The Court relies upon the Purcell Declaration only to obtain a general idea of the context in which this Motion arises. It does not turn to the Purcell Declaration for the purpose of adjudicating specific facts regarding various properties or entities. Therefore, MBN's objections as to Mr. Purcell's lack of personal knowledge are overruled.

Turning to the merits, in *Fed. Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989), the Ninth Circuit articulated the factors the Court must consider when determining whether to stay civil proceedings pending the outcome of parallel criminal proceedings. *Molinaro* is not exactly on point. MBN seeks a one-month continuance of the trial, as opposed to an indefinite stay. Nonetheless, the Court finds the *Molinaro* factors relevant and will consider them in adjudicating the instant

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CONT... Morad Javedanfar

Chapter 7

Motion.

The *Molinaro* factors are as follows:

- 1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- 2) the burden which any particular aspect of the proceedings may impose on defendants;
- 3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- 4) the interests of persons not parties to the civil litigation; and
- 5) the interest of the public in the pending civil and criminal litigation.

Fed. Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 903 (9th Cir. 1989).

Factor One—the Plaintiff’s Interest in Proceeding Expeditiously with this Litigation

This factor weighs slightly in favor of JLAMP. By this litigation, JLAMP seeks to recover several properties located in downtown Los Angeles. JLAMP has an economic interest in having this litigation resolved as quickly as possible. On the other hand, MBN seeks a delay of only slightly more than one month. JLAMP has not shown that there are special circumstances—such as an imminent risk of damage to the properties—which would cause it to be seriously prejudiced by an additional one-month delay.

The Court does not agree with JLAMP’s contention that the Court’s prior ruling, denying JLAMP’s request for leave to amend, now compels it to deny MBN’s request for a brief continuance. Granting JLAMP leave to amend would have delayed this action by far more than the brief delay at issue in the context of this Motion.

Factor Two—the Burden on the Defendants

This factor weighs strongly in favor of MBN. JLAMP is correct that MBN has not specified exactly how Neman’s exercise of his Fifth Amendment rights would prevent him from fully testifying as to the transactions at issue. What JLAMP overlooks is that the disclosure of such information would, in and of itself, be prejudicial to Neman’s upcoming criminal sentencing, as such disclosures could be construed as an admission of guilt which could, in turn, effect his sentence. MBN’s failure to provide a specific explanation therefore does not indicate that its claims of prejudice are not well grounded.

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CONT... **Morad Javedanfar**

Chapter 7

Factor Three—the Convenience of the Court

This factor weighs slightly in favor of JLAMP. Faster resolution of this matter would conserve judicial resources. However, because MBN seeks a delay of only one month, this factor has minimal weight.

Factor Four—the Interests of the Persons Not Parties to the Civil Litigation

This factor weighs slightly in favor of JLAMP. Resolution of this litigation would remove a cloud over title to the several valuable properties in downtown Los Angeles. Faster development of such properties would benefit the public. But again, this factor is of minimal weight since the delay is only one month.

Factor Five—the Interest of the Public in the Pending Civil and Criminal Litigation

This factor has minimal weight. Neman's testimony in this matter will likely have minimal effect upon the criminal litigation, since Neman has already reached a plea agreement. Faster resolution of the civil litigation would be in the public's interest—since it would enable the faster development of the properties at issue—but again, the short delay makes this factor minimal.

Consideration of All Factors Supports a Brief Delay of the Trial

Upon consideration of all five factors, the Court finds that MBN has shown that it is entitled to a brief delay of the trial. In this context, factor two is the most salient. Neman is MBN's principal witness. If trial takes place before Neman's sentencing, he will not be able to fully testify as to the transactions at issue in this case. This would prevent MBN from fully defending itself.

It is true that the other factors weigh in favor of JLAMP. However, as noted above, those factors have only minimal weight, given that the delay will be approximately one month.

Neman is scheduled to be sentenced on October 4, 2018. The Court will continue the trial to **Tuesday, October 9, 2018, at 9:00 a.m.** The deadline for the submission of trial briefs, exhibits, and other materials described in the *Order Re: Courtroom Procedures* [Doc. No. 71] is **Thursday, September 27, 2018** (seven court days prior to trial).

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel

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Thursday, August 9, 2018

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CONT... Morad Javedanfar

Chapter 7

Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn
Yuriko M Shikai

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
John S Purcell

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:16-19567 West Coast Psychiatry Inc.

Chapter 7

#5.00 HearingRE: [76] Application for Compensation Supplemental Final Fee Application of Levene, Neale, Bender, Yoo & Brill L.L.P. as Bankruptcy Counsel to the Chapter 7 Trustee (with proof of service) for Lindsey L Smith, Trustee's Attorney, Period: 8/30/2016 to 4/22/2018, Fee: \$3500, Expenses: \$.

Docket 76

Tentative Ruling:

8/8/2018

Having reviewed the supplemental final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,500.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

West Coast Psychiatry Inc.

Represented By
Kevin Liu

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:17-14957 Sharonda Elaine Waddles

Chapter 7

#6.00 APPLICANT: Other Professional Fees - Jeffrey L Sumpter

Hearing re [58] and [59] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

8/8/2018

See Cal. No. 8 below, incorporated by reference.

Party Information

Debtor(s):

Sharonda Elaine Waddles

Represented By
Ursula G Barrios

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-14957 Sharonda Elaine Waddles

Chapter 7

#7.00 APPLICANT: Attorney - Levene Neale Bender Yoo & Brill

Hearing re [58] and [59] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/8/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$20,327.00

Expenses: \$1,211.14

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Sharonda Elaine Waddles

Represented By
Ursula G Barrios

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
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2:17-14957 Sharonda Elaine Waddles

Chapter 7

#8.00 APPLICANT: Trustee - Timothy J Yoo

Hearing re [58] and [59] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/8/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$25,050.00

Total Expenses: \$43.01

Other, Jeffrey Sumpter: amounts previously paid to this applicant on an interim basis are now deemed final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Sharonda Elaine Waddles

Represented By
Ursula G Barrios

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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10:00 AM

CONT... Sharonda Elaine Waddles

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#9.00 Hearing

RE:[1255] Motion for approval of chapter 11 disclosure statement Notice Of Joint Motion And Joint Motion Of The Debtor And Official Committee Of Unsecured Creditors For An Order (I) Approving Disclosure Statement; (II) Establishing Forms And Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan; (III) Establishing Deadline And Procedures For Filing Objections To The Confirmation Of The Plan; And (IV) Granting Related Relief; Memorandum Of Points And Authorities

Docket 1242

Tentative Ruling:

8/8/2018

For the reasons set forth below, the Disclosure Statement contains adequate information and is approved.

Pleadings Filed and Reviewed:

- 1) Notice of Joint Motion and Joint Motion of the Debtor and Official Committee of Unsecured Creditors for an Order (I) Approving Disclosure Statement; (II) Establishing Forms and Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan; (III) Establishing Deadline and Procedures for Filing Objections to the Confirmation of the Plan; and (IV) Granting Related Relief [Doc. No. 1242] (the "Motion")
 - a) *Modified* Proposed Disclosure Statement for Joint Chapter 11 Plan of Liquidation Pursuant to Section 1125 of the Bankruptcy Code, with Accompanying *Modified* Joint Chapter 11 Plan of Liquidation [Doc. No. 1255]
 - b) Notice of Filing of Exhibit B to Proposed Disclosure Statement for Joint Chapter 11 Plan of Liquidation [Doc. No. 1256]
- 2) No Opposition to the Motion is on file

I. Facts and Summary of Pleadings

Chapter 11 Debtor and Debtor-in-Possession Gardens Regional Hospital and

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, August 9, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Medical Center, Inc. (the "Debtor") and the Official Committee of Unsecured Creditors (the "Committee") jointly seek approval of the *Modified Proposed Disclosure Statement for Joint Chapter 11 Plan of Liquidation Pursuant to Section 1125 of the Bankruptcy Code* [Doc. No. 1255] (the "Disclosure Statement").

The Plan provides for liquidation of the Debtor's remaining assets. Funds recovered in connection with such liquidation will be paid to claimants in accordance with the distribution priorities established by the Bankruptcy Code and Plan. Upon the Effective Date of the Plan, the Debtor shall establish a Liquidating Trust, and the assets shall be liquidated by a Liquidating Trustee.

No Opposition to the Motion is on file.

II. Findings and Conclusions

Section 1125 provides that a disclosure statement must contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, ... that would enable ... a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." §1125.

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). As explained by one court:

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable;

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CONT...

Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

(14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984).

However, "[d]isclosure of all factors is not necessary in every case." *Id.*

The Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case. Among other things, the Disclosure Statement contains detailed descriptions of (1) the Debtor's capital structure and pre-petition indebtedness, (2) the factors precipitating the Chapter 11 filing, (3) significant events that occurred during the Chapter 11 case, (4) the classification structure of the Plan, and (5) the means for execution of the Plan. The Disclosure Statement also contains (1) a liquidation analysis, (2) a description of the tax consequences of the Plan, and (3) a discussion of risk factors in connection with the Plan.

The Court has reviewed the Debtor's proposed order (the "Proposed Order"), which approves the Disclosure Statement, approves procedures pertaining to the tabulation and solicitation of ballots, and approves the form of various notices to be sent to creditors and interested parties. The Court will enter the Proposed Order in the form submitted by the Debtor, with the following minor modifications and clarifications:

- The provision at ¶25.e. allowing for an extension of the September 10, 2018 deadline to object to confirmation of the Plan upon the consent of the Debtor, the Committee, the United States Trustee, and all parties who have requested notice shall be stricken. To provide the Court sufficient time to consider all objections, the deadline to object to confirmation shall not be extended except upon order of the Court.
- The Court will enter the Proposed Order on **Thursday, August 9, 2016**. Therefore, the Solicitation Commencement Date (as defined in the Proposed Order) shall be **Wednesday, August 15**.
- The Proposed Order does not set forth a date certain by which the Debtor must distribute the Confirmation Hearing Notice and Solicitation Packages to Voting Classes. To enable creditors adequate time to review such materials, the Debtor must serve the Confirmation Hearing Notice and Solicitation

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Packages upon parties entitled to notice thereof, via first class mail, by no later than **August 17, 2018**.

- The **August 17, 2018** deadline also applies to service of the documents captioned *Notice of Non-Voting Acceptance Status and Confirmation Status*, and *Notice of Non-Voting Rejecting Status and Confirmation Hearing*.
- The deadline for the Debtor to file a tabulation report for the Plan, a proposed form of confirmation order, and a declaration in support of confirmation addressing the requirements of §1129(a) is **September 11, 2018, at 4:00 p.m.** (not September 13, 2018, at 4:00 p.m.).

Except as set forth above, all other deadlines pertaining to plan confirmation, the solicitation of votes, and the tabulation of ballots shall be as set forth in the Proposed Order. The Plan Confirmation Hearing shall take place on **Monday, September 17, 2018, at 10:00 a.m.**, as requested by the Debtor.

The Court will enter the Proposed Order that has already been submitted by the Debtor.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

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2:18-17345 Fu Kong Inc.

Chapter 11

#10.00 Hearing
RE: [40] Motion to Use Cash Collateral NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING FURTHER INTERIM USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT REGARDING CASH COLLATERAL; DECLARATION OF GEORGE HSU; DECLARATION OF FRANK AVINA; DECLARATION OF TONY HWANG (Lo, Michael)

Docket 40

Tentative Ruling:

8/8/2018

The hearing on the Debtor's "Motion for Order Authorizing Further Interim Use of Cash Collateral" [Doc. No. 40], is CONTINUED to **August 16, 2018 at 10:00 a.m.** The Interim Cash Collateral Order entered on July 16, 2018 [Doc. No. 21] will remain in effect through and including August 16, 2018. No further briefing on the Motion is authorized or will be accepted by the Court.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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11:00 AM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#100.00 Hearing re [162] Appearance and Examination re Enforcement of Judgment-Debtor **Ramin Emami** and to Produce Documents.

fr. 5-17-18

Docket 0

***** VACATED *** REASON: CONTINUED 10-10-18 AT 10:00 A.M.**

Tentative Ruling:

8/8/2018

Hearing required.

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Pro Se

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:00 PM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#200.00 Hearing re [173] *Appearance and Examination re Enforcement of Judgment-Debtor Vicki Emami and to Produce Documents*

Docket 0

***** VACATED *** REASON: CONTINUED 10-10-18 AT 12:00 P.M.**

Tentative Ruling:

8/8/2018

Hearing required.

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Pro Se

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:12-22639 Claire Levine

Chapter 7

#1.00 HearingRE: [608] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: . # 4 Request for Judicial Notice (Part 2 of 2)) (Goldflam, Hal)

Docket 608

Tentative Ruling:

8/9/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 608]
- 2) Chapter 7 Trustee's Opposition to Pacific Western Bank's Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 638]
 - a) Chapter 7 Trustee's Request for Judicial Notice in Support of its Opposition to Pacific Western Bank's Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 639]
- 3) Levine and Rudinkas Joint Opposition to the Pacific Western Bank Motion for Relief from Stay [Doc. No. 641]
- 4) Notice of Joinder and Joinder in Oppositions to Pacific Western Bank's Motion for Relief from Stay [Doc. No. 640]
- 5) Reply in Support of Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 645]
 - a) Evidentiary Objections and Motion to Strike Declaration of Lucy H. Mekhael [Doc. No. 646]

I. Facts and Summary of Pleadings

Pacific Western Bank ("PWB") seeks relief from the automatic stay, pursuant to § 362(d)(1), to enable it to record abstracts of judgment and to exercise similar state law remedies against Gerald Goldstein. Recordation of the abstracts of judgment would result in the perfection of a lien against Goldstein's interest in certain real properties

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in which both the estate and Goldstein claim an interest. The Chapter 7 Trustee (the "Trustee"), the Debtor, unsecured creditor Peter Rudinkas, Goldstein, and Nemecek & Cole (a law firm that has represented Goldstein) oppose the Motion.

A. Background

Claire Levine (the "Debtor") commenced a voluntary Chapter 11 petition on April 4, 2012. On July 30, 2012, the case was converted to Chapter 7. Doc. No. 78. Prior to the petition date, the Debtor initiated a palimony action against Gerald Goldstein, a high net worth music and entertainment executive (the "2008 Action"). The Debtor alleged that she had rescued Goldstein from financial disaster, saving his home from foreclosure and his business from bankruptcy, and had devoted her time, labor, and capital to Goldstein's music and entertainment businesses, which the parties agreed would be their joint businesses. The Debtor further alleged that Goldstein had siphoned joint assets, concealed asset transfers, and engaged in a course of conduct designed to deny the Debtor her rightful share of the assets of the joint businesses. The Debtor and Goldstein executed a settlement agreement under which the 2008 Action was dismissed without prejudice.

The Debtor and Goldstein are co-trustees of the Amadeus Trust dated January 24, 2000 (the "Amadeus Trust"). As of the commencement of the case, the Amadeus Trust held title to six parcels of real property. Four of the properties have been sold, foreclosed upon, or are otherwise no longer within the estate. Two properties are still subject to administration by the Trustee. Those properties are located at 1027 Napoli Drive, Pacific Palisades, CA (the "Napoli Property") and 3800 Wailea Alanui, B101, Maui, HI (the "Wailea Property"). The extent of Goldstein's interest in the Napoli and Wailea Properties, if any, has not been adjudicated.

On December 3, 2012, Goldstein filed a proof of claim (the "Goldstein Claim") in the amount of \$5,571,022.62. The Goldstein Claim alleged that Debtor, as a co-trustee of the Amadeus Trust and a co-owner of properties held by the trust, was responsible for 50% of the expenses of maintaining the trust properties. The Goldstein Claim alleged that Goldstein paid all the expenses of maintaining the properties, and that the Debtor failed to pay any of the expenses for which she was responsible. Other than the Goldstein Claim, total allowed unsecured claims amount to approximately \$80,000.

On July 30, 2018, the Court conducted a trial on the allowability of the Goldstein Claim. On that same date, the Court entered judgment disallowing the Goldstein Claim in its entirety. Doc. Nos. 636–37.

After the 2008 Action was dismissed, the Debtor alleged that instead of complying

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with his fiduciary obligations to and his agreements with the Debtor, Goldstein undertook a course of conduct that exposed the parties' assets to substantial devaluation. The Debtor commenced a second action against Goldstein, which the Chapter 7 Trustee ("Trustee") is now prosecuting as the real party in interest; the action is entitled *Howard M. Ehrenberg, Chapter 7 Trustee and Real Party in Interest for Claire Levine v. Gerald Goldstein et al.* (the "Civil Complaint"). The Civil Complaint alleges that Goldstein wrongfully withdrew up to \$30 million in equity from Levine and Goldstein's jointly-held properties, and seeks damages in that amount. Civil Complaint at ¶83. The Civil Complaint seeks an adjudication that Debtor holds an undivided one-half interest in all of the properties, as well as an undivided one-half interest in Goldstein's music and entertainment businesses and assets. *Id.* at ¶156.

On September 24, 2015, the Court approved a global settlement between the Debtor, Goldstein, the Amadeus Trust, and various businesses controlled by Goldstein (the "Original Settlement Agreement"). Doc. Nos. 324 and 326. The Original Settlement Agreement was conditioned on the short sale of property in which the Debtor and Goldstein claimed an interest, located at 3800 Wailea Avenue, B101, Wailea, Maui (the "Wailea Property"), to HAR-Bronson ("Bronson"). Bronson was then required to resell the Wailea Property (the "Resale"). Upon the Resale, Goldstein and the Debtor would have been required to cause the Amadeus Trust to quitclaim and Napoli Property to the Debtor. Thus, consummation of the Original Settlement Agreement would have established the extent of Goldstein's interest, if any, in the Napoli and Wailea Properties.

As a result of the parties' inability to complete the short sale of the Wailea Property, the Original Settlement Agreement was never consummated. On January 19, 2017, the Court approved an Amended Settlement Agreement. Consummation of the Amended Settlement Agreement would have likewise established the extent of Goldstein's interest in the Napoli and Wailea Properties. Like the Original Settlement Agreement, the Amended Settlement Agreement required the short sale of the Wailea Property. As a result of various issues, including an inability to resolve a lien asserted against the Wailea Property by Trinity Financial Services, the parties were unable to complete the short sale.

By its own terms, the Amended Settlement Agreement would become "null and void" if the parties did not complete the short sale within 450 days of full execution of the Amended Settlement Agreement. *See* Amended Settlement Agreement at ¶2a [Doc. No. 373, Ex. 1]. The Amended Settlement Agreement was fully executed as of

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September 30, 2016. Thus, the deadline for the short sale was December 24, 2017. Because the parties were unable to complete the short sale by that date, the Amended Settlement Agreement is now null and void.

On December 8, 2014, the Court granted PWB stay-relief to proceed with two state court actions against Goldstein. The Court ordered that the stay would remain in effect with respect to PWB's enforcement of any judgments it obtained against Goldstein, to the extent that such enforcement actions "directly or indirectly impact estate property ..." See Doc. No. 299 at p. 3.

On January 19, 2017, the Court denied PWB's request that the stay be lifted to enable PWB to record abstracts of judgment against properties in which both the estate and Goldstein claimed an interest. Doc. No. 429. The Court had previously lifted the stay to enable PWB to enforce judgments it had obtained against Goldstein against Goldstein's personal property. Doc. Nos. 360–361. The Court found that permitting PWB to enforce its judgments against properties in which both the estate and Goldstein claimed an interest risked jeopardized consummation of the Amended Settlement Agreement.

PWB appealed the denial of its motion to lift the stay to the District Court. On January 8, 2018, in a published opinion, the District Court affirmed the denial. The District Court noted that if the Amended Settlement Agreement were consummated, the Debtor would acquire an interest in certain real properties. The District Court held that the automatic stay extended to the Debtor's contingent future property interest:

Like the debtor in *Bialac*, Levine owns a contingent interest in the entirety of the Real Properties. If the B101 Apartment is sold in a Short Sale pursuant to the Settlement Agreement, then Levine, and therefore her bankruptcy estate, will take the Napoli Property and Brentwood Condo as her sole, separate property. At that point, the B101 Apartment will have been sold, with Goldstein receiving none of the direct proceeds from the Short Sale. The Settlement Agreement could, therefore, operate to grant Levine and her bankruptcy estate the entirety of the Real Properties. Because Levine has a contingent interest in the entirety of the Real Properties, including whatever separate interest Goldstein currently has in them, Bank cannot take enforcement actions against the Real Properties without also affecting the bankruptcy estate's property rights. Accordingly, the Real Properties fall entirely within the scope of the automatic stay.

Pacific Western Bank v. Howard M. Ehrenberg (In re Levine), 583 B.R. 231, 237 (C.D. Cal. 2018).

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B. Summary of PWB's Motion for Stay-Relief; Oppositions Filed by the Debtor and Peter Rudinkas, Goldstein and Nemecek & Cole, and the Trustee; and PWB's Reply in Support of the Motion

PWB holds judgments against Goldstein in excess of \$5 million. PWB seeks relief from the automatic stay for cause, pursuant to §362(d)(1), to enable it to record abstracts of judgment and to exercise similar state law remedies against Goldstein. Recordation of the abstracts of judgment would result in the perfection of a lien against Goldstein's interest, if any, in the Napoli and Wailea Properties. PWB states that if the stay is not lifted, its ability to enforce its judgments against Goldstein will be severely impaired. PWB notes that state and local procedures do not permit abstracts of judgment to be recorded on a property-by-property basis. Consequently, absent stay-relief, PWB will be unable to record abstracts of judgment against any real property owned by Goldstein—including property in which the estate does not claim an interest and property which Goldstein may acquire in the future.

In opposition to the Motion, the Trustee argues that allowing the Napoli and Wailea Properties to be liened will interfere with the Trustee's administration of those properties. The Trustee requests that any order awarding stay-relief be limited, making clear that (1) any collection or judgment enforcement actions PWB takes do not attach to the estate's interest in any property; that (2) PWB shall have no right or ability to block any sale or monetization of any estate asset, notwithstanding any liens it may obtain, even if the contemplated disposition does not satisfy PWB's liens in full; and that (3) any post-petition lien PWB obtains shall be deemed fully and completely released as is necessary to transfer title upon the Trustee's sale of the property, regardless of whether such lien has been satisfied.

Goldstein, and Nemecek & Cole ("N&C"), a law firm that has provided legal services to Goldstein, also oppose stay-relief. Lucy Mekhael, an attorney at N&C, testifies that Goldstein and the Debtor are still attempting to consummate the Amended Settlement Agreement. Mekhael states that the parties are close to achieving a global resolution of all disputes, but that such resolution will be jeopardized if PWB obtains stay-relief.

The Debtor and unsecured creditor Peter Rudinkas jointly oppose stay-relief. The Debtor and Rudinkas likewise argue that stay-relief will interfere with future administration of the estate. The Debtor and Rudinkas contend that Goldstein holds no interest in the Napoli and Wailea Properties, and that PWB is seeking to record abstracts of judgment against Goldstein only to obtain an unfair bargaining position.

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In its Reply in support of the Motion, PWB argues that the parties opposing stay-relief have failed to furnish any competent evidence. PWB moves to strike the declaration submitted by Lucy Mekhael (the "Mekhael Decl.") on the grounds that it does not contain a holographic signature as required by the Local Bankruptcy Rules. PWB notes that regardless of whether it records abstracts of judgment, it will be difficult for the Trustee to administer the Napoli and Wailea Properties, given that the extent of Goldstein's interest in such properties has never been adjudicated. PWB states that these difficulties are not its fault and that it should not be penalized as a result of the disputes between the Debtor and Goldstein.

II. Findings and Conclusions

A. PWB's Evidentiary Objections to the Mekhael Declaration

PWB moves to strike the Declaration of Lucy H. Mekhael (the "Mekhael Decl.") in its entirety. PWB notes that the Mekhael Decl. does not contain Mekhael's holographic signature. Instead, the declaration contains an electronic signature. PWB states that the electronic signature is not effective under the Local Bankruptcy Rules, because the Mekhael Decl. was filed using attorney Jonathan Cole's CM/ECF login.

PWB is correct that the Mekhael Decl.'s signature is not compliant with LBR 9011. LBR 9011 implements Federal Rule of Bankruptcy Procedure 9011. Bankruptcy Rule 9011 requires that papers filed with the Court be signed by the attorney of record. The purpose of Bankruptcy Rule 9011 is to insure that attorneys who file frivolous papers can be held responsible for their actions.

The Court finds that Mekhael's failure to precisely comply with the requirements of LBR 9011 was inadvertent. Mekhael's firm appears before the Bankruptcy Court infrequently. LBR 9011's holographic signature requirement became effective only recently. Many firms are still unfamiliar with the technical requirements of submitting a PDF document compliant with LBR 9011's holographic signature provisions.

Bankruptcy Rule 9011 provides that an "unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." Because Mekhael's failure to comply with LBR 9011's holographic signature requirement was inadvertent, the Court will permit Mekhael to correct the error by re-filing the declaration with a holographic signature. Mekhael must file a declaration containing her holographic signature by no later than **Wednesday, August 15**. Provided that Mekhael timely files a compliant declaration, the Court will deny PWB's request to strike the declaration.

PWB's evidentiary objection to Mekhael's testimony that Goldstein and the

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Debtor have been working diligently to settle their disputes, and are close to reaching a settlement, is **OVERRULED**. As an attorney who has represented Goldstein, Mekhael has sufficient personal knowledge to offer such testimony. However, the Court accords Mekhael's representation that Goldstein and the Debtor are close to resolving their disputes very little weight. Goldstein and the Debtor have had more than three years to resolve their disputes, and have not done so. Various parties have repeatedly represented to the Court that a resolution was imminent—only for the Court to see such resolution collapse as a result of additional unexpected complications. At this point it is immaterial whether the failure to achieve resolution was attributable to a lack of diligence, or from the complexity of the issues and the number of counterparties. The bottom line is that the parties have been provided more than ample time to resolve their disputes. Having failed to do so, they can no longer be permitted to enjoy the protections of the automatic stay to the detriment of PWB's ability to enforce its judgments against Goldstein, as further discussed below.

PWB's remaining evidentiary objections are **SUSTAINED**. PWB objects to the Mekhael Decl. to the extent that it presents legal argument disguised as testimony. PWB is correct that significant portions of the Mekhael Decl. are in fact nothing more than legal argument—which has no place in a declaration. To the extent the Mekhael Decl. states legal conclusions, the Court construes the declaration only as argument, not as testimony.

B. The Motion is Granted

Under §362(d)(1), the Court is required to lift the stay "for cause." As explained by the Ninth Circuit Bankruptcy Appellate Panel:

What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved.

Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer), 405 B.R. 915, 921 (BAP 9th Cir. 2009).

The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding

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whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

Applying the applicable *Curtis* and *Kronemyer* factors, the Court finds ample cause to lift the stay to allow PWB to record abstracts of judgment against property in which both estate and Goldstein claim an interest. Here, the most salient consideration is factor two—the extent to which stay-relief will interfere with the Trustee's ability to administer the Napoli and Wailea Properties. The Court previously denied PWB's motion for stay-relief, finding that granting relief would jeopardize consummation of the Amended Settlement Agreement. However, as stated above, Goldstein and the Debtor have been provided more than sufficient time to resolve their disputes, and have failed to do so. The Court has no confidence in representations that a resolution is imminent. The Court has heard such representations on multiple past occasions, only to see the settlement collapse.

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Regardless of whether stay-relief is granted to PWB, the Napoli and Wailea Properties will be difficult assets for the Trustee to administer. That is because the Debtor and Goldstein vigorously dispute the extent of Goldstein's interest in those properties. Preventing PWB from recording abstracts of judgment against Goldstein does nothing to facilitate resolution of the disputes between the Debtor and Goldstein. It is true that an additional lien against the properties may slightly complicate the Trustee's efforts to sell or otherwise administer such properties. But the main challenge to administration is not PWB's claims against Goldstein—it is the contentious disputes between Goldstein and the Debtor.

Denying stay-relief would be particularly prejudicial to PWB because state and local procedures do not permit recordation of an abstract of judgment on a property-by-property basis. As long as the stay remains in place, PWB cannot record abstracts of judgment against *any* of Goldstein's real estate—even real estate as to which the estate claims no interest, or real estate which Goldstein may acquire in the future.

The Court will lift the stay to permit PWB to take whatever actions are necessary to record abstracts of judgment against those properties in which both the estate and Goldstein claim an interest. The stay remains in place with respect to PWB's ability to foreclose upon such properties. Before any such foreclosure can take place, this Court must first determine the extent, if any, of Goldstein's interest in the properties, and the extent of the estate's interest. These issues require an adjudication of the scope of the estate's property interests and are therefore within the sole jurisdiction of the Bankruptcy Court.

In addition to authorization to record abstracts of judgment, PWB also requests stay-relief for the purpose of "exercising similar state law remedies" against Goldstein. Doc. No. 608 at ¶4.g. That request is denied. The phrase "similar state law remedies" is far too vague and ambiguous. Instead, PWB shall be authorized to take whatever actions are necessary to record abstracts of judgment against those properties in which both the estate and Goldstein claim an interest.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. Because the Motion was opposed, PWB's request for waiver of the 14-day stay is DENIED. PWB shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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CONT... Claire Levine

Chapter 7

intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Claire Levine

Represented By
Dennis E McGoldrick
Thomas M Geher
Stella A Havkin

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg (TR)
Daniel A Lev
Asa S Hami
Jennifer M Hashmall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 13, 2018

Hearing Room 1568

10:00 AM

2:18-17361 Carlos Alberto Velasco

Chapter 7

#2.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 850, 852, & 852 West 43rd Place, Los Angeles, CA 90037 . (Schloss, Edward)

Docket 8

Tentative Ruling:

8/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$628,114.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$829,261.01. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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CONT... Carlos Alberto Velasco

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Carlos Alberto Velasco

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 13, 2018

Hearing Room 1568

10:00 AM

2:18-17399 Jill Ellen Taylor

Chapter 7

#3.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 386 S. Burnside Ave., #7M, Los Angeles, CA 90036 .

Docket 11

Tentative Ruling:

8/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on May 24, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Jill Ellen Taylor

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jill Ellen Taylor

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 13, 2018

Hearing Room 1568

10:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#4.00 Hearing
RE: [56] [59] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: none .
(Salamirad, Ali)

Docket 56

Tentative Ruling:

8/9/2018

The Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movants to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (the "Motion") [Doc. No. 56]
- 2) No Opposition to the Motion has been filed as of the date of this tentative ruling

I. Facts and Summary of Pleadings

Henderson Mechanical Systems, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on April 9, 2018 (the "Petition") [Doc. No. 1]. On July 19, 2018, International Fidelity Insurance Company (the "Movant") filed the "Notice of Motion and Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)" (the "Motion") [Doc. No. 56].

The Motion

The Motion seeks stay-relief pursuant to § 362(d)(1), so that the Movant may proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum in an action currently pending in the

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CONT... Henderson Mechanical Systems, Inc.

Chapter 11

California Superior Court, County of Los Angeles, captioned *International Fidelity Ins. Co. v. Henderson Mech. Sys. Inc.*, Case No. BC678452 (the "State Court Action"). The State Court Action was filed on October 4, 2017. Other defendants in the State Court Action are James Paul Lee, individually and dba Henderson Heating & Ductman, Hedieh Lee, and individual, and Doe defendants. Trial is estimated to require 2 days of trial/hearings. The Complaint in the State Court Action asserts claims for: breach of contract – indemnity; breach of contract – collateral security; statutory reimbursement; and specific performance.

The Movant contends that cause exists to grant stay-relief under §362(d)(1) for the following reasons:

- (1) The Movants seek recovery primarily from third parties and agrees that the stay will remain in effect as to the enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or an adversary complaint under 11 U.S.C. § 523 or § 727 in this bankruptcy case.
- (2) The claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum, because the State Court Action involves non-debtor parties and a single trial in the nonbankruptcy forum is the most efficient use of judicial resources.

The Movant seeks to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. The Movant also requests annulment of the stay; however, the basis for annulment of the stay is not clear.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

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CONT... Henderson Mechanical Systems, Inc.

Chapter 11

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

- (1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921

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CONT... **Henderson Mechanical Systems, Inc.** **Chapter 11**
(B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve state law violations and are within the expertise of the state court. Allowing the Movant to continue the State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

The Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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CONT... Henderson Mechanical Systems, Inc.

Chapter 11

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 13, 2018

Hearing Room 1568

10:00 AM

2:18-15223 Dayra Ofelia Olivares-Beltran

Chapter 7

#5.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 38288 County Line Road, Yucaipa CA . (Long, Helen)

Docket 15

Tentative Ruling:

8/9/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on January 8, 2018. The Movant filed an unlawful detainer action on May 2, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay.

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CONT... Dayra Ofelia Olivares-Beltran

Chapter 7

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Dayra Ofelia Olivares-Beltran	Pro Se
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#1.00 Status Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18; 2-21-18; 5-15-18

Docket 234

Tentative Ruling:

8/13/2018

For the reasons set forth below, this hearing is VACATED and no appearances are required. A continued Status Conference shall be held on **September 11, 2018, at 10:00 a.m.**

On February 17, 2018, the Court issued a Report and Recommendation, recommending that the District Court enter final judgment, in favor of the Chapter 7 Trustee (the "Trustee"), as to the second, third, and sixth claims for relief for avoidance and recovery of fraudulent transfers made with actual intent. Doc. No. 341. On that same date, the Court issued a Memorandum of Decision, stating that the Court intended to grant the Trustee's motion for summary adjudication disallowing the proofs of claim filed by the Bright Conscience Trust. However, the Memorandum of Decision stated that the findings set forth therein would not become the order of the Court until the District Court acted upon the Report and Recommendation.

On June 25, 2018, the District Court rejected the Report and Recommendation, and denied the Trustee's motion for summary adjudication as to the second, third, and

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CONT... EPD Investment Co., LLC

Chapter 7

sixth claims for relief. On July 20, 2018, the Trustee moved for reconsideration of the District Court's rejection of the Report and Recommendation. On August 10, 2018, the District Court vacated oral argument on the motion for reconsideration and took the motion under submission.

The Trustee requests that the Status Conference be continued until after the Motion for Reconsideration has been adjudicated. Defendants request that the Court set a Pretrial Conference for a date in September 2018. Defendants state that it is likely that the District Court will deny the Motion for Reconsideration. Defendants also state that they anticipate filing a motion to withdraw the reference to the District Court.

It is not appropriate for the Bankruptcy Court to continue to adjudicate this matter until the District Court has ruled upon the Trustee's Motion for Reconsideration. A continued Status Conference shall be held on **September 11, 2018, at 10:00 a.m.** A Joint Status Report shall be filed by no later than seven days prior to the hearing.

The Trustee shall promptly advise the Court once the District Court rules upon the Motion for Reconsideration. The September 11, 2018 Status Conference may be advanced in the event that the Motion for Reconsideration is decided quickly.

The Court will prepare and enter an order setting the continued Status Conference.

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

John C Kirkland, individually	Represented By Autumn D Spaeth ESQ Lewis R Landau
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Poshow Ann Kirkland, individually	Represented By Lewis R Landau
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Poshow Ann Kirkland, as Trustee of	Represented By Lewis R Landau
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Plaintiff(s):

Jason M Rund, Chapter 7 Trustee	Represented By Larry W Gabriel
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CONT... EPD Investment Co., LLC

Chapter 7

Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

2:16-17889 Manuel J. Leon, Jr.

Chapter 7

Adv#: 2:18-01157 Gonzalez v. Leon Cruz

#2.00 Status Hearing RE: [1] Adversary case 2:18-ap-01157. Complaint by Rosendo Gonzalez against Ramona Leon Cruz. (Charge To Estate). Complaint for Avoidance and Recovery of Fraudulent and Preferential Transfers Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Shinbrot, Jeffrey)

Docket 1

Tentative Ruling:

8/13/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendant Ramona Leon Cruz ("Defendant") has timely demanded a jury trial in this avoidance action, has not filed a proof of claim against the estate, and consents to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Defendant is entitled to a jury trial. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."). Because both Plaintiff and Defendant have consented to the Bankruptcy Court's entry of final judgment, the jury trial will be conducted by the Bankruptcy Court. *See* Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only with the consent of all parties).
- 2) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **9/13/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/25/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/24/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to

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CONT...

Manuel J. Leon, Jr.

Chapter 7

- expert discovery, is **2/12/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **2/19/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/23/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1.

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CONT...

Manuel J. Leon, Jr.

Chapter 7

The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii).
 - i) A jury trial is set for the week of **3/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

CONT... Manuel J. Leon, Jr.

Chapter 7

Debtor(s):

Manuel J. Leon Jr.

Represented By
Gary Leibowitz
Jacqueline D Serrao

Defendant(s):

Ramona Leon Cruz

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Jeffrey S Shinbrot

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Jeffrey S Shinbrot

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Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18; 5-15-18

Docket 1

Tentative Ruling:

8/13/2018

This hearing is vacated and no appearances are required. On November 16, 2017, the Court entered an order staying this adversary proceeding pending the completion of Defendant's appeal of the State Court Judgment giving rise to the indebtedness alleged to be non-dischargeable. On April 16, 2018, the California Court of Appeal reversed and remanded to the trial court the portion of the State Court Judgment awarding attorneys' fees. On June 7, 2018, the trial court conducted an initial status conference regarding the proper award of attorneys' fees. A further hearing in the trial court regarding the appropriate award of attorneys' fees is set for August 13, 2018, at 8:30 a.m.

A continued Status Conference shall take place on **October 16, 2018, at 10:00 a.m.** A Joint Status Report, which should discuss the status of the proceedings before the State Court, must be submitted by no later than fourteen days prior to the hearing. The Court will enter an order setting the continued Status Conference.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... John Martin Kennedy

Chapter 7

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

2:18-13712 Chong Sang Tak

Chapter 7

Adv#: 2:18-01217 Trujillo v. Tak et al

#4.00 Status Hearing RE: [1] Adversary case 2:18-ap-01217. Complaint by Celia Bryann Trujillo against Chong Sang Tak , In Og Tak , Gangnam Pizza, Inc. , dba Round Table Pizza, Does 1 Through 50, Inclusive . willful and malicious injury)) (Milano, Sonny) Additional attachment(s) added on 6/28/2018 (Milano, Sonny). Additional attachment(s) added on 6/28/2018 (Milano, Sonny).

Docket 1

Tentative Ruling:

8/13/2018

On June 28, 2018, Plaintiff filed this dischargeability action against Defendants Chong Sang Tak, In Og Tak, Gangnam Pizza, Inc., dba Round Table Pizza ("Gangnam Pizza"), and Does 1 through 50. Doc. No. 1. On July 24, 2018, Defendant Chong Sang Tak filed an Answer to the Complaint. Doc. No. 8. The remaining defendants have not answered or otherwise responded to the Complaint.

On July 30, 2018, Plaintiff filed a document captioned *Amended Adversary Petition*, wherein Plaintiff requests that the Court dismiss Defendants In Og Tak, Gangnam Pizza, and Does 1 through 50 (the "Non-Answering Defendants"), on the ground that such defendants were named in error. The Court will construe this document as a request for dismissal, without prejudice, of the Non-Answering Defendants, made pursuant to Civil Rule 41(a)(1)(A) (the "Request for Dismissal"). Pursuant to Civil Rule 41(a)(1)(A), a plaintiff may dismiss parties who have not appeared without a Court order. The Court will enter an order confirming that the voluntary dismissal of the Non-Answering Defendants took effect as of the date of the filing of the Request for Dismissal. Although the document is captioned *Amended Adversary Petition*, it is not appropriate for the Court to construe the Request for Dismissal as a First Amended Complaint, because the document requests only that the Non-Answering Defendants be dismissed, and does not re-allege any of the operative claims for relief.

According to Plaintiff's Unilateral Status Report, Defendant failed to respond to any of Plaintiff's attempts to meet and confer in order to prepare the Status Report. Defendant is advised that cooperation with Plaintiff in the preparation of Status

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

CONT... Chong Sang Tak

Chapter 7

Reports is required by Local Bankruptcy Rule 7016-1. Defendant is further advised that continued failure to comply with the Local Bankruptcy Rules and/or the orders of the Court may result in the imposition of sanctions as deemed appropriate by the Court, including, without limitation, the striking of Defendant's Answer, the entry of default, and the entry of judgment in favor of the Plaintiff. *See Hester v. Vision Airlines, Inc.*, 687 F.3d 1162, 1169 (9th Cir. 2012) (setting forth the factors the Court must consider before striking a pleading and declaring default).

Having reviewed Plaintiff's Unilateral Status Report, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **9/13/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/25/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/24/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/12/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **2/19/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/23/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU)

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10:00 AM

CONT...

Chong Sang Tak

Chapter 7

system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.

- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) A trial is set for the week of **3/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will

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10:00 AM

CONT...

Chong Sang Tak

Chapter 7

lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Chong Sang Tak	Pro Se
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Defendant(s):

Chong Sang Tak	Pro Se
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In Og Tak	Pro Se
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Gangnam Pizza, Inc.	Pro Se
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Does 1 Through 50, Inclusive	Pro Se
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Plaintiff(s):

Celia Bryann Trujillo	Represented By Christine Y Ham
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Trustee(s):

Sam S Leslie (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

2:11-57514 Sondra Derderian

Chapter 11

#5.00 Post confirmation status conference [294]

fr. 10-22-14; 3-9-15; 7-8-15; 2-9-16; 8-10-16, 2-15-17; 8-15-17; 2-13-18

Docket 0

Tentative Ruling:

8/13/2018

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **February 12, 2019 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. The continued status conference will be vacated if a final decree is entered before the date of the continued status conference.

Party Information

Debtor(s):

Sondra Derderian

Represented By
Michael J Jaurigue
Elaine Le
Nam H. Le
Ryan A Stubbe

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 14, 2018

Hearing Room 1568

10:00 AM

2:12-36594 Fusione, Inc.

Chapter 11

#6.00 Post Confirmation status conference re [216]

FR. 2-17-15; 2-19-15; 9-9-15; 11-17-15; 2-17-16; 6-14-17; 10-11-17; 2-14-18

Docket 0

Tentative Ruling:

8/13/2018

No appearances required. This is a post-confirmation status conference. Upon review of the Status Report, the Court continues the status conference to **February 12, 2019 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing.

Party Information

Debtor(s):

Fusione, Inc.

Represented By
Marta C Wade
Sandford Frey
Stuart I Koenig

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:15-21374 Maria Del Carmen Linares

Chapter 7

#100.00 Status HearingRE: [1] Chapter 7 Voluntary Petition . Vera) Additional attachment(s) added on 7/20/2015 (Serrano, Vera). Additional attachment(s) added on 4/19/2016 (Del Mundo, Wilfredo).

Docket 1

Tentative Ruling:

8/13/2018

For the reasons set forth below, this hearing is VACATED and no appearances are required.

On May 31, 2018, the Court reopened this case, and ordered the United States Trustee to appoint a Chapter 7 Trustee (the "Trustee"), for the purpose of investigating a newly discovered asset. The Court set this Status Conference and directed the Trustee to advise the Court regarding the anticipated administration of the asset—a lawsuit.

On July 16, 2018, the Court granted the Trustee's application to employ Best, Best & Krieger LLP as his general bankruptcy counsel. On August 6, 2018, the Court granted the Trustee's application to employ McElfish Law Firm Corporation as his special litigation counsel.

The asset is an action seeking damages for a prepetition slip-and-fall injury that occurred on November 4, 2013. According to the Debtor's personal injury attorney, the claim is worth approximately \$1 million. Trial in the personal injury action is scheduled for October 23, 2018, in the Los Angeles Superior Court. General unsecured claims in the Debtor's Chapter 7 case equal \$24,736.61.

The Trustee has adequately informed the Court of the status of his administration of the action. This hearing is VACATED and no appearances are required. Unless ordered by the Court, no further Status Conferences regarding the administration of the asset will be conducted.

The Court will prepare and enter an appropriate order.

Party Information

Debtor(s):

Maria Del Carmen Linares

Pro Se

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Maria Del Carmen Linares

Chapter 7

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 6-12-18

Docket 1

*** VACATED *** REASON: 7/2/2018 Adv Dismissed

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Vineland Sunshine Properties, LLC,	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#102.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 6-12-18

Docket 1

*** VACATED *** REASON: 7/2/2018 ADV dismissed

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#104.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18; 6-5-18

Docket 1

***** VACATED *** REASON: CONTINUED 9-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01452 TIMOTHY J. YOO, Chapter 7 Trustee v. SPHERE DIGITAL, LLC

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01452. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SPHERE DIGITAL, LLC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-12-18; 6-5-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 8-3-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SPHERE DIGITAL, LLC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

fr. 3-13-18; 5-15-18

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERD 6-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of
Navient Corporation

Pro Se
Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:18-11909 Raymond Express International,LLC

Chapter 7

#108.00 PRETRIAL

RE: [6] Addendum to voluntary petition Amended Involuntary Petition (To Amend the Total Amount of Petitioners' Claims)

fr. 4-10-18

Docket 6

***** VACATED *** REASON: PER ORDER ENTERED 8-3-18**

Tentative Ruling:

4/9/2018

Tentative Ruling:

The litigation deadlines set forth below shall govern the trial on the involuntary petition.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
 - a) Addendum to Involuntary Petition [Doc. No. 6]
 - b) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 7]
 - i) Proof of Service of Summons and Notice of Status Conference [Doc. No. 9]
- 2) Answer and Affirmative Defenses of Raymond Express International, LLC to Involuntary Petition [Doc. No. 10]

I. Facts and Summary of Pleadings

On February 21, 2018, Korean Air Lines Co., Ltd., Asiana Airlines, Inc., and Sunjin Logistics Co., Ltd. (collectively, the "Petitioning Creditors") commenced this involuntary Chapter 7 petition against Raymond Express International, LLC (the "Alleged Debtor"). The Alleged Debtor is a logistics company that transports perishable goods requiring refrigeration. On March 16, 2018, the Alleged Debtor answered the involuntary petition. This hearing is a status conference on the involuntary petition.

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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Raymond Express International,LLC

Chapter 7

II. Findings and Conclusions

Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Where a petition is timely controverted, the court must enter an order for relief against the alleged debtor if, after trial, the court determines that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." § 303(h).

During the period between the commencement of an involuntary petition and the issuance of an order for relief, the Alleged Debtor enjoys the protections of the automatic stay but is not required to comply with many of the obligations imposed upon Debtors who commence voluntary petitions. To minimize the length of this period of uncertainty, the Court's policy is to set compressed litigation deadlines governing the trial on the involuntary petition.

The following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **5/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the

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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT...

Raymond Express International,LLC

Chapter 7

motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court FURTHER ORDERS that the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Petitioning Creditors will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Raymond Express International,LLC

Chapter 7

Debtor(s):

Raymond Express International,LLC Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#109.00 Hearing

RE: [683] Motion for approval of chapter 11 disclosure statement (SECOND AMENDED) Describing Second Amended Chapter 11 Plan Of Reorganization And Setting Dates And Procedures For Approval Of Second Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Ruben Monge, Jr. In Support Thereof, with Proof of Service

Docket 683

***** VACATED *** REASON: CONTINUED 8-15-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By
Matthew D Resnik
Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#110.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

Docket 1

Tentative Ruling:

8/13/2018

This is an action to quiet title, brought by Ravinder Kumar Bhatia and Johanna Arias-Bhatia against Fidel Ramirez. On August 15, 2011, Fidel Ramirez and Liduvina Ramirez commenced a voluntary Chapter 7 petition. The Ramirezes' case was closed on November 22, 2011.

Ramirez holds a *Short Form Deed of Trust and Assignment of Rents* (the "Deed of Trust") against property located at 721 N. Alta Vista Blvd, Los Angeles, CA 90046 (the "Property"). The Deed of Trust is dated February 27, 2007, but was not recorded until March 2, 2012. Ramirez failed to disclose the Deed of Trust in his Chapter 7 case. The Bhatias dispute the validity of the Deed of Trust.

On March 16, 2018, the Bhatias reached a settlement with Ramirez, under which the Bhatias agreed to pay Ramirez \$31,000 to release the Deed of Trust. Solorzano Decl. at ¶4 [Doc. No. 25]; Motion to Reopen filed in Ramirez's Chapter 7 case [Doc. No. 17, Case No. 1:11-bk-17676-VK]. Recognizing that Ramirez had failed to disclose the Deed of Trust in his Chapter 7 case, the Bhatias notified the United States Trustee (the "UST") of the settlement. The UST filed a motion seeking to reopen Ramirez's case, which was granted on August 6, 2018. *See* Doc. No. 20, Case No. 1:11-bk-17676-VK. David K. Gottlieb ("Trustee Gottlieb") is serving as the Trustee in Ramirez's case.

Trustee Gottlieb requests that this Pretrial Conference be continued for 60–90 days, to allow him to investigate the facts of this action, and potentially substitute in as the real party-in-interest. The Bhatias likewise request a continuance.

It appears that any settlement proceeds payable to Ramirez are most likely an asset

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia

Chapter 11

of Ramirez's estate, meaning that Trustee Gottlieb would be required to approve any settlement of this action. The Court finds it appropriate to continue the Pretrial Conference for 90 days to allow Trustee Gottlieb to determine whether the \$31,000 proposed settlement is adequate. A continued Pretrial Conference shall be held on **November 13, 2018, at 11:00 a.m.** Unless a settlement of this action has been approved by the Court, a Joint Pretrial Order must be submitted, via the Court's Lodged Order Upload (LOU) system, by no later than fourteen days prior to the hearing. The trial is continued to the week of **November 26, 2018.**

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Ravinder Kumar Bhatia
Johanna Arias Bhatia

Represented By
Giovanni Orantes

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01525 Official Unsecured Creditors Committee for Liberty v. Tsang et al

#111.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01525. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Steven Tsang, Cathy Tsang, ELSV LLC. (14 (Recovery of money/property - other)) (Greenwood, Gail)

Docket 1

Tentative Ruling:

8/13/2018

The Court has reviewed the Joint Pretrial Stipulation submitted by Plaintiff and Defendants. The Joint Pretrial Stipulation shall be adopted as the Pretrial Order and shall govern the course of trial of this action, unless modified to prevent manifest injustice.

Pursuant to the *Order Establishing Procedures for the Adjudication of Evidentiary Objections* [Doc. No. 20] (the "Evidence Procedures Order"), the parties were required to present any objection to the admissibility of (a) any exhibit or (b) the testimony proposed to be offered by any witness by way of a noticed Motion *in Limine*. The parties were required to notice a hearing on any such Motion *in Limine* concurrently with this Pretrial Conference. As no such Motions *in Limine* have been filed, all exhibits set forth in the Joint Pretrial Stipulation shall be deemed admissible, and any objections to the admissibility thereof have been waived. *See* Evidence Procedures Order at ¶3. In addition, the Court will not entertain at trial any objections to the admissibility of any witness testimony, if such an objection could have been presented by way of a Motion *in Limine*. *See* Evidence Procedures Order at ¶4. (The Court recognizes that certain types of objections to live witness testimony cannot be anticipated prior to trial and thus could not have been brought in accordance with the Evidence Procedures Order; the parties are not precluded from raising such objections at trial.)

Trial shall take place on **Monday, August 27, commencing at 9:00 a.m.** All trial materials specified in the *Order Re: Courtroom Procedures* [Doc. No. 5] shall be delivered directly to chambers by no later than **Thursday, August 16** (seven court days prior to trial). As set forth in the *Scheduling Order* [Doc. No. 15], because

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Defendants have not consented to entry of final judgment by the Bankruptcy Court, the Court will prepare and transmit to the District Court a Report and Recommendation. Final judgment will be entered by the District Court.

As set forth above, the Joint Pretrial Stipulation submitted by the parties shall be adopted as the Pretrial Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Steven Tsang

Pro Se

Cathy Tsang

Pro Se

ELSV LLC

Pro Se

David Tsang

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01540 Liberty Asset Management Corporation v. Pan

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01540. Complaint by Liberty Asset Management Corporation against Yonggan Pan. (Fee Not Required). / Complaint for: (1) Slander of Title; (2) Disallowance of Claim [11 U.S.C. § 502(b); (3) Avoidance of Lien; [FRBP 7001] (4) Declaratory Relief; (5) Violation of Cal. Civ. Code § 2943; (6) Punitive Damages; and (7) Attorneys' Fees and Costs (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (91 (Declaratory judgment)),(81 (Subordination of claim or interest)) (Golubchik, David)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Yonggan Pan

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-17199 John Fuchs

Chapter 11

#113.00 Pretrial Conference re [112] Objection to Claim #14 by Claimant Mikhaeil Rouil Corporation, Inc. dba ServiceMaster Professional Restoration

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 7-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-17199 John Fuchs

Chapter 11

#114.00 Pretrial Conference re [113] Objection to Claim #4 by Claimant Rainbow International of Van Nuys

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 6-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#115.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Oganessian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 8-21-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman	Pro Se
Carlos Lizardo	Pro Se
Edward Smith	Pro Se
Gary Oganessian	Pro Se
Hassan Mahmoudi	Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 14, 2018

Hearing Room 1568

11:00 AM

CONT... Rideshare Port Management, LLC

Chapter 11

Howard Miller Pro Se

Jose Diaz Pro Se

Juan Martinez Pro Se

Kaushaal Laxmee Pro Se

Raymond Moradian Pro Se

Roberto Martinez Pro Se

Ronaldo Ramos Pro Se

Valo Khalatian Pro Se

Vince Olivar Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:09-35755 Mojgan Boodaie

Chapter 7

#1.00 APPLICANT: Charges: U.S. Bankruptcy Court

Hearing re [269] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/14/2018

See Cal. No. 4 below, incorporated by reference.

Party Information

Debtor(s):

Mojgan Boodaie

Represented By
Stephen F Biegenzahn

Trustee(s):

Sam S Leslie (TR)

Represented By
Sam S Leslie
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:09-35755 Mojgan Boodaie

Chapter 7

#2.00 APPLICANT: Accountant for Trustee: LEA Accountancy, LLP

Hearing re [269] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis, if any, are now deemed final).

Fees: \$3,569.50

Expenses: \$89.97

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mojgan Boodaie

Represented By
Stephen F Biegenzahn

Trustee(s):

Sam S Leslie (TR)

Represented By
Sam S Leslie
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:09-35755 Mojgan Boodaie

Chapter 7

#3.00 APPLICANT: Attorney for Trustee: Law Office of Carolyn A Dye

Hearing re [269] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the fourth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below (amounts previously paid on an interim basis, if any, are now deemed final).

Fees: \$25,238.50

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Mojgan Boodaie

Represented By
Stephen F Biegenzahn

Trustee(s):

Sam S Leslie (TR)

Represented By
Sam S Leslie
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:09-35755 Mojgan Boodaie

Chapter 7

#4.00 APPLICANT: Trustee: Sam S. Leslie

Hearing re [269] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

8/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$18,828.65

Total Expenses: \$0.00

Charges, U.S. Bankruptcy Court: \$793.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Mojgan Boodaie

Represented By
Stephen F Biegenzahn

Trustee(s):

Sam S Leslie (TR)

Represented By
Sam S Leslie
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:13-35859 Arnold Serrano

Chapter 7

#5.00 APPLICANT: Accountant for Trustee: LEA ACCOUNTANCY

Hearing

RE: [77] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 76). (united states trustee (fsy))

Docket 77

Tentative Ruling:

8/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$5,771.50

Expenses: \$324.15

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Arnold Serrano

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:13-35859 Arnold Serrano

Chapter 7

#6.00 APPLICANT: Attorney for Trustee: DANNING GILL DIAMOND & KOLLITZ LLP

Hearing

RE: [77] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 76). (united states trustee (fsy))

Docket 77

Tentative Ruling:

8/14/2018

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$35,310.50

Expenses: \$715.18

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Arnold Serrano

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:13-35859 Arnold Serrano

Chapter 7

#7.00 APPLICANT: Trustee: BRAD D. KRASNOFF

Hearing

RE: [77] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 76). (united states trustee (fsy))

Docket 77

Tentative Ruling:

8/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$13,250.00

Total Expenses: \$63.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Arnold Serrano

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#8.00 Hearing

RE: [266] Motion RE: Objection to Claim Number 14 by Claimant Carlos Mosquera. et al.. OBJECTION TO CLASS PROOF OF CLAIM OF CARLOS MOSQUERA AND JUAN F. RODRIGUEZ; NOTICE OF MOTION AND MOTION BY CREDITOR PEOPLE OF THE STATE OF CALIFORNIA FOR AN ORDER DISALLOWING IN PART CLAIM #14; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF TIMOTHY KOLESNIKOW IN SUPPORT THEREOF

Docket 266

***** VACATED *** REASON: CONTINUED 11-6-18 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

2:17-20082 Uprising Creative, LLC

Chapter 7

#9.00 HearingRE: [65] Motion to Approve Compromise Under Rule 9019 Motion of Chapter 7 Trustee For Approval of Settlement Agreement and Release with Proof of Service (Kogan, Michael)

Docket 65

Tentative Ruling:

8/14/2018

The Court, finding the terms of the Settlement Agreement to be fair, reasonable, and adequate, GRANTS the Trustee's Motion.

Pleadings Filed and Reviewed:

- 1) Motion of Chapter 7 Trustee for Approval of Settlement Agreement and Release (the "Motion") [Doc. No. 65]
- 2) No opposition on file

I. Facts and Summary of Pleadings

Uprising Creative, LLC (the "Debtor") filed a voluntary Chapter 7 petition on August 17, 2017 (the "Petition") [Doc. No. 1]. On July 23, 2018, the Trustee filed the "Motion of Chapter 7 Trustee for Approval of Settlement Agreement and Release" (the "Motion") [Doc. No. 65]. The Motion seeks an order approving the compromises of the Estate's claims with JMBSM Equities, LLC ("JMBSM"), Bill Silva Management Inc. ("Silva Management") and William Silva (collectively, "Silva"), in which the Trustee resolved his claims on potential avoidable transfers to Silva. The terms of the compromise are set forth in the "Agreement of Compromise, Settlement, and Release," which is attached as Exhibit "A" to the Motion (the "Settlement Agreement").

On December 11, 2017, JMBSM filed Claim No. 17 in the total amount of \$357,342.45, of which \$101,384.27 was claimed as secured (the "JMBSM Claim"). On the same date, Silva Management filed Claim No. 15 in the total amount of \$5,500.00 (the "Silva Claim").

The Trustee alleges that the Debtor made certain transfers in the total amount

**United States Bankruptcy Court
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Los Angeles
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

CONT... Uprising Creative, LLC

Chapter 7

of \$276,985.00 to Silva (the "Transfers"), which transfers avoidable by the Trustee. On June 5, 2018, the Trustee sent correspondence to Silva detailing the Transfers. Additionally, the Trustee's investigation revealed a transfer of the Debtor's stock interest in AtVenue, Inc. (the "Stock"), and an adversary action by the Trustee would seek to avoid the Stock transfer and return of the value of the Stock to the Estate. Silva contends that the Transfers are not avoidable or recoverable by the Trustee, and that the Stock is held by the Debtor. Based on the Trustee's review of the documents related to the Transfers and Silva's arguments pertaining thereto, the Trustee determined that a settlement was in the best interests of the Estate.

The Proposed Settlement Agreement

The material terms of the Settlement Agreement, *see* Motion at Ex. A, are as follows:

1. Silva's Payment to the Estate: Silva agrees to pay the Trustee \$100,000.00 within twelve days after the date of entry of the order approving the Settlement Agreement.
2. Transfer and Assignment of Stock: Upon receipt of the settlement payment, the Trustee will transfer to Silva, and Silva will acquire the Estate's ownership interest in the Stock.
3. Mutual Releases: The parties are executing mutual releases including a waiver of claims by Silva. The mutual releases and the release extends to the JMBSM Claim and the Silva Claim.

The Trustee contends that the Settlement Agreement is a favorable compromise for the Estate, because it will resolve all claims of the Trustee while avoiding the risks and costs associated with litigation. "Declaration of Wesley H. Avery" ("Avery Decl.") [Doc. No. 65] at ¶¶ 15–17.

No opposition to approval of the Settlement Agreement has been filed.

II. Findings of Fact and Conclusions of Law

The Court approves the Settlement Agreement. Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, August 15, 2018

Hearing Room 1568

10:00 AM

CONT... Uprising Creative, LLC

Chapter 7

involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re Western Funding Inc.*, 550 B.R. 841, 851 (B.A.P. 9th Cir. 2016). Furthermore, "compromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

The *A&C Properties* factors weigh in favor of approving the Settlement Agreement. Applying the *A&C Properties* factors, the Court finds that the compromise is adequate, fair, and reasonable.

(1) Probability of Success in the Litigation and Complexity of the Litigation, and the Expense, Inconvenience and Delay Necessarily Attending It

Under the circumstances, these factors are the most pertinent, and they weigh strongly in favor of approving the Settlement Agreement. The Trustee evaluated the potential outcome of the Trustee's claims, and the Strength of Silva's defenses, and determined that there was no assurance that the Trustee would prevail on his claims. Avery Decl. at ¶¶ 8, 16, 17. The Trustee's assessment in this respect is in part due to the complexity of the transactions and underlying transactional documents, and the factual and legal issues that would likely arise in litigation of the Trustee's claims. The Settlement Agreement, however, minimizes the costs and expenses that would necessarily be incurred in litigation of the Trustee's claims.

(2) Paramount Interests of Creditors

The Settlement Agreement is in the best interest of Estate creditors. The Settlement Agreement will result in a substantial return to the Estate that will provide for distributions to creditors, while keeping administrative expenses at a minimum. *Id.* at ¶ 16.

III. Conclusion

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CONT... Uprising Creative, LLC

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Based upon the foregoing, the Trustee's Motion to Approve the Settlement Agreement is GRANTED.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Uprising Creative, LLC

Represented By
Byron Z Moldo

Trustee(s):

Wesley H Avery (TR)

Represented By
Michael S Kogan

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: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#10.00 HearingRE: [11] Motion to Change Venue/Inter-district Transfer Adversary Proceeding to W.D. Wash. (Plevin, Mark)

Docket 11

Tentative Ruling:

8/14/2018

Because this adversary has apparently been stayed by an order issued by the Bankruptcy Court for the Western District of Washington, Century Indemnity's motion seeking to transfer venue is STAYED. A Status Conference shall be held on **November 13, 2018, at 11:00 a.m.** The Court is aware that Movant's request was to take this matter off calendar, however, this court will not leave this adversary pending indefinitely.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion by Century Indemnity Company to Transfer Venue to the Debtor's Home Court, the Western District of Washington [Doc. No. 11] (the "Motion")
- 2) Notice of Stay of Proceedings Due to Orders Issued by the U.S. Bankruptcy Court for the Western District of Washington [Doc. No. 23] Consensual Motion to Transfer Venue to the United States Bankruptcy Court for the Northern District of Texas ("Motion") [Doc. No. 6]
 - a) Notice of Consensual Motion to Transfer Venue to the United States Bankruptcy Court for the Northern District of Texas [Doc. No. 8]
 - b) Declaration of H. Thomas Moran in Support of Consensual Motion to Transfer Venue to the United States Bankruptcy Court for the Northern District of Texas [Doc. No. 7]
- 3) No opposition on file

I. Facts and Summary of Pleadings

On July 6, 2018, Century Indemnity Company ("Century Indemnity"), one of the

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defendants herein, removed this action from the Los Angeles Superior Court to the Bankruptcy Court. On July 13, 2018, Century Indemnity filed a motion seeking to transfer venue to the Bankruptcy Court for the Western District of Washington. The action is between insurers of Fraser's Boiler Service (the "Debtor"), the debtor in a Chapter 11 case pending in the Bankruptcy Court for the Western District of Washington. Century Indemnity argues that transfer of venue is appropriate because the action was intended to interfere with the Debtor's Chapter 11 case, by obstructing a Court-approved settlement between the Debtor and various insurers.

On July 31, 2018, Century Indemnity filed a document captioned *Notice of Stay of Proceedings Due to Orders Issued by the U.S. Bankruptcy Court for the Western District of Washington* [Doc. No. 23] (the "Notice of Stay"). Century Indemnity states that all activity in this adversary proceeding has been enjoined as a result of an order issued by the Bankruptcy Judge presiding over the Debtor's case. The order provides, in relevant part:

Pursuant to Sections 363 and 105(a) of the Bankruptcy Code, all rights, titles, and interests in Policies issued by any Insurers will be deemed to have been sold, transferred, and conveyed to those Insurers, free and clear of all claims, liens, encumbrances, and interests of any kind or nature whatsoever. In order to effectuate the sale, transfer, and conveyance of the Policies, all persons and entities shall be, and hereby are, permanently enjoined, barred, and estopped from seeking any relief from or taking any action or asserting any claim against the Insurers based upon, arising out of, in connection with, attributable to, or relating to the Policies, for the purpose of directly or indirectly collecting, recovering, receiving, or asserting any claims, liens, encumbrances, or interests of any kind or nature based upon, arising out of, under, and/or relating to the Policies, including, but not limited to, any claims, liens, encumbrances, or interests such person or entity had, has, or may have against or in the Debtor or its estate or successors.

Order on Motion Approving (I) A Settlement Agreement with Certain Insurers, (II) the Sale of Certain Policies to Certain Insurers, and (III) Certain Other Relief to be Provided to Certain Insurers (the "Settlement Approval Order") at ¶8.

On July 30, 2018, the Washington Bankruptcy Court issued an order staying this adversary proceeding. That order provides:

1. The pending action *National Union Fire Insurance Company of Pittsburgh, Pa.v. Allianz Underwriters Insurance Company, et al.*, formerly pending in the Superior Court of the State of California, County of Los

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Angeles, Central District as No. BC697553, having been removed to the United States Bankruptcy Court for the Central District of California by notice dated July 6, 2018 and now docketed in the United States Bankruptcy Court for the Central District of California as Case No. 2:18-ap-01221-ER (the "Removed Action"), is stayed by the Court's orders dated July 25, 2018 [Docket Nos. 300 and 301] (the "Settlement Orders").

2. If any party shall timely file an appeal of the Settlement Orders, all times within which any party to the Removed Action may act to remand the Removed Action or object or respond to any pending motion in the Removed Action shall be extended until 30 days after such time as the appeal has been fully adjudicated and the time for any further appeal has expired without a further appeal having been taken.

Stipulated Order on Emergency Motion of National Union for Modification of Order and Leave to File Responsive Pleadings in Removed State Court Action to Preserve Rights (the "Stay Order") at ¶¶1-3.

Century Indemnity states that based upon the Stay Order, its venue-transfer motion must be taken off calendar.

II. Findings and Conclusions

A Status Conference in this adversary proceeding shall be held on **November 13, 2018, at 10:00 a.m.** By no later than fourteen days prior to the hearing, all parties to this action shall file a Joint Status Report. The Joint Status Report shall discuss (1) the status of the appeal of the Settlement Orders and (2) any events occurring in the Debtor's Chapter 11 case that are relevant to the disposition of this action.

The Court will prepare and enter an order setting the Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's, Hartford Accident And Indemnity	Pro Se Represented By Philip E Smith
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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2:16-17965 Guillermo Alvarado

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#11.00 HearingRE: [102] Motion for Turnover of Property and Accounting of Estate's Property, with proof of service (Chung, Toan)

Docket 102

Tentative Ruling:

8/14/2018

The Motion is GRANTED for the reasons set forth below. A continued hearing to monitor the Debtor's compliance with his accounting and turnover obligations shall be held on **September 18, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Motion and Motion for Order Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 102] (the "Motion")
- 2) Opposition to Chapter 7 Trustee's Notice of Motion and Motion for Order Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 104] (the "Opposition")
- 3) Chapter 7 Trustee's Reply to Debtor's Opposition to Motion for Order Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 107] (the "Reply")

I. Facts and Summary of Pleadings

A. Background

Guillermo Alvarado (the "Debtor") filed a voluntary Chapter 7 petition on June 15, 2016 (the "Petition Date"). Doc. No. 1. The Debtor received a discharge on November 7, 2016. Doc. No. 31. On March 14, 2018, after conducting a trial on a dischargeability action brought by C.H. Robinson Worldwide, Inc. ("CH Robinson"), the Court found that the Debtor was indebted to CH Robinson in the amount of \$68,361.00, and that such indebtedness was excepted from the Debtor's discharge pursuant to §523(a)(2)(A) and (a)(4). Adv. Doc. Nos. 55–56. Among other things, the Court found that the Debtor had committed "actual fraud" by causing Global Fresh, a company which he controlled, to transfer a substantial salary to himself instead of

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remitting the funds to CH Robinson, per the requirements of the Perishable Agricultural Commodities Act ("PACA"). Adv. Doc. No. 55 at p. 11. The Court further found that the Debtor had committed defalcation by misappropriating PACA trust assets. *Id.* at 12–13.

In his Statement of Financial Affairs (the "SOFA"), the Debtor stated that during the one year period prior to the Petition Date, he received \$70,000.00 from the sale of real property to Rebecca Segovia. The SOFA stated that the Debtor did not make any payments to any creditors within one year of the Petition Date, other than a payment of \$1,406.12 to Infinity Financial Services made in June 2016. The SOFA further provided that the Debtor did not transfer any property to anyone within one year of the Petition Date. The Debtor's Schedule A/B provides that as of the Petition Date, the Debtor had \$800.00 in cash and \$585.80 in various bank accounts, of which \$580.62 belonged to his children, leaving the Debtor with \$5.18.

B. The Trustee's Motion for Turnover, the Debtor's Opposition, and the Trustee's Reply in Support of the Motion

The Trustee moves for an accounting and turnover of the \$70,000.00 the Debtor received from the sale of the real property. The Trustee asserts that the funds are property of the estate that must be administered for the benefit of creditors. The Trustee notes that the Debtor has failed to adequately explain the disposition of the funds. The Trustee points out that it is implausible that the Debtor could have so little cash on hand as of the Petition Date, based upon the Debtor's representation in his SOFA that he had not transferred funds to creditors or other parties during the one-year period prior to the Petition Date.

In Opposition to the Motion, the Debtor's counsel, the Orantes Law Firm, PC, states that he has been unable to contact the Debtor since Friday, July 27, 2018. Counsel requests that the Motion be denied, or in the alternative be continued for approximately thirty days, to enable the Debtor to file a more detailed response. Counsel located a declaration filed by the Debtor on October 27, 2016, regarding the disposition of the \$70,000.00. The declaration provides:

In regards to the \$70,000.00 I received from the sale of the real property located at 17104 West Summer Maple Way, Canyon Country, CA 91387, I used that money for a business investment that resulted in a net loss. I sent the money in two wire transfers to Costa Rica for the purchase of containers of fruit that were sent to Texas to sell; however, by the time the fruit arrived in Texas, it was [too] old to sell or had outright spoiled and could not be sold, so

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I lost the money that I invested.

Alvarado Decl. at ¶6.

In Reply to the Debtor's Opposition, the Trustee argues that the Debtor's declaration is inadequate, because it is not accompanied by any documentation—such as proofs of purchase, wire transfer receipts, bank statements, or financial statements—evidencing the alleged investment. The Trustee further argues that the Opposition should be rejected because it failed to comply with Local Bankruptcy Rule 9013-1(f)(2), which requires that an opposition must advise the adverse party of the deadline for the filing of a reply.

II. Findings and Conclusions

As a preliminary matter, the Court declines the Trustee's request to reject the Debtor's Opposition solely on the ground that the Opposition failed to advise the Trustee of the deadline for filing a Reply, as required by Local Bankruptcy Rule 9013-1(f)(2). The purpose of LBR 9013-1(f)(2) is to apprise litigants of the requirements for presenting their arguments to the Court. The Trustee is well aware of his briefing obligations and therefore was in no way prejudiced by the Opposition's failure to explicitly advise him of the deadline for filing reply papers.

Turning to the merits, the Motion is GRANTED, and the Debtor's Opposition and request for a 30-day continuance is OVERRULED. The request for a continuance is not well taken. Debtor's counsel claims that he has been unable to communicate with the Debtor since Friday, July 27, 2018. Yet on August 8, 2018, counsel filed, on the Debtor's behalf, a motion seeking to compel the Trustee to abandon the estate's interest in the Debtor's principal residence. That motion was supported by a declaration of the Debtor, which was dated July 30, 2018—three days subsequent to the date that counsel claims it lost contact with the Debtor. Thus, counsels' claim that it has been unable to contact the Debtor since July 27, 2018 is contradicted by other papers that counsel has filed on the Debtor's behalf.

Even if counsel had lost contact with the Debtor, that would not constitute cause for continuing the Motion. Debtor chose to subject himself to the jurisdiction of the Court when he sought bankruptcy protection. He has received benefits afforded by the Bankruptcy Code, including a discharge. Having received such benefits, the Debtor cannot now shirk his corresponding obligations to cooperate with the Trustee and to timely respond to matters pertaining to the administration of the estate. The Bankruptcy Code requires the Debtor to cooperate with the Trustee "as necessary to enable the trustee to perform the trustee's duties under this title" §521(a)(3).

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Among other duties, the Trustee has the obligation to "collect and reduce to money the property of the estate" and to "investigate the financial affairs of the debtor" § 704(a)(1) and (a)(4). "[T]he Trustee has a statutory authorization to require production of documents in the furtherance of an investigatory duty also created by statute," and the debtor has a "duty to provide information and to cooperate in this investigation." *Rigby v. Mastro (In re Mastro)*, 585 B.R. 587, 596 (B.A.P. 9th Cir. 2018).

Section 542 provides: "[A]n entity, other than a custodian, in possession, custody, or control, during the case, of property that the trustee may use, sell or lease under section 363 of this title ..., shall deliver to the trustee, and account for, such property or the value of such property, unless such property is of inconsequential value or benefit to the estate." The "property" referred to in §542 "is generally understood to mean 'property of the estate,' as defined in section 541." *Collier on Bankruptcy* ¶ 542.02[2] (16th rev'd ed.). The Trustee may seek turnover of property from any person or entity that had "possession, custody, or control" of the subject property during the bankruptcy case, regardless of whether that person or entity had "possession, custody, or control" at the time the turnover motion is filed. *Shapiro v. Henson*, 739 F.3d 1198, 1204 (9th Cir. 2014).

The \$70,000.00 that the Debtor received from the sale of the real estate is property of the estate that the Debtor is required to account for and turnover to the Trustee. The cursory 2016 declaration filed by the Debtor does not constitute an adequate accounting of the property. A sufficient accounting would include documentation, such as proofs of purchase, wire transfer receipts, bank statements, or financial statements.

By no later than **August 24, 2018**, the Debtor shall:

- 1) Provide to the Trustee an accounting of the \$70,000.00 the Debtor received from the sale of the real estate. Such accounting shall be accompanied by a declaration executed under penalty of perjury by the Debtor attesting to the authenticity of the accounting. The accounting shall be supported by adequate documentary evidence, such as proofs of purchase, wire transfer receipts, bank statements, or financial statements.
- 2) Turnover the \$70,000.00 to the Trustee. This requirement applies only if the Debtor has the ability to turnover the funds.

A continued hearing to monitor the Debtor's compliance with the order granting the Motion shall be held on **September 18, 2018, at 10:00 a.m.** By no later than **September 4, 2018**, the Trustee shall file a declaration (1) setting forth his position as

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to the sufficiency of the accounting and (2) stating whether the \$70,000 has been turned over. The Debtor's response to the Trustee's declaration is due by no later than **September 11, 2018**. The Debtor is advised that if he fails to comply with his accounting and turnover obligations, he may be subject to sanctions as deemed appropriate by the Court.

The Trustee shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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2:09-28606 Jayampath P Dharmasuriya

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#100.00 HearingRE: [1045] Motion RE: Objection to Claim Number 31 by Claimant Objection to Claim No. 31-1; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support With Proof of Service (Gaschen, Beth)

Docket 1045

Tentative Ruling:

8/14/2018

For the reasons set forth below, the Trustee's Claim Objections are SUSTAINED, and Claims 25 and 31 are DISALLOWED in their entirety.

Pleadings Filed and Reviewed:

- 1) Objection to Claim No. 31-1 [Doc. No. 1045] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 1046]
- 2) Objection to Claim No. 25-2 [Doc. No. 1047]
 - a) Notice of Objection to Claim [Doc. No. 1048]
- 3) No Opposition to either Claim Objection is on file

I. Facts and Summary of Pleadings

Jayampath P. Dharmasuriya (the "Debtor") commenced a voluntary Chapter 11 petition on July 20, 2009. Four Bankruptcy Judges have presided over this case, which has been pending for almost ten years. From the date of the filing of the petition (the "Petition Date") to August 22, 2010, the Hon. Samuel L. Bufford acted as presiding judge. Doc. No. 108. From August 23, 2010 to May 8, 2014, the Hon. Peter Carroll presided. Doc. Nos. 108 and 741. From May 9, 2014 to January 2, 2018, the Hon. Deborah J. Saltzman presided. Doc. Nos. 741 and 1025. On January 3, 2018, the case was transferred to the undersigned Judge. Doc. No. 1025.

On July 13, 2011, the Court conducted a hearing on a motion to appoint a Chapter 11 Trustee brought by three creditors. On August 24, 2011, the Court ordered the United States Trustee to appoint a Chapter 11 Trustee. Doc. No. 181. On September 7, 2011, the United States Trustee appointed Jeffery Golden as the Chapter 11 Trustee. Doc. No. 184. On November 2, 2011, upon the Chapter 11 Trustee's motion, the Court converted the case to Chapter 7. Doc. No. 213. Jeffery Golden was reappointed

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as the Chapter 7 Trustee (the "Trustee").

The Debtor owned more than seventeen rental properties located in or around Los Angeles, California. The Trustee sold certain of the properties and obtained orders authorizing him to abandon others. As relevant to these Claim Objections, the Debtor owned properties located at 7051 S. La Cienega Blvd., Los Angeles, CA (the "La Cienega Property") and 4053 W. 23rd Street, Los Angeles, CA (the "23rd Street Property").

On November 27, 2012, Bank of America sought stay-relief with respect to the La Cienega Property. Ultimately, the Trustee and Bank of America entered into a stipulation, pursuant to which the Trustee abandoned the La Cienega Property effective as of the Petition Date, and Bank of America was granted stay-relief. The Court approved the stipulation on December 14, 2012. Doc. No. 539.

On November 15, 2011, East West Bank sought stay-relief with respect to the 23rd Street Property. Ultimately, the Trustee and East West Bank entered into a stipulation, pursuant to which the Trustee abandoned the 23rd Street Property, and East West Bank was granted stay-relief. The Court approved the stipulation on December 14, 2011. Doc. No. 255. The stipulation did not specify the date upon which the abandonment took effect.

Arne Oftedal, in his capacity as Successor Trustee of The Richard and Suzanne Oftedal Trust Dated July 27, 2004, asserts a fully secured claim in the amount of \$568,684.11 against the 23rd Street Property ("Claim 31"). Bank of America asserts a fully secured claim in the amount of \$429,896.53 against the La Cienega Property. The Trustee seeks disallowance of both claims, on the ground that each claim is secured by property that is not property of the estate. No opposition to either of the Trustee's Claim Objections is on file.

II. Findings and Conclusions

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient

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evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Here, Claims 25 and 31 are unenforceable against the estate because the properties securing such claims have been abandoned. The Court approved the abandonment of the La Cienega Property on December 14, 2012, with such abandonment taking effect as of the Petition Date. Doc. No. 529. The Court approved the abandonment of the 23rd Street Property on December 14, 2011. Doc. No. 255.

Because Claims 25 and 31 are unenforceable against the estate, the Trustee's Claim Objections are SUSTAINED, and Claims 25 and 31 are DISALLOWED in their entirety. The Trustee shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

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Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

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Chapter 7

#101.00 HearingRE: [1058] Motion RE: Objection to Claim Number 39 by Claimant David Hunter. Objection to Claim No. 39; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support (with Proof of Service) (Gaschen, Beth)

Docket 1058

Tentative Ruling:

8/14/2018

For the reasons set forth below, the Trustee's Claim Objection is SUSTAINED, and Claim 39 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Objection to Claim No. 39 [Doc. No. 1058] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 1059]
- 2) Declaration of David Hunter in Opposition to Trustee's Objection to David Hunter's Claim No. 39 [Doc. No. 1070] (the "Hunter Decl.")
- 3) Reply in Support of Objection to Claim No. 39 [Doc. No. 1073] (the "Reply")

I. Facts and Summary of Pleadings

Jayampath P. Dharmasuriya (the "Debtor") commenced a voluntary Chapter 11 petition on July 20, 2009. Four Bankruptcy Judges have presided over this case, which has been pending for almost ten years. From the date of the filing of the petition (the "Petition Date") to August 22, 2010, the Hon. Samuel L. Bufford acted as presiding judge. Doc. No. 108. From August 23, 2010 to May 8, 2014, the Hon. Peter Carroll presided. Doc. Nos. 108 and 741. From May 9, 2014 to January 2, 2018, the Hon. Deborah J. Saltzman presided. Doc. Nos. 741 and 1025. On January 3, 2018, the case was transferred to the undersigned Judge. Doc. No. 1025.

On July 13, 2011, the Court conducted a hearing on a motion to appoint a Chapter 11 Trustee brought by three creditors. On August 24, 2011, the Court ordered the United States Trustee to appoint a Chapter 11 Trustee. Doc. No. 181. On September 7, 2011, the United States Trustee appointed Jeffery Golden as the Chapter 11 Trustee. Doc. No. 184. On November 2, 2011, upon the Chapter 11 Trustee's motion, the Court converted the case to Chapter 7. Doc. No. 213. Jeffery Golden was reappointed

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as the Chapter 7 Trustee (the "Trustee").

The Debtor owned more than seventeen rental properties located in or around Los Angeles, California. The Trustee sold certain of the properties and obtained orders authorizing him to abandon others. As relevant to this Motion, on December 28, 2011, the Court authorized the Trustee to abandon the estate's interest in property located at 3637-3639 9th Avenue, Los Angeles, CA 90018 (the "9th Avenue Property"). Doc. No. 272. On April 11, 2012, the Court authorized the Trustee to abandon the estate's interest in property located at 3123-3125 Vernon Avenue, Los Angeles, CA 90008 (the "Vernon Avenue Property"). Doc. No. 381. On January 7, 2013, the Court authorized the Trustee to abandon the estate's interest in property located at 818 E. 65th Street, Inglewood, CA 90302 (the "65th Street Property") (the 9th Avenue Property, the Vernon Avenue Property, and the 6th Street Property collectively, the "Properties"). Doc. No. 544.

Each order authorizing the Trustee to abandon the Properties provided that abandonment was effective as of the Petition Date. Doc. Nos. 272, 381, and 544 (such orders collectively, the "Abandonment Orders"). The Abandonment Orders further authorized the Trustee to retain the rents that he collected during the period in which he operated the Properties. *Id.* David M. Hunter, the claimant herein, objected to the Trustee's request to retain the rental income generated by the Vernon Avenue Property. Doc. Nos. 318 and 364. The Court overruled Hunter's objections to the Trustee's retention of the rental income. Doc. No. 381 at ¶3 (providing that the "Trustee is authorized to retain the rents from the [Vernon Avenue Property]").

On April 30, 2012, David M. Hunter ("Hunter") filed Proof of Claim 39-1 ("Claim 39"), asserting an administrative claim in the amount of \$8,877.50. Hunter asserts that he is entitled to rental income generated by the Properties for the months of October and November 2011, based on the fact that Hunter holds Deeds of Trust secured by the Properties.

Before the Trustee abandoned the Properties, he obtained orders authorizing him to operate the Properties and authorizing him to use cash collateral. The Trustee also obtained orders establishing procedures under which lenders holding Deeds of Trust secured by the Properties could obtain principal payments from the rental income collected by the Trustee. Those orders established a detailed procedure for calculating the exact amount of the principal payments to which the lenders would be entitled. Per the orders, the lenders were not necessarily entitled to receive the full principal payment under the terms of the notes. Doc. Nos. 234, 259, 355, 483, 593, and 639. Hunter received lender payments from rental income generated by the Vernon Avenue

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Property from December 2011 until April 2012, the date upon which the property was abandoned. Hunter received lender payments from rental income generated by the 65th Street Property from December 2011 through October 2012, the date upon which the property was abandoned.

The Trustee's Claim Objection, Hunter's Opposition, and the Trustee's Reply in Support of the Claim Objection

The Trustee objects to Claim 39. First, the Trustee asserts that Claim 39 should be disallowed because it was not timely filed. Second, the Trustee argues that Claim 39 should be disallowed, because the claim is not enforceable against the estate, since the Properties by which the claim is secured have all been abandoned, with such abandonment taking effect as of the Petition Date. The Trustee further argues that the claim for the two missed monthly rental payments do not constitute an administrative expense claim, but at most could serve to increase the amount of the secured claim.

Hunter filed an untimely declaration in opposition to the Claim Objection. The declaration provides in relevant part: "Although we believe this should be considered an administrative claim, I am prepared to amend this claim to a secured claim, but stand on the position that the subject properties were utilized by the Trustee who failed to pay the secured claims." Hunter Decl. at ¶8.

In his Reply in support of the Claim Objection, the Trustee first contends that Hunter's declaration should be disregarded because it was not filed timely. Next, the Trustee argues that Hunter has no rights to any rents that were retained by the estate. The Trustee's position is that he was authorized to retain any rents collected pursuant to Cal. Civ. Code §2938(a), which provides that an assignment of rents provision in a Deed of Trust is not an absolute assignment, but instead creates only a security interest in the rents.

II. Findings and Conclusions

Notwithstanding the fact that it was not timely filed, the Court will consider Hunter's declaration in opposition to the Trustee's Claim Objection. Hunter's opposition is OVERRULED, the Trustee's Claim Objection is SUSTAINED, and Claim 39 is DISALLOWED in its entirety.

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance

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with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *In re G.I. Indus., Inc.*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *In re Medina*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *In re Hemingway Transport, Inc.*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Here, Claim 39 is unenforceable against the estate because the Court has approved the Trustee's abandonment of the Properties securing such claims. Abandonment of each Property took effect as of the Petition Date.

Even if the Properties had not been abandoned, Hunter would still not be entitled to an administrative claim on account of the rental income collected by the Trustee. Cal. Civ. Code §2398 sets forth the circumstances under which an assignee can collect and receive rents pursuant to an assignment-of-rents clause, and provides in relevant part:

Upon default of the assignor under the obligation secured by the assignment of leases, rents, issues, and profits, the assignee shall be entitled to enforce the assignment in accordance with this section. On and after the date the assignee takes one or more of the enforcement steps described in this subdivision, the assignee shall be entitled to collect and receive all rents, issues, and profits that have accrued but remain unpaid and uncollected by the assignor or its agent or for the assignor's benefit on that date, and all rents, issues, and profits that accrue on or after that date. The assignment shall be enforced by one or more of the following:

- (1) The appointment of a receiver;

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- (2) Obtaining possession of the rents, issues or profits;
- (3) Delivery to any one or more of the tenants of a written demand for turnover of rents, issues and profits . . .
- (4) Delivery to the assignor.

Under the plain language of the statute, an assignee, such as Hunter, is not entitled to any rents collected unless and until the assignee takes steps to enforce the assignment of rents clause. Here, Hunter is not entitled to the rents asserted in Claim 39 because he took no steps to enforce the assignment of rents clause before the Trustee had collected the rents. Courts interpreting Cal. Civ. Code §2398 have held that lenders are not entitled to pre-enforcement step rents. *See In re GOCO Realty Fund I*, 151 B.R. 241, 248 (Bankr. N.D. Cal. 1993) ("No California court has interpreted an absolute assignment of rents to be self-executing with respect to enforcement upon default by the borrower. Thus, a lender's right to possession of rents arises only upon both the borrower's default and the lender's demand for possession. Although Cal. Civ. Code § 2938 may obviate the need for a further perfection step, it cannot be read to obviate the need for a further enforcement step."). Hunter's contention that he failed to take enforcement steps, because he was unaware of the need to do so, is unavailing.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 39 is DISALLOWED in its entirety. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By

William H Brownstein

Robert S Altagen

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Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#102.00 Hearing
RE: [1056] Motion RE: Objection to Claim Number 8 by Claimant L.A. County
Treasurer and Tax Collector. Objection to Claim No. 8-1 (Gaschen, Beth)

Docket 1056

***** VACATED *** REASON: NOTICE OF VOLUNTARY DISMISSAL
FILED ON 7-23-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#103.00 HearingRE: [1052] Motion RE: Objection to Claim Number 38 by Claimant Objection to Claim No. 38; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support With Proof of Service (Gaschen, Beth)

Docket 1052

Tentative Ruling:

8/14/2018

For the reasons set forth below, the Trustee's Claim Objection is GRANTED IN PART and DENIED IN PART. Claim 38 shall be allowed as a general unsecured claim in the amount of \$1,800.

Pleadings Filed and Reviewed:

- 1) Objection to Claim No. 38 [Doc. No. 1052] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 1053]
- 2) Declaration of Regina Smith in Opposition to Trustee's Objection to Regina Smith's Claim No. 38 [Doc. No. 1071] (the "Smith Decl.")
- 3) Reply to the Declaration of Regina Smith in Opposition to the Trustee's Objection to Regina Smith's Claim No. 38 [Doc. No. 1072] (the "Reply")

I. Facts and Summary of Pleadings

Jayampath P. Dharmasuriya (the "Debtor") commenced a voluntary Chapter 11 petition on July 20, 2009. Four Bankruptcy Judges have presided over this case, which has been pending for almost ten years. From the date of the filing of the petition (the "Petition Date") to August 22, 2010, the Hon. Samuel L. Bufford acted as presiding judge. Doc. No. 108. From August 23, 2010 to May 8, 2014, the Hon. Peter Carroll presided. Doc. Nos. 108 and 741. From May 9, 2014 to January 2, 2018, the Hon. Deborah J. Saltzman presided. Doc. Nos. 741 and 1025. On January 3, 2018, the case was transferred to the undersigned Judge. Doc. No. 1025.

On May 2, 2012, Regina Smith filed Proof of Claim 38 ("Claim 38"), asserting a priority claim in the amount of \$10,000, and a general unsecured claim in the amount of \$179,000. The basis for the claim is "unpaid wages." No supporting documentation is attached to the claim.

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The Trustee objects to the claim on the ground that it has not been substantiated. In response, Smith filed a declaration, stating that she is a bookkeeper who used to manage various properties for the Debtor. Smith states that she is "prepared to amend the claim to remove [the] administrative portion and reduce it to \$1,800.00." Smith Decl. at ¶3. In his Reply, the Trustee states that he is amenable to reclassification of the claim as a general unsecured claim, in the amount of \$1,800.

II. Findings and Conclusions

The Trustee and Smith have agreed that Claim 38 should be reclassified as a general unsecured claim in the amount of \$1,800. Based upon that agreement, the Trustee's Claim Objection is GRANTED IN PART and DENIED IN PART. Claim 38 shall be allowed as a general unsecured claim in the amount of \$1,800.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok

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Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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2:09-28606 Jayampath P Dharmasuriya

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#104.00 HearingRE: [1047] Motion RE: Objection to Claim Number 25 by Claimant Objection to Claim No. 25-2; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support With Proof of Service (Gaschen, Beth)

Docket 1047

Tentative Ruling:

8/14/2018

See Cal. No. 100, above, incorporated in full by reference.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

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2:14-31356 Assi Super Inc

Chapter 7

#105.00 APPLICANT: Bond Payments - International Sureties

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

See Cal. No. 110 below, incorporated by reference.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

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2:14-31356 Assi Super Inc

Chapter 7

#106.00 APPLICANT: Accountant for Trustee - HAHN FIFE & COMPANY

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$2,604.00

Expenses: \$497.50

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

**United States Bankruptcy Court
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2:14-31356 Assi Super Inc

Chapter 7

#107.00 APPLICANT: Other State or Local Taxes (post-petition) - FRANCHISE TAX BOARD (ADMINISTRATIVE)

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

See Cal. No. 110 below, incorporated by reference.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

**United States Bankruptcy Court
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2:14-31356 Assi Super Inc

Chapter 7

#108.00 APPLICANT: Attorney for Trustee - EPPORT, RICHMAN & ROBBINS, LLP

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$17,928.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

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2:14-31356 Assi Super Inc

Chapter 7

#109.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

See Cal. No. 110 below, incorporated by reference.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

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2:14-31356 Assi Super Inc

Chapter 7

#110.00 APPLICANT: Trustee - Wesley H. Avery

Hearing re [155] & [156] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,750.00

Total Expenses: \$182.00

Charges, U.S. Bankruptcy Court: \$1,400.00

Bond Payments, Int'l Sureties: amounts previously paid on an interim basis are now deemed final.

Franchise Tax Board: \$2,667.01

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Assi Super Inc

Pro Se

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Trustee(s):

Wesley H Avery (TR)

Represented By
Christopher R Nelson

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2:17-14345 Rokuro Takahashi and Masako Takahashi

Chapter 7

#111.00 APPLICANT: Attorney for Trustee(Other Firm) - LAW OFFICES OF ZAMORA AND HOFFMEIERS

Hearing re [60] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$14,465.00 (to be paid \$9,355.96 pursuant to Trustee's Final Report)

Expenses: \$1,128.86

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Rokuro Takahashi

Represented By
Irwin M Friedman

Joint Debtor(s):

Masako Takahashi

Represented By
Irwin M Friedman

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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2:17-14345 Rokuro Takahashi and Masako Takahashi

Chapter 7

#112.00 Bond Payments - INTERNATIONAL SURETIES

Hearing re [60] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

See Cal. No. 114 below, incorporated by reference.

Party Information

Debtor(s):

Rokuro Takahashi

Represented By
Irwin M Friedman

Joint Debtor(s):

Masako Takahashi

Represented By
Irwin M Friedman

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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2:17-14345 Rokuro Takahashi and Masako Takahashi

Chapter 7

#113.00 APPLICANT: Accountant for Trustee(Other Firm) - MENCHACA & COMPANY

Hearing re [60] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,459.50 (to be paid \$2,237.60 pursuant to Trustee's Final Report)

Expenses: \$43.15

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Rokuro Takahashi

Represented By
Irwin M Friedman

Joint Debtor(s):

Masako Takahashi

Represented By
Irwin M Friedman

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
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2:17-14345 Rokuro Takahashi and Masako Takahashi

Chapter 7

#114.00 APPLICANT: Trustee - Wesley H. Avery

Hearing re [60] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/14/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$14,567.42 (voluntarily reduced to \$11,572.00)

Total Expenses: \$272.19

International Sureties: All amounts previously paid to this applicant on an interim basis are approved as final.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522.

Party Information

Debtor(s):

Rokuro Takahashi

Represented By
Irwin M Friedman

Joint Debtor(s):

Masako Takahashi

Represented By
Irwin M Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... Rokuro Takahashi and Masako Takahashi

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Represented By
Nancy H Zamora

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Central District of California
Los Angeles
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Wednesday, August 15, 2018

Hearing Room 1568

11:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#115.00 HearingRE: [710] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. Section 363 Free and Clear of All Liens, Claims and Interests, and Granting Such Other Related Relief; Memorandum of Points and Authorities; Declarations of Ruben Monge, Jr., Vu Ly and Gonzalo N. Diaz in Support Thereof, with Proof of Service

Docket 710

Tentative Ruling:

8/14/2018

The Court will conduct the auction in accordance with the procedures set forth below. The actual purchaser will be identified at the conclusion of the auction.

Key Sale Terms:

- 1) Proposed purchasers: Journey Investments, Inc.
- 2) Property for Sale: 5908 1/2 Fayette Street, Los Angeles, CA 90042
- 3) Purchase price: \$295,000.00
- 4) Overbids: The initial overbid shall be \$10,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Debtor of their intent to overbid and the amount of such interested bidder's initial overbid no later than three business days prior to the hearing on the Sale Motion. Overbidders shall provide the Debtor with a cashier's check in the amount of \$10,000.00 prior to the hearing on the Sale Motion.

Pleadings Filed and Reviewed:

- 1) Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims, and Interests and Granting Certain other Related Relief (the "Sale Motion") [Doc. No. 710]
 - a) Declaration of Ruben Monge, Jr.
 - b) Declaration of Vu Ly

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CONT... Monge Property Investments, Inc.

Chapter 11

- c) Declaration of Gonzalo Diaz
- 2) Notice of Sale of Estate Property [Doc. No. 711]
- 3) Los Angeles County Treasurer and Tax Collector's Statement of Obligations in Response to [the Sale Motion] (the "LACTTC Response") [Doc. No. 718]
- 4) United States of America's Limited Opposition to the [Sale Motion] (the "Limited Opposition") [Doc. No. 719]
- 5) Debtor's Reply to (1) the Limited Opposition, and (2) the LACTTC Response (the "Reply") [Doc. No. 721]

I. Facts and Summary of Pleadings

Monge Property Investments, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on May 31, 2012 (the "Petition") [Doc. No. 1]. On June 24, 2016 the Honorable Thomas Donovan entered an order staying any disclosure statement and/or plan proceeding until a probate matter that the Debtor was involved in (the "Probate Matter") is resolved. The Debtor's case was transferred to this Court on March 13, 2017. On September 14, 2017 the Court entered the "Order Granting Debtor in Possession's Motion for an Order (1) Approving Compromise of Controversy (Fed. R. Bank. P. 9019); and (2) Authorizing the Use of Property of the Estate Outside the Ordinary Course of Business (11 U.S.C. § 363(b)(1))" (the "Settlement Order") [Doc. No. 580]. The Settlement Order approved the settlement of the "Probate Code § 850 Petition prosecuted by the Estate of Ruben M. Monge, Sr., against MPI in Los Angeles Superior Court, Probate Division."

The Debtor owns and operates three parcels of residential real property located at the following addresses: (1) 5908 1/2 Fayette St., Los Angeles, CA 90042; (2) 5908 Fayette St., Los Angeles, CA 90042; and (3) 942-44 Marine Ave., Wilmington, CA 90744. The Debtor is operating its business and managing its financial affairs as Debtor-in-Possession.

The Sale Motion

On July 18, 2018, the Debtor filed the "Motion for Order Approving Sale of Real Property Pursuant to 11 U.S.C. § 363 Free and Clear of All Liens, Claims, and Interests and Granting Certain other Related Relief (the "Sale Motion") [Doc. No. 710]. The Debtor holds an interest in the real property located at 5908 1/2 Fayette St., Los Angeles, CA 90042 (the "Property"). The Debtor seeks to fund its Second

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Amended Chapter 11 Plan, in part, through the sale of the Property. On August 22, 2014, the Court entered the Order Approving the Debtor's Application to Employ Vu Ly (the "Broker") as Real Estate Broker [Doc. No. 323]. The Debtor listed the Property for sale with the Broker on May 3, 2018. After a period of marketing the Property, the Debtor entered into negotiations with Journey Investments, Inc. (the "Buyer") for the sale of the Property, and the parties eventually agreed to the sale of the Property for a purchase price of \$295,000.00 as set forth in the "Residential Purchase Agreement" attached as Exhibit "A" to the Sale Motion. The offer from the Buyer was the highest offer among three offers to purchase the Property. The Debtor believes that the proposed sale of the Property will generate approximately \$240,069.00 of net proceeds for the Estate. "Declaration of Ruben Monge, Jr." (the "Monge Declaration") [Doc. No. 710] at ¶ 19. Therefore, the Debtor seeks an order (granting among other relief): (a) authorizing the sale of the Property to the Buyer free and clear of all liens, claims, and interests; (b) approving the proposed overbid procedures; (c) determining that the Buyer is a good faith purchaser; (d) authorizing payment of commissions set forth in the Sale Motion at the close of escrow; and (e) waiving the fourteen-day stay prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure. The key sale terms are as follows:

- 1) Proposed purchaser: Journey Investments, Inc.;
- 2) Property for Sale: 5908 1/2 Fayette Street, Los Angeles, CA 90042;
- 3) Purchase price: \$295,000.00;
- 4) Overbids: The initial overbid shall be \$15,000.00; subsequent overbids shall be in the amount of \$7,500.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Debtor of their intent to overbid and the amount of such interested bidder's initial overbid no later than three business days prior to the hearing on the Sale Motion. Overbidders shall provide the Debtor with a cashier's check in the amount of \$10,000.00 prior to the hearing on the Sale Motion.

The LACTTC Response

On July 30, 2018, the Los Angeles County Treasurer and Tax Collector (the "LACTTC"), filed the "Los Angeles County Treasurer and Tax Collector's Statement of Obligations in Response to [the Sale Motion]" (the "LACTTC Response") [Doc. No. 718]. The LACTTC Response states that the estimated amount of the amount owing to the LACTTC stated in the Sale Motion (\$35,106.00) is incorrect. The LACTTC Response states that as of August and September 2018, the LACTTC is

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owed taxes for the Property in the amount of \$51,433.99 and \$51,890.47, for August and September respectively. "Declaration of Barry S. Glaser" (the "Glaser Declaration") at ¶ 2; *see also* Claim Nos. 7-4 and 12-3 (LACTTC Proofs of Claim). The LACTTC Response was filed in order to ensure that the LACTTC will be paid in full through escrow with penalties, interest, and costs.

The Limited Opposition

On August 1, 2018, the United States of America, on behalf of the IRS, filed the "United States of America's Limited Opposition to the [Sale Motion]" (the "Limited Opposition") [Doc. No. 719]. On July 6, 2016, the IRS filed its amended Proof of Claim No. 13, reflecting a pre-petition priority claim of \$46,543.19, and a general unsecured claim of \$28,346.01. On June 4, 2018, the IRS filed its amended Proof of Claim No. 14, reflecting the post-petition administrative tax due by the Debtor in the total amount of \$136,937.78. The Limited Opposition states that the Sale Motion does not discuss the tax implications of the proposed sale, or how the Estate is going to pay any resulting administrative expense. Therefore, the Limited Opposition requests that the Court grant the Sale Motion, and order that the Debtor make a deposit with the IRS for the 2018 tax year based on the sale of the Property.

The Reply

On August 8, 2018, the Debtor filed the Reply to (1) the Limited Opposition, and (2) the LACTTC Response (the "Reply") [Doc. No. 721]. With respect to the Limited Opposition, the Reply states that the Debtor will include the additional language requested by the IRS in any order approving the Sale Motion, and that the Debtor agrees to make the deposit requested by the IRS, if any, within 30-days of the close of escrow. With respect to the LACTTC Response, the Reply states that the correct amount of taxes owed to the LACTTC is "in the range of \$103,324.46," and that the Debtor agrees that the LACTTC must be paid and will ensure that escrow has the updated information.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19-20.

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Here, the Debtor articulates a sufficient business justification for the sale. The Debtor believes the proposed sale of the Property is in the best interest of the Estate because the sale will generate significant cash proceeds for the Estate. Additionally, the Debtor believes that the sale price is reasonable considering that the Property was marketed by the Broker, and the Broker received a total of three offers to purchase the Property, with the Buyer's offer being the highest offer. Additionally, the sale is subject to overbids, which allows any party wishing to purchase the Property at a higher price to do so. The purchase offer of \$295,000.00 was obtained by the Debtor through arm's length negotiations.

Lastly, the Debtor has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3). The price at which the Property will be sold (\$295,000.00) is greater than the aggregate value of all liens on the Property held by the LACTTC. Lastly, the proposed Sale Order shall incorporate the language set forth in the Limited Opposition regarding the tax deposit requested by the IRS.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and

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all qualified overbidders. The initial overbid will be \$10,000.00. Subsequent overbids will be increments of \$5,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Debtor's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Debtor shall submit an appropriate order within seven days of the hearing. The Order shall incorporate the conditional language set forth by the IRS in the Limited Opposition.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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2:12-29275 Monge Property Investments, Inc.

Chapter 11

#116.00 Hearing

RE: [683] Motion for approval of chapter 11 disclosure statement (SECOND AMENDED) Describing Second Amended Chapter 11 Plan Of Reorganization And Setting Dates And Procedures For Approval Of Second Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Ruben Monge, Jr. In Support Thereof, with Proof of Service

FR. 8-14-18

Docket 683

Tentative Ruling:

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For the reasons set forth below, the Court finds that the Disclosure Statement contains adequate information; therefore, the Motion is GRANTED. The dates set forth herein below shall apply to the solicitation of votes and plan confirmation.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion for Order Approving the Adequacy of Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization and Setting Dates and Procedures for Approval of Second Amended Chapter 11 Plan of Reorganization (the "Motion") [Doc. No. 683]
 - a) Debtor's Second Amended Disclosure Statement Describing Second Amended Chapter 11 Plan of Reorganization (the "Disclosure Statement") [Doc. No. 681]
 - b) Debtor's Second Amended Chapter 11 Plan of Reorganization (the "Plan") [Doc. No. 682]
- 2) United States of America's Opposition to the [Motion] (the "Opposition") [Doc. No. 720]
- 3) Debtor's Reply to the Opposition (the "Reply") [Doc. No. 722]

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- 4) Stipulation RE: Treatment of Creditor's Claim Under Debtor's Proposed Chapter 11 Plan of Reorganization (the "JPMorgan Stipulation") [Doc. No. 694]
 - a) Order Approving the JPMorgan Stipulation [Doc. No. 702]
- 5) Stipulation RE Treatment of All Claims Held by the Los Angeles County Treasurer and Tax Collector (the "LATTC Stipulation") [Doc. No. 700]
 - a) Order Approving the LATTC Stipulation [Doc. No. 703]

I. Facts and Summary of Pleadings

Monge Property Investments, Inc. (the "Debtor") filed a voluntary Chapter 11 petition on May 31, 2012 (the "Petition") [Doc. No. 1]. On June 24, 2016 the Honorable Thomas Donovan entered an order staying any disclosure statement and/or plan proceeding until a probate matter that the Debtor was involved in (the "Probate Matter") is resolved. The Debtor's case was transferred to this Court on March 13, 2017. On September 14, 2017 the Court entered the "Order Granting Debtor in Possession's Motion for an Order (1) Approving Compromise of Controversy (Fed. R. Bank. P. 9019); and (2) Authorizing the Use of Property of the Estate Outside the Ordinary Course of Business (11 U.S.C. § 363(b)(1))" (the "Settlement Order") [Doc. No. 580]. The Settlement Order approved the settlement of the "Probate Code § 850 Petition prosecuted by the Estate of Ruben M. Monge, Sr., against MPI in Los Angeles Superior Court, Probate Division."

On the Petition Date, the Debtor owned eight parcels of real property. The Debtor has sold five of these parcels during the pendency of this case, will seek to sell a sixth parcel located at 5908 1/2 Fayette St., Los Angeles, CA 90042 in order to fund the Plan (*see* Sale Motion [Doc. No. 710], which is set to be heard concurrently with the hearing on this Motion), and will retain the remaining two parcels located at 5908 Fayette St., Los Angeles, CA 90042, and 942-44 Marine Ave., Wilmington, CA 90744.

The Second Amended Disclosure Statement

On June 20, 2018, the Debtor filed the "Second Amended Chapter 11 Plan of Reorganization" (the "Plan") [Doc. No. 682], and the "Second Amended Disclosure Statement Describing [the Plan]" (the "Disclosure Statement") [Doc. No. 681]. The Debtor concurrently filed the "Motion for Order Approving the Adequacy of [the

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Disclosure Statement] and Setting Dates and Procedures for Approval of [the Plan]" (the "Motion") [Doc. No. 683]. The effective date of the Plan is January 1, 2019 (the "Effective Date").

On July 2, 2018, the Debtor entered into the following stipulations regarding the Plan treatment of certain claims: (i) the "Stipulation RE: Treatment of Creditor's Claim Under Debtor's Proposed Chapter 11 Plan of Reorganization" (the "JPMorgan Stipulation") [Doc. No. 694], which was approved pursuant to the Court's order entered on July 3, 2018, *see* Order Approving the JPMorgan Stipulation [Doc. No. 702]; and (ii) the "Stipulation RE Treatment of All Claims Held by the Los Angeles County Treasurer and Tax Collector" (the "LACTTC Stipulation") [Doc. No. 700], which was approved pursuant to the Court's order entered on July 3, 2018, *see* Order Approving the LACTTC Stipulation [Doc. No. 703].

The Plan includes "Unclassified Claims" as follows:

- 1) Administrative Priority Claims: these claims include, (i) professional fees and costs; (ii) the claim of the IRS, Claim No. 14-2, including additional administrative taxes, fees, and penalties, (iii) the Post-Petition administrative claim of the LACTTC, Claim No. 12-3, *see* LACTTC Stipulation [Doc. No. 700], and (iv) United States Trustee's fees.
- 2) Priority Tax Claims: Unsecured Claims of Governmental Units entitled to priority under § 507(a)(8). These claims will be paid in full on the Effective Date.

The Plan's classification scheme for Claims and Interests is as follows:

- 1) Class 1 – JPMorgan Chase Bank, N.A.: this class includes the Claim of JPMorgan Chase Bank, N.A., in the amount of \$163,307.95 (pursuant to the JPMorgan Stipulation [Doc. No. 694]) (the "JPMorgan Claim") amortized over 30-years at a fixed interest rate of 6% per annum. The Debtor shall tender regular monthly principal and interest payments to JPMorgan in the amount of \$979.11 on the first day of each month commencing on July 1, 2018.
- 2) Class 2 – LACTTC: this class includes Claim No. 7-4, filed by the

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LACTTC in the amount of 62,766.78 (pursuant to LACTTC Stipulation [Doc. No. 700]) (the "Pre-Petition LACTTC Claim"). The Pre-Petition LACTTC Claim will be paid in full over five-years at 18% interest commencing on the first day of the first month following the Effective Date. LACTTC Stipulation at ¶ 3.

- 3) Class 3 – Priority Unsecured Claims: this class consists of certain priority claims specified in §§ 507(a)(3), (4), (5), (6), and (7). The Debtor does not believe any such claims exist.
- 4) Class 4 – Unsecured Claims: this class consists of general unsecured claims not entitled to priority under § 507(a). The Debtor estimates that Class 4 general unsecured debts total approximately \$78,711.00. *See* Disclosure Statement, Ex. C. Class 4 is impaired. Class 4 claims will be paid in full in 60 equal monthly installments of \$1,312.00 each, commencing on the first day of the first month following the Effective Date.
- 5) Class 5 – Interest Holders: the Debtor's owner will retain his ownership interest in the Debtor.

The Disclosure Statement details the means of funding the plan and making Effective Date payments. The Disclosure statement states that the Plan will be primarily funded from the proceeds of the sale of the property located at 5908 ½ Fayette St., Los Angeles, CA 90042. Additional funding for the Plan will come from the proceeds of debtor-in-possession exit financing of the property located at 5908 Fayette St., Los Angeles, CA 90042 (the Debtor has obtained preliminary pre-approval from Caliber Home Loans in the amount of \$538,460.00, *see* Disclosure Statement, Ex. E), and from the collection of its rental income and the finds it has/will have accumulated in its Debtor-in-Possession bank account.

The Plan's risk factors, as detailed in the Disclosure Statement, include the risk that the Debtor will not have sufficient cash flow in the future to pay all of the obligations created under the Plan.

The Opposition

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On August 1, 2018, the United States of America, on behalf of the IRS, filed the Opposition to the Motion (the "Opposition") [Doc. No. 720]. On July 6, 2016, the IRS filed its amended Proof of Claim No. 13, reflecting a pre-petition priority claim of \$46,543.19, and a general unsecured claim of \$28,346.01. On June 4, 2018, the IRS filed its amended Proof of Claim No. 14, reflecting the post-petition administrative tax due by the Debtor in the total amount of \$136,937.78.

The first contention in the Opposition is that the Disclosure Statement and Plan fail to properly describe the treatment of the IRS Administrative Claim, and that the post-petition tax liability must be paid on the Effective Date of the Plan. The Opposition further states that the Debtor has not made any deposits for its Form 941 account, or filed its Form 941 for the period ending on June 30, 2018. The IRS additionally notes that the Plan and Disclosure Statement do not contain a discussion of the tax consequences of the proposed sale of certain real property of the Estate.

The second contention in the Opposition is that the Disclosure Statement and Plan fail to properly describe the treatment of the IRS priority claim. The Opposition states that the Debtor is required to pay all pre-petition priority unsecured taxes specified in § 507(a)(8) in cash in regular installment payments within five-years of the Petition Date, including interest on such installments.

The Reply

On August 8, 2018, the Debtor filed the Reply to the Opposition (the "Reply") [Doc. No. 722]. With respect to the IRS administrative claim, the Reply states that the Debtor will pay the full amount of the administrative claim by the Effective Date, and that the Debtor will file its Form 941 for the period ending June 30, 2018 within fourteen-days of the date of entry of the order approving the adequacy of the Disclosure Statement. Regarding the tax consequences of the Plan, the Debtor states that it is amenable to including language that the Debtor is required to make a deposit with the IRS for any taxes resulting from the sale of property, within thirty-days of the close of escrow. Lastly, the Reply states that to the extent the IRS objects to the terms of payment of the IRS priority claim, the Plan provides that all amounts due to the IRS will be paid in full by the Effective Date; thus, the Opposition's argument regarding interest on periodic/installment payments is not relevant under the circumstances.

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Chapter 11

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or

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otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, "[d]isclosure of all factors is not necessary in every case." *Id.*

The Court finds that the Disclosure Statement contains adequate information. Here, the Disclosure Statement satisfies many relevant *Metrocraft* factors, including: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (10) the future management of the debtor; (11) the Chapter 11 Plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 Plan; (15) information relevant to the risks posed to creditors under the Plan; and (18) tax attributes of the debtor. The Court further finds that the Reply addresses the issues raised by the Opposition with respect to the Plan treatment of the IRS Claims.

III. Conclusion

Based on the foregoing, the Motion is GRANTED. The Disclosure Statement is approved as containing adequate information. The following dates will apply with respect to the solicitation of votes and plan confirmation:

- 1) A hearing will be held on the confirmation of the Debtor's Second Amended Chapter 11 Plan on **November 7, 2018 at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **August 24, 2018**.
- 3) **September 24, 2018** is fixed as the last day for creditors and equity

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security holders to return to the Debtor's counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by the Debtor's counsel by 5:00 p.m. on such date.

- 4) **October 10, 2018** is fixed as the last day on which the Debtor must file and serve a motion for an order confirming the Plan (the Confirmation Motion") including declarations setting forth a tally of the ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Debtor have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.
- 5) **October 24, 2018** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **October 31, 2017** is fixed as the last day on which the Debtor may file and serve their reply to any opposition to the Confirmation Motion ("Reply").

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D Resnik

Roksana D. Moradi-Brovia

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2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#117.00 Hearing

RE: [100] [104] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Chapter 7 Trustees Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder as Good-Faith Purchaser Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale; Memorandum of Points and Authorities; Declarations of David M. Goodrich and Jan Neiman in Support (with Proof of Service). (Gaschen, Beth)

Docket 100

Tentative Ruling:

8/14/2018

The Court will conduct the auction in accordance with the procedures set forth below. The actual purchaser shall be determined at the conclusion of the auction.

Key Sale Terms:

- 1) Proposed purchaser: Yunying Chen
- 2) Property for Sale: 1806 Chapel Avenue, Alhambra, CA 91801
- 3) Purchase price: \$1,012,000.00
- 4) Overbids: The initial overbid shall be \$10,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Trustee of their intent to overbid and the amount of such interested bidder's initial overbid no later than two business days prior to the hearing on the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$25,000.00, as well as evidence of the Overbidder's financial ability to pay the full amount of the Overbid.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Amended Motion for Order: (1) Authorizing Sale of Real

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Chapter 7

Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder As Good Faith Purchaser Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale (the "Sale Motion") [Doc. No. 104]

- a) Declaration of David M. Goodrich
- b) Declaration of Jan Neiman
- 2) Notice of Sale of Estate Property [Doc. No. 106]
- 3) Conditional Non-Opposition to the Sale Motion (the "Non-Opposition") [Doc. No. 107]
- 4) Reply to the Non-Opposition (the "Reply") [Doc. No. 110]

I. Facts and Summary of Pleadings

Crestalliance LLC (the "Debtor") filed a voluntary Chapter 11 petition on November 22, 2017 (the "Petition") [Doc. No. 1]. On January 17, 2018, the Court entered the "Order Converting Case to Chapter 7" [Doc. No. 22]. David M. Goodrich accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case. On March 6, 2018, the Trustee filed the "Application to Employ Neiman Realty, Inc. as Real Estate Broker to Market and Sell Real Properties" [Doc. No. 33]. The Court entered the "Order Granting the Application to Employ Neiman Realty" on March 28, 2018 [Doc. No. 46].

The Motion

On July 26, 2018, the Trustee filed the "Amended Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder As Good Faith Purchaser Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale" (the "Sale Motion") [Doc. No. 104]. The Debtor holds an interest in the real property located at 1806 Chapel Avenue, Alhambra, CA 91801 (the "Property"). *See* "Schedule A/B" [Doc. No. 10]. Yunying Chen (the "Buyer") has offered to purchase the Property pursuant to the terms of the "Purchase Agreement", *see* "Declaration of David M.

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Goodrich" ("Goodrich Decl.") [Doc. No. 104], Exhibit "4", whereby the Buyers have agreed to purchase the Property for the sum of \$1,012,000.00, *id.* at ¶ 9. The Buyers' offer was the highest offer the Trustee has received. *Id.* at ¶ 10. The Trustee believes that the proposed sale of the Property will generate approximately \$305,000.00 to \$450,000.00 of net proceeds for the Estate. *Id.* at ¶ 16. Therefore, the Trustee seeks an order: (a) authorizing the sale of the Property to the Buyer free and clear of all liens, claims, and interests; (b) approving proposed overbid procedures; (c) determining that the buyer is a good faith purchaser; (d) authorizing payment of costs of sale from escrow; and (e) waiving the fourteen day stay prescribed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure. The key sale terms are as follows:

- 1) Proposed purchaser: Yunying Chen;
- 2) Property for Sale: 1806 Chapel Avenue, Alhambra, CA 91801;
- 3) Purchase price: \$1,012,000.00;
- 4) Overbids: The initial overbid shall be \$10,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall advise the Trustee of their intent to overbid and the amount of such interested bidder's initial overbid no later than two business days prior to the hearing on the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$25,000.00, as well as evidence of the Overbidder's financial ability to pay the full amount of the Overbid.

The Non-Opposition

On August 3, 2018, Ocwen Loan Servicing, LLC (the "Creditor"), which is the holder of a note and first deed of trust encumbering the Property, filed the Conditional Non-Opposition to the Sale Motion (the "Non-Opposition") [Doc. No. 107]. The Non-Opposition states that the estimated payoff amount of the Creditor's lien as of August 31, 2018 is \$475,976.40, which amount may not include interest and additional advances that may come due prior to the date of the proposed sale. The Creditor does not oppose the Sale Motion on the condition that the following provisions are included in the sale order: (1) the Creditor's consent is contingent upon the Creditor's first priority lien being paid off in full from the proceeds of the sale; (2) the Creditor's claim shall be paid off in full or in accordance with any approval authorized by Wells Fargo before satisfying any other lien on the Property; (3) the Creditor is authorized to submit an updated payoff demand to the appropriate escrow company; (4) to the extent the Debtor disputes any amounts which the Creditor is owed, the undisputed

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amount and the disputed amount shall be segregated into an interest bearing account pending further order of the Court; (5) in the event the Sale does not take place within 90 days from the entry of the order granting the Sale Motion, a new motion must be filed; and (6) in the event that the sale does not take place, the Creditor shall retain its lien.

The Reply

On August 8, 2018, the Trustee filed the Reply to the Non-Opposition (the "Reply") [Doc. No. 110]. The Reply states that the Non-Opposition fails to demonstrate the necessity or relevance of the provisions requested therein. Furthermore, three of the provisions are irrelevant because (1) the Sale Motion expressly provides for the Creditor to be paid through escrow, (2) if escrow requires an updated payoff demand, one will be requested, and (3) the Creditor's lien shall automatically remain in full force in the event the sale fails to close. The Trustee also argues that the request related to the segregation of disputed amounts, and the request regarding the 90 day period during which the sale should take place, interfere with the Trustee's authority and discretion to sell the Property. The Trustee is also not aware of any connection between Wells Fargo and the Creditor. Therefore, the Trustee does not consent to any of the proposed provisions.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Property is in the best interest of the Estate because the sale will generate significant cash proceeds for the Estate. Additionally, the Trustee believes that the sale price is reasonable considering that the Property was extensively marketed by the Broker. Additionally, the sale is subject to overbids, which allows any party wishing to purchase the Property at a higher price to do so. The purchase offer of \$1,012,000.00 was obtained by the Trustee through arm's length negotiations.

Lastly, the Trustee has met the conditions for the sale of the Property free and

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clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3). The price at which the Property will be sold is greater than the aggregate value of all liens on the Property. Furthermore, the Sale Motion provides that the Creditor's lien will be paid in full from the sale proceeds. The Creditor's Non-Opposition is overruled in its entirety. The Court finds that the provisions requested by the Creditor are not necessary, duplicative, and interfere with the Trustee's authority to sell the Property.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$10,000.00. Subsequent overbids will be increments of \$5,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Buyers prevails at the auction, the Court will take

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testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Trustee shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Represented By
Beth Gaschen

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2:17-21681 Guillermo De La Torre

Chapter 7

#1.00 APPLICANT: TRUSTEE: Heide Kurtz

Hearing re [24] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

8/15/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$933.13

Total Expenses: \$28.26

Party Information

Debtor(s):

Guillermo De La Torre

Represented By
Cynthia Grande

Trustee(s):

Heide Kurtz (TR)

Pro Se

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10:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. United States Department Of Education et al

#2.00 HearingRE: [30] Motion United States Department of Education's Notice of Motion and Motion to Compel Plaintiff's Discovery Responses and for Order Admitting United States Department of Education's Requests for Admission; Memorandum of Points and Authorities; and Declaration of Elan S. Levey in Support Thereof [with Proof of Service]

Docket 30

Tentative Ruling:

8/15/2018

See Cal. No. 4, below, incorporated in full by reference.

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

United States Department Of

Represented By
Elan S Levey

Educational Credit Management

Represented By
Scott A Schiff

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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10:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. United States Department Of Education et al

#3.00 HearingRE: [23] Motion : (1) to Compel Plaintiff Margaret Tully Imhoffs Responses to Interrogatories and Requests for Production of Documents; (2) for an Order Admitting Requests for Admissions of Fact and Genuineness of Documents; and (3) for an Order Directing Plaintiff to Pay ECMCs Expenses in the Amount of \$2,400.00

Docket 23

Tentative Ruling:

8/15/2018

See Cal. No. 4, below, incorporated in full by referenc

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

United States Department Of

Represented By
Elan S Levey

Educational Credit Management

Represented By
Scott A Schiff

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. United States Department Of Education et al

- #4.00** Show Cause Hearing
RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

Docket 1

Tentative Ruling:

8/15/2018

For the reasons set forth below, this action is dismissed without prejudice, pursuant to Civil Rule 41(b), based upon Plaintiff's failure to prosecute. The motions seeking to compel Plaintiff to respond to discovery filed by the United States Department of Education and Educational Credit Management Corporation are DENIED as moot.

Pleadings Filed and Reviewed:

- 1) Order Requiring Plaintiff to Appear and Show Cause Why this Action Should Not be Dismissed for Failure to Prosecute [Doc. No. 33] (the "Order to Show Cause")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 36]
- 2) United States Department of Education's Notice of Motion and Motion to Compel Plaintiff's Discovery Responses and for Order Admitting United States Department of Education's Requests for Admission [Doc. No. 30]
- 3) Educational Credit Management Corporation's Notice of Motion and Motion: (1) To Compel Plaintiff Margaret Tully Imhoff's Responses to Interrogatories and Requests for Production of Documents; (2) For an Order Admitting Requests for Admissions of Fact and Genuineness of Documents; and (3) For an Order Directing Plaintiff to Pay ECMC's Expenses in the Amount of \$2,400 [Doc. No. 23]

I. Facts and Summary of Pleadings

On February 2, 2018, Margaret Tully Imhoff ("Plaintiff"), proceeding *in pro per*, commenced this action to discharge \$166,102.19 in student loan indebtedness, on the grounds of undue hardship pursuant to §523(a)(8). On July 17, 2018, the Court

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conducted a Status Conference, at which Plaintiff appeared. The Court advised Plaintiff that it intended to require her to appear and show cause why this action should not be dismissed for failure to prosecute. The Court noted that Defendants Educational Credit Management Corporation ("ECMC") and the United States Department of Education ("Education") had both noticed motions to compel the Plaintiff to respond to written discovery, and that both Motions alleged that notwithstanding multiple extensions, Plaintiff failed to respond to written discovery and had failed to respond to the Defendants' requests to meet and confer regarding discovery. The Court further noted that Plaintiff had failed to contact either Defendant to prepare a Joint Status Report, as required by the Local Bankruptcy Rules. In response to the Court's concerns, Plaintiff stated that she did not intend to oppose dismissal of the action, and stated that she no longer wished to pursue the action for health reasons. The Court advised Plaintiff that the action would be dismissed if she did not respond to the Court's Order to Show Cause.

Plaintiff has not responded to the Order to Show Cause, and has not responded to either of Defendants' Motions to Compel.

II. Findings and Conclusions

Civil Rule 41(b), made applicable to these proceedings by Bankruptcy Rule 7041, provides in relevant part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) ... operates as an adjudication on the merits."

The Court weighs five factors in determining whether to dismiss a case for lack of prosecution:

- 1) the public's interest in expeditious resolution of litigation;
- 2) the court's need to manage its docket;
- 3) the risk of prejudice to the defendants;
- 4) the public policy favoring the disposition of cases on their merits; and
- 5) the availability of less drastic sanctions.

MoneyMaker v. CoBEN (In re Eisen), 31 F.3d 1447, 1451 (9th Cir. 1994).

Here, all factors weight in favor of dismissal. With respect to factor one, if the litigation remained pending, it would not be expeditiously resolved, because Plaintiff has failed to comply with her discovery obligations, and has indicated to the Court that health difficulties prevent her from diligently prosecuting the action. With respect to factor two, less drastic sanctions are not available because Plaintiff has made clear

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that she no longer desires to prosecute the action. Regarding factor three, there is no indication that Defendants would be prejudiced by dismissal. Defendants have not filed any papers opposing dismissal of this action. Even factor four, the public policy favoring disposition of cases on their merits, weighs in favor of dismissal. There is no way for the Court to find the facts necessary to adjudicate whether Plaintiff's loans are non-dischargeable if Plaintiff is unwilling or unable to comply with her discovery obligations. Dismissal of cases where a party refuses to participate in discovery furthers factor four by establishing that the Court will adjudicate only those cases in which all parties have the opportunity to uncover the relevant facts. Attempting to adjudicate a matter in which the parties did not have access to relevant factual information would frustrate the policy, by forcing the Court to decide matters without the facts. Finally, factor two—the Court's need to manage its docket—weighs in favor of dismissal.

Based upon the foregoing, this action is dismissed, pursuant to Civil Rule 41(b), for failure to prosecute. Because a dismissal with prejudice would prevent Plaintiff from ever again asserting that her student loans impose an undue hardship, the dismissal will be without prejudice. It would not be appropriate for the Court to prevent Plaintiff from ever seeking to except her student loans from discharge only because she has elected not to pursue such an action at the present time. The motions seeking to compel Plaintiff to respond to discovery filed by the United States Department of Education and Educational Credit Management Corporation are DENIED as moot.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

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Chapter 7

Defendant(s):

United States Department Of

Represented By
Elan S Levey

Educational Credit Management

Represented By
Scott A Schiff

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#5.00 HearingRE: [64] Motion For Order Authorizing The Debtor To Continue Its Insurance Policies And To Pay Prepetition And Postpetition Obligations In Respect Thereof; Memorandum Of Points And Authorities In Support Thereof

Docket 64

Tentative Ruling:

8/15/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Motion for Order Authorizing the Debtor to Continue its Insurance Policies and to Pay Prepetition and Postpetition Obligations in Respect Thereof [Doc. No. 64] (the "Motion")
 - a) Notice of Hearing on Motion for Order Authorizing the Debtor to Continue its Insurance Policies and to Pay Prepetition and Postpetition Obligations in Respect Thereof [Doc. No. 65]
 - b) Declaration That No Party Requested a Hearing on Motion [Doc. No. 87]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") commenced a voluntary Chapter 11 petition on July 13, 2018. Doc. No. 1. The Debtor currently operates sixteen discount retail stores under a franchise agreement with Aaron's, Inc. ("Aaron's"). The Debtor seeks authorization to (1) renew its insurance policies or obtain replacement coverage, as needed in the ordinary course of business, without further Court approval, and to (2) pay, in its sole discretion, (a) all prepetition insurance obligations for all undisputed premiums, claims, deductibles, administrative fees, broker fees, and other obligations relating to the insurance policies (the "Prepetition Insurance Obligations"), and (b) postpetition insurance obligations for all undisputed premiums, claims, deductibles, administrative fees, broker fees, and other obligations relating to the Insurance Policies, as applicable.

The Debtor states that payment of the Prepetition Insurance Obligations is

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necessary to insure continued coverage under its insurance policies and to maintain good relationships with its insurers. The Debtor states that continued insurance coverage is necessary to comply with the guidelines of the United States Trustee, the laws of the various jurisdictions in which the Debtor operates, and the Debtor's various financial agreements.

No opposition to the Motion is on file.

II. Findings and Conclusions

As a preliminary matter, the Court notes that the Debtor filed a *Declaration That No Party Requested a Hearing on Motion* [Doc. No. 87] (the "Negative Notice Declaration"). However, the Motion was noticed for hearing; it was not filed a negative notice basis. Therefore, the Negative Notice Declaration does not apply. Because the Motion was noticed for hearing, the hearing will go forward. However, as set forth below, the Debtor is not required to appear if it submits upon this tentative ruling.

Turning to the merits, §363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. In the Court's view, payment of the Postpetition Insurance Obligations constitutes use of estate property in the ordinary course of business, making entry of a Court order approving such payment unnecessary. Nonetheless, the Court will enter an order approving payment of the Postpetition Insurance Obligations.

It was necessary for the Debtor to seek Court approval to pay the Prepetition Insurance Obligations, because such payment is on account of prepetition indebtedness. The Debtor is authorized to pay the Prepetition Insurance Obligations. The Debtor has established that if it does not pay the Prepetition Insurance Obligations, it would be required to obtain new insurance coverage, most likely at greater cost.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Court will enter the order that the Debtor has already submitted.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield

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2:18-17345 Fu Kong Inc.

Chapter 11

#6.00 Hearing

RE: [40] Motion to Use Cash Collateral NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING FURTHER INTERIM USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT REGARDING CASH COLLATERAL; DECLARATION OF GEORGE HSU; DECLARATION OF FRANK AVINA; DECLARATION OF TONY HWANG (Lo, Michael)

fr. 8-9-18

Docket 40

Tentative Ruling:

8/15/2018

Hearing required.

8/16/2018

Revised Tentative below:

For the reasons set forth below, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further interim use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is **December 19, 2018**.

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Pleadings Filed and Reviewed:

- 1) Motion for Order Authorizing Further Interim Use of Cash Collateral (the "Renewed Cash Collateral Motion") [Doc. No. 40]
 - a) Declaration of George Hsu (the "Hsu Declaration")
 - b) Declaration of Tony Hwang (the "Hwang Declaration")
- 2) Further Opposition of Creditor, Cathay Bank to the Renewed Cash Collateral Motion (the "Opposition") [Doc. No. 46]
 - a) Supplemental Declaration of David B. Bloom (the "Supplemental Bloom Declaration")
- 3) Reply to the Opposition (the "Reply") [Doc. No. 48]
- 4) Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral (the "Evidentiary Objections") [Doc. No. 49]

I. Facts and Summary of Pleadings

Fu Kong Inc. (the "Debtor"), filed a voluntary Chapter 11 petition on June 26, 2018 (the "Petition") [Doc. No. 1]. The Debtor is an importer, wholesaler, and designer of women's apparel under the brands "Lu Lu" and "Shu Shu." The Debtor has 29 years of experience in the industry and has created designs and sold women's apparel under various labels to high end retailers such as Nordstrom, Saks, Lord & Taylor, Dillard's, Macy's, and Stein Mart. Lillian Yu-Li Hsu is the Debtor's president, sole shareholder, and sole director; George Hsu was, until his termination on August 1, 2018, the Debtor's secretary.

The Petition was precipitated by the Debtor's recent cash flow problems due to a slowdown in business in the last three to six months, and a delayed shipment due to production issues in China which delay resulted in a number of the Debtor's customers to cancel orders. The Debtor's ability to generate income was also interfered with for a few weeks due to the father of George Hsu having an emergency health issue.

On June 1, 2018, the Debtor's secured lender, Cathay Bank (the "Secured

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Lender"), filed a lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC070342 (the "State Court Action"), for failing to make payments on a business loan, seeking possession of the Debtor's assets and appointment of a receiver, foreclosure of the commercial warehouse leased by the Debtor, and foreclosure of Lillian and George Hsu's principal residence. Other of the Debtor's creditors have also recently began attempting to collect debts.

On July 9, 2018, the Debtor filed the "Motion for Order: (1) Authorizing Debtor to Use Cash Collateral; (2) Granting Adequate Protection to Secured Creditors" (the "Emergency Cash Collateral Motion") [Doc. No. 11]. The Debtor submitted the "Original Budget" [Doc. No. 11, Ex. 1] in connection with the Emergency Cash Collateral Motion. On July 13, 2018, the Court held a hearing on the Emergency Cash Collateral Motion, and on July 16, 2018, the Court entered the "Order (1) Authorizing Debtor to Use Cash Collateral On An Interim Basis Through and Including August 9, 2018, (2) Granting Adequate Protection to Cathay Bank, and (3) Setting Continued Hearing on the Further Interim Use of Cash Collateral" (the "Interim Order") [Doc. No. 21]. Pursuant to the Interim Order, on July 16, 2018, the Debtor made an adequate protection payment in the amount of \$6,780.32 to Cathay Bank. "Declaration of George Hsu" (the "Hsu Declaration") [Doc. No. 40] at ¶ 13¹ [Note 1].

The Renewed Cash Collateral Motion

On July 26, 2018, the Debtor filed the "Motion for Order Authorizing Further Interim Use of Cash Collateral" (the "Renewed Cash Collateral Motion") [Doc. No. 40].

The Secured Lender is the holder of a promissory note in the total current amount of \$1,574,163.00 (the "Loan"), secured by the Debtor's assets including inventory and accounts receivable. The Secured Lender's Loan is also secured by two real properties: (1) the Loan is secured by a second deed of trust on the Debtor's principals' residence located at 1324 N. Vosburg Dr., Azusa, CA 91702 (the "Vosburg Property"), which was appraised at \$1.225 million on September 20, 2017, with approximately \$975,000.00 in equity to satisfy the Loan; and (2) the Loan is secured by a second deed of trust on the industrial warehouse leased by the Debtor located at 2455 Lee Avenue, S. El Monte, CA 91733 (the "El Monte Property"), which was appraised at \$2.0 million as of July 22, 2018, *see* "Declaration of Tony Hwang" (the

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"Hwang Declaration") [Doc. No. 40], Ex. 3, with approximately \$941,919.35 in equity. Based on these figures, the Secured Lender is protected by equity in the approximate amount of \$1,916,919.35 on the \$1,574,163.00 principal balance of the Loan.

The Debtor has four additional working capital lenders that each have UCC-1 security interests in the Debtor's assets and accounts receivable: (1) Funding Metrics, LLC; (2) Landing Club Corp; (3) Wide Merchant Investment Inc.; and (4) Yellowstone Capital West, LLC (collectively, the "Capital Secured Creditors").

As of July 26, 2018, the Debtor has \$11,761.91 in cash, and the Debtor anticipates that as of August 10, 2018, the Debtor will have approximately \$18,949.91 in cash. Renewed Cash Collateral Motion at 7. The Debtor seeks authorization to continue to use the cash collateral in accordance with the "Amended Budget", *see* Hsu Declaration, Ex. 1, for the period of August 10, 2018 through and including December 31, 2018. Beginning in September or October 2018, the Debtor projects up to \$100,000.00 to \$200,000.00 in monthly gross revenue at a 15% to 20% profit margin through selling custom fabrics. The Debtor additionally submits further documentation to support the income projections in the Amended Budget. *See* Renewed Cash Collateral Motion, Ex. 5 ("Purchase Orders and Documentation Supporting Income Projections"). These documents purport to show that the Debtor has received \$438,952.40 in purchase orders, with an additional \$53,400.00 in pending purchase orders; however, the Amended Budget projects \$850,000.00 in income for the period of August through December 2018 "because Debtor believes it will be able to generate such income." Renewed Cash Collateral Motion at 12; Hsu Declaration at ¶ 34. Just over half of the purchase orders, which total \$438,952.40, consist of certain unsigned purchase orders by Pacico, Inc., dated July 26, 2018, which orders collectively total \$298,200.00. *See* Renewed Cash Collateral Motion, Ex. 5. The Debtor further states that its belief in this regard is based on the Debtor anticipating large purchase orders from Intex Usa, Inc., and Casual Express Apparel, Inc. *Id.*

The Amended Budget represents the Debtor's best estimate of the necessary business expenses; however, because the needs of the business may fluctuate, the Debtor requests authority to deviate from the total expenses contained in the Amended Budget by no more than 20% and to deviate by expense category without the need for further court order. The Amended Budget reflects certain changes in response to the

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Court's Interim Cash Collateral Order. Among these changes, the Amended Budget: (1) provides for payment of rent on the El Monte Property in the amount of \$5,000.00 per month, reduced from \$10,000.00 per month in the Original Budget; (2) does not include a line item for payment of property tax on the El Monte Property, because the lessors are responsible for payment of such taxes; (3) the line item for "Auto Expense" is reduced to \$500 per month, which the Debtor explains is a car allowance paid by the Debtor to Lillian Hsu for the business use of her personal car, *see* Renewed Cash Collateral Motion at 9; (4) includes a line item for "Commission" in varying amounts for each of the months August through December 2018, which expense is necessary to pay the Debtor's "road representatives" who travel to various stores around the country to promote and sell the Debtor's products, *see id.* at 10; and (5) includes a line item for "Wages" in the amount of \$26,000.00, which expense is necessary to pay the Debtor's Principals, and which will only be paid after the expiration of the 15-day period required for insider compensation, *see id.* at 11 (on July 25, 2018 the Debtor filed the "Notice of Setting/Increasing Insider Compensation" for each of the Debtor's Principals, *see* Doc. Nos. 35, 36).

The Debtor contends that the use of cash collateral is necessary to continue business operations. The Debtor states that, based on the figures set forth above, the Secured Lender is adequately protected by the Debtor's inventory (which, according to the Debtor, has an approximate value of \$1.4 million), the equity in the Vosburg Property and the El Monte Property, and has an equity cushion of approximately 21.77%. The Debtor disputes the appraisal figures relied on by the Secured Lender in its Opposition to the Emergency Cash Collateral Motion [Doc. No. 18], wherein the Secured Lender contends that its loan is not fully secured. The Debtor contends that the Secured Lender's respective appraisals of the Vosberg Property and the El Monte Property, which were based on exterior viewings, are less reliable than the Debtor's respective appraisals, which were based on full inspections. *Compare* "Declaration of Glenn W. Lee" (the "Lee Declaration") [Doc. No. 18] at ¶ 4, *and* "Declaration of Thomas C. Anderson" (the "Anderson Declaration") [Doc. No. 18] at ¶ 4 (Secured Lender's appraisals), *with* "Declaration of Frank Avina" [Doc. No. 40] at ¶ 2 & Ex. 2, *and* Hwang Declaration, Ex. 3 (Debtor's appraisal of the El Monte Property as of July 22, 2018). Based on its appraisal figures, the Debtor further contends that it should not be required to make any further adequate protection payments to the Secured Lender. Additionally, the Debtor states that the Secured Lender and the Capital Secured Creditors are adequately protected by the Debtor's continued business operations because the Debtor will continue to generate revenue and preserve the

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The Renewed Opposition

On August 2, 2018, the Secured Lender filed the "Further Opposition of Creditor, Cathay Bank to [the Renewed Cash Collateral Motion]" (the "Renewed Opposition") [Doc. No. 46]. The Secured Lender opposes further use of the cash collateral by the Debtor. According to the Renewed Opposition, as of June 29, 2018, the total owing on the Loan is \$1,589,689.04. Both the Vosburg Property and the El Monte Property are owned by Lillian and George Hsu. Renewed Opposition at 4. In addition to the Loan to the Debtor, the Secured Lender has made two additional loans to the Hsus, personally: a home equity line of credit secured by a first deed of trust on the Vosburg Property, and a commercial real estate loan secured by a first deed of trust on the El Monte Property. The Debtor defaulted on the Loan after failing to make the payment due on February 18, 2018. The Loan matured on June 18, 2018.

On June 1, 2018, the Secured Lender commenced the State Court Action, and on June 5, 2018, the State Court entered a temporary restraining order and an order to show cause re: appointment of receiver. During the period from the issuance of the TRO on June 5, 2018, through June 26, 2018, the Secured Lender experienced significant difficulties in its attempts to get the Debtor's compliance with the TRO. Such difficulties included, among other things, multiple delays by the Debtor's principals of the field examination of the Debtor's records, and the Debtor's failure to produce certain documents requested by the Secured Lender. The hearing on the State Court OSC was set for June 27, 2018, and on June 26, 2018, the State Court entered its tentative ruling granting the receivership and related relief. The Debtor filed the Petition shortly thereafter.

The Secured Lender points out the following discrepancies with respect to the Renewed Cash Collateral Motion, the Debtor's Schedules, and certain past representations made to the Secured Lender:

- (1) Schedule A/B, ¶ 11, lists the amount of accounts receivable as \$3,250.00; however, in written financial statements provided by the Debtor to the Secured Lender pre-petition, the Debtor represented that as of December 31, 2017, it had \$1,200,370.78 in accounts receivable. The Secured Lender argues that the Debtor has failed to explain this discrepancy. Furthermore, at the 341(a)

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meeting of creditors on August 1, 2018, Ms. Hsu testified that the December 31, 2017 financial statements were inaccurate. Supplemental Bloom Declaration at ¶ 4(a).

- (2) The Debtor's Statement of Financial Affairs, Part 1, states that the gross sales of the Debtor in 2017 totaled "\$1,200,00.00" [*sic*]; however, in the 2017 Financial Statements provided to the Secured Lender, the gross sales of the Debtor were stated as \$6,250,267.00. Renewed Opposition at 5. The Secured Lender argues that based on the Debtor's failure to explain this discrepancy, it continues to appear that either the 2017 signed financial statement given by the Debtor to the Secured Lender, or the Debtor's Schedules, are fraudulent. *Id.*

The Renewed Opposition further contends that, notwithstanding the changes to the Amended Budget as compared to the Original Budget, the Amended Budget is unrealistic based on the disparity between the Amended Budget's projections and the Debtor's past performance. The Debtor's 2016 tax return shows that the Debtor had gross sales in the amount of \$6,167,200.00, and reported cost of goods sold of \$4,783,280.00 (77.6% cost of goods). The Debtor's unaudited 2017 Financial statements show that the Debtor had gross sales in the amount of \$6,250,267.00, and reported cost of goods sold of \$4,898,057.00 (78.4% cost of goods). In contrast, the Amended Budget projects gross sales of \$850,000.00, with a projected cost of goods sold of 60.06% of the projected gross sales. The Renewed Opposition raises additional issues regarding the assumption in the Budget that the Debtor will be able to obtain new credit, as well as significant discrepancies between the Debtor's net profit before taxes in 2016 and 2017 (.9% and 1.7% of gross sales, respectively), and the projected net profit before taxes of 30.7% of gross sales in the Budget. Furthermore, the Opposition contends that the Amended Budget is not supported by sufficient documentation or business records. Specifically, the Secured Lender argues that the newly provided "purchase orders" from Pacico, Inc., are not signed, and fail to set forth material provisions such as payment terms, delivery terms, and cancellation terms. Furthermore, the Pacico purchase orders only account for part of the \$855,000.00 in projected sales, without any documentation to support the remaining projections. Previously, the Secured Lender discovered that the Debtor "maintained no general ledger and that no accounts receivable ageings were available, no inventory ageings were available, and the Debtor's accounts payable ageings appear[ed] to be highly inaccurate" "Declaration of Margaret Waye" ("Waye Declaration") [Doc. No. 18] at ¶¶ 16, 20, 21, 22. The Renewed Opposition also contends that the Debtor

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still has not provided sufficient information with respect to the lease of the El Monte Property

Lastly, the Renewed Opposition contends that the Secured Lender's interest in the collateral is not adequately protected. The Secured Lender disputes the Debtor's valuation of the Vosburg Property and El Monte Property. First, the Secured Lender points out that the Court previously rejected the Debtor's appraisal of the Vosburg Property, yet the Debtor submits the same appraisal in support of the Renewed Cash Collateral Motion. Thus, the Secured Lender contends that based on the its appraisal of the Vosburg Property on May 7, 2018, the Vosburg Property has a value of \$978,000.00, leaving gross equity in the amount of \$696,258.71 (including a reduction for delinquent property taxes). Regarding the El Monte Property, the Secured Lender argues that the Debtor's appraisal inflates the value of the El Monte Property by simply adding \$200,000.00 to \$250,000.00 in adjustments to the comparable sales. Additionally, the Secured Lender discovered that there is an additional third deed of trust in the amount of over \$1 million recorded against the El Monte Property, which means that the encumbrances greatly exceed the amount of any appraisal.

The Reply

The Debtor filed the Reply to the Renewed Opposition on August 6, 2018 (the "Reply") [Doc. No. 48]. At the outset, the Debtor admits the misconduct of its now-former secretary, George Hsu, who provided false financial information to the Secured Lender pre-petition. The Debtor states that George Hsu has been removed, and that the Debtor is committed to maintaining accurate business records moving forward. Lillian Hsu disclaims having any knowledge of the actions taken by George Hsu regarding the financial statement provided to the Secured Lender pre-petition. The Reply submits additional evidence in support of the Renewed Cash Collateral Motion including, among other evidence: the Declaration of Lillian Hsu (the "L. Hsu Declaration"); signed purchase orders from Pacico, Inc., *see* L. Hsu Declaration, Exhibit 1; and further documentation to substantiate the list of received purchase orders and projected sales, *see id.*, Exhibit 2. The Debtor explains that it anticipates large purchase orders being made by Intex USA, Inc. ("Intex") and Casual Express Apparel Inc. ("Casual Express") in the near future, which orders will account for the difference between the total amount of the received purchase orders and the Debtor's projection of gross income. The Reply contends that the Secured Lender's interest in

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the cash collateral is adequately protected by the equity in the Vosburg Property and the El Monte Property, the Debtor's business operations, and the approximately \$1.4 million in inventory. The Debtor argues that the Debtor's appraisals of each of the Properties are superior to those submitted by the Secured Lender, and that calculation of equity for the purpose of determining adequate protection should be based on the Debtor's appraisals.

The Evidentiary Objections

On August 8, 2018, the Secured Lender filed the "Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral" (the "Evidentiary Objections") [Doc. No. 49]. The Secured Lender objects (on various grounds) to the Declaration of Lillian Hsu and the Declaration of George Hsu, submitted in support of the Reply.

II. Findings of Fact and Conclusions of Law

The Evidentiary Objections

For the reasons set forth below, the Secured Lender's Evidentiary Objections to the Declaration of Lillian Hsu and the Declaration of George Hsu are **OVERRULED**. To the extent the Secured Lender objects based on the respective declarations containing numerous statements that end with "to the best of my knowledge," "to the best of my knowledge, information, and belief," or any similar variation, the Court finds the objections lack merit. Additionally, the Court finds that as officers of the Debtor (in the case of George Hsu, a former officer of the Debtor), the Hsu's have the requisite personal knowledge to testify to the Debtor's operations, and the events and circumstances that arose in the ordinary course of business. *See, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position).

The Court further notes that to the extent that declaration testimony purports to characterize the contents of evidence set forth in the record, the Court does not rely upon such testimony. Instead the Court has independently reviewed the evidence in the record, and draws its own conclusions as to whether the proffered evidence corroborates the position advanced by its proponent.

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The Renewed Cash Collateral Motion

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

Here, the Court finds that the Secured Lender is not adequately protected by the equity in the Vosburg Property and the El Monte Property; therefore, the Court finds that the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

First, in connection with the Emergency Cash Collateral Motion the Court accepted the Secured Lender's appraisal of the Vosburg Property; nevertheless, the Debtor still attempts to rely on its appraisal of the Vosburg Property, which the Court previously rejected. The Debtor has failed to show that the Court should reconsider its previous rejection of the appraisal. Based on the Secured Lender's Appraisal, there is only \$627,678.71 of equity in the Vosburg Property.

Secondly, with respect to the El Monte Property, the Court finds that the Secured Lender's Appraisal is the most reliable valuation, particularly because of the ambiguity identified by the Secured Lender with respect to whether the Debtor's appraisal is in fact an appraisal, or just an evaluation. Therefore, the Court finds that the value of the El Monte Property is \$1,630,000.00.

In sum, the Secured Lender's Loan is secured by property with available equity of

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\$1,111,798.06, while the principal balance on the Loan is \$1,589,689.04, leaving \$477,890.98 unsecured by real property. The Debtor argues that the Secured Lender has recourse to the Debtor's inventory, which the Debtor claims has a value of \$1.4 million; however, given the lack of documentary evidence to support the claimed value of the collateral, the Court cannot accept the Debtor's valuation of the inventory for the purposes of determining whether the Secured Lender's interest in the cash collateral is adequately protected. As discussed, there is not sufficient equity in the Vosburg and El Monte Properties to provide adequate protection. Therefore, the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

With respect to the evidence submitted in support of the Renewed Cash Collateral Motion and the Amended Budget, and having considered the Renewed Opposition filed by the Secured Lender, the Court finds that the documentation submitted with the Reply, coupled with the statements of Ms. Hsu regarding the anticipated purchase orders from Intex and Casual Express, *see* L. Hsu Declaration at ¶¶ 11–12, is sufficient to support the further interim use of the c. The evidence submitted as Exhibit 1 to the Lillian Hsu Declaration (the signed Pacico purchase orders) is sufficient to rebut the argument of the Secured Lender with respect to the authenticity of the Pacico purchase orders. Additionally, the documentation submitted as Exhibit 2 to the Lillian Hsu Declaration is sufficient to support the Renewed Cash Collateral Motion with respect to the total amount of purchase orders received by the Debtor. While there remains a sizeable difference in the total amount of the purchase orders received (\$492,352.40), and the projected gross sales (\$855,000.00), the Court finds that Ms. Hsu provided sufficient information detailing the status of the Debtor's negotiations with Intex and Casual Express to support the projected gross sales.

The Secured Lender additionally argues that there are significant disparities between the Amended Budget projections and the past performance of the Debtor, however, the Court finds that the Reply offers a sufficient explanation of these discrepancies. Importantly, the Debtor explains that the disparity between the cost of goods in the past and the cost which is set forth in the Amended Budget is attributable to the inclusion of \$30,000.00 per month in projected sales of existing inventory in the Amended Budget, and the Debtor maintains that it will be able to afford the cost of purchasing new goods without third party financing based on its new business model. The Debtor's new business model includes an invoicing system whereby the Debtor's customers are invoiced with 30 days for repayment, while the Debtor's suppliers

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invoice the Debtor with 60 to 90 days for repayment. This model allows the Debtor to collect payments from its customers before the Debtor it pays its suppliers. Thus, the Debtor has submitted sufficient documentary evidence in connection with the Reply to support the further use of cash collateral on an interim basis.

The Court notes that the Debtor has acknowledged the past misrepresentations made by its former secretary, George Hsu. The Debtor fired George Hsu on August 1, 2018, and the Court expects all future representations to be accurate.

III. Conclusion

In ordering the deadlines set forth below, the Court understands there is a hearing on the Secured Lender's Motion to Appoint a Trustee or Examiner [Doc. No. 28] scheduled for August 21, 2018 at 10:00 a.m. That Motion is not before the Court, and the Court's ruling on the instant motion is unrelated to the merits of the pending Motion to Appoint a Trustee or Examiner.

Based on the foregoing, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is **December 19, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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#100.00 HearingRE: [127] Motion For Sale of Property of the Estate under Section 363(b) - No Fee -[Motion For Order (A) Approving Sale Of Property Free And Clear Of Liens, Claims And Interests, Subject To Overbid; (B) Approve Bidding Procedures; And (C) Granting Related Relief; Memorandum Of Points And Authorities And Declarations Of Gary Lorenzini And Lawrence Perkins In Support Thereof (POS Attached)]-

Docket 127

Tentative Ruling:

For the reasons set forth below, the Sale Motion is GRANTED.

Key Sale Terms:

- 1) Proposed purchaser: Yeung Sai Yeung
- 2) Property for Sale: 119 Furlong Lane, Bradbury, CA 91008
- 3) Purchase price: \$6,900,000
- 4) Overbids: Debtor did not receive any overbids

Pleadings Filed and Reviewed:

- 1) Motion for Order (A) Approving Sale of Property Free and Clear of Liens, Claims and Interests; (B) Approving Bidding Procedures; and (C) Granting Related Relief [Doc. No. 127] (the "Sale Motion")
 - a) Notice of Auction and Hearing on Motion for Order (A) Approving Sale of Property Free and Clear of Liens, Claims and Interests; (B) Approving Bidding Procedures; and (C) Granting Related Relief [Doc. No. 128]
 - b) Notice of Sale of Estate Property [Doc. No. 129]
 - c) Amended Notice of Sale of Estate Property [Doc. No. 130]
- 2) Los Angeles Country Treasurer and Tax Collector's Statement of Obligations in Response to [Sale Motion] [Doc. No. 132]
- 3) Plan Administrator's Response to [Sale Motion] [Doc. No. 133]
- 4) Supplement Re: [Sale Motion] [Doc. No. 134]
- 5) Notice of Consent to [Sale Motion] [filed by Plan Administrator Bradley D. Sharp] [Doc. No. 679]

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I. Facts and Summary of Pleadings

Oak River Asset Management LLC ("Oak River") commenced a voluntary Chapter 11 petition on July 12, 2016 (the "Petition Date"). From the Petition Date until January 29, 2017, the Hon. Thomas B. Donovan presided over this case. The case was reassigned to the undersigned Judge on January 30, 2017. Doc. No. 95.

As of the Petition Date, the Debtor's primary asset was its 50% interest in a single family residence located at 119 Furlong Lane, Bradbury, CA 91008 (the "Property"). The Property is a seven-bedroom, ten-bathroom single family residence containing more than 12,000 square feet, and is located in one of the most expensive ZIP codes in the United States.

Based upon the *List of Equity Security Holders—Amended* filed by Oak River on January 25, 2018, Liberty Asset Management Corporation ("Liberty") holds a 100% membership interest in Oak River. Doc. No. 113. Pursuant to Liberty's Chapter 11 Plan of Liquidation, Bradley D. Sharp, as Plan Administrator, is charged with effectuating the liquidation of Liberty's remaining assets.

On April 17, 2018, the Court approved a compromise between Oak River, on the one hand, and Ta-Lin Hsu ("Hsu"), TLH Reo Management LLC ("TLH"), and Han Ding Holding, Ltd. ("Han Ding") (Hsu, TLH, and Han Ding collectively, the "Co-Owners"). As of the Petition Date, the Co-Owners collectively held a 50% ownership interest in the Property. Under the compromise, the Co-Owners transferred their 50% ownership interest in the Property to Oak River. In exchange, the Oak River agreed to use its best efforts to market the Property, and agreed that upon sale, the Co-Owners would be entitled to receive a payment of \$850,000 on account of their ownership interest. The compromise resolved an adversary proceeding between Oak River and the Co-Owners, Adv. No. 2:16-ap-01333-ER.

Oak River states that it acquired the Property in 2012 for the benefit of Liberty. According to Oak River, Liberty solicited minority investors to invest in the Property. Oak River states that those investors included Christopher Deryen Lee, Frank Lee, the Lee Living Trust dated 6/23/1998 (the "Lee Trust"), and YCJS 2012 LLC ("YCJS") (Christopher and Frank Lee, the Lee Trust, and YCJS collectively, the "Minority Investors"). Christopher Lee and the Lee Trust assert an unsecured claim in the amount of \$1,176,164.38 for "breach of contract." Proof of Claim 3-1. YCJS asserts an unsecured claim in the amount of \$1,210,191.78, also for "breach of contract." Proof of Claim 4-1. The Minority Investors have recorded a *Notice of Lis Pendens* against the Property.

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Prolien Services LLC ("Prolien") is the successor-in-interest to certain contractors that performed services on the Property. The contractors recorded a mechanic's lien against the Property, and filed an action in the State Court seeking to foreclose upon their lien (the "Prolien Action"). Prolien has recorded a *Notice of Lis Pendens* against the Property on account of the Prolien Action.

On September 16, 2016, the Court authorized Oak River to obtain \$500,000 in financing, on an emergency basis, for the purpose of remediating a hillside on the Property that was in danger of imminent collapse. Doc. No. 47.

Oak River seeks authorization to sell the Property, free and clear of liens, claims, and interests, to Yeung Sai Yeung, for \$6,900,000. No timely overbids have been submitted. After payment of (a) \$850,000 to the Co-Owners, (b) \$575,000 to the lender who extended funds for hillside remediation, (c) property taxes, (d) payments owed to the City of Bradbury, (e) broker commissions, and (f) costs of sale, net proceeds to the estate are estimated to be approximately \$4,185,085.

Oak River states that it has been in communication with counsel for Prolien and the Minority Investors regarding the Sale Motion. According to Oak River, Prolien and the Minority Investors consent to sale of the Property free and clear of liens, claims, and interests, provided that their liens, claims, and interests attach to the sale proceeds. Oak River agrees that the interests asserted by Prolien and the Minority Investors should attach to the sale proceeds.

The Liberty Plan Administrator supports the sale, but objects to Oak River's position that the interests asserted by the Minority Investors should attach to the sale proceeds. According to the Plan Administrator, the Minority Investors have acknowledged in litigation that they never received any interest in the Property, and have admitted in Proofs of Claim that they hold only unsecured claims against Oak River. The Plan Administrator's position is that the order approving the sale (the "Sale Order") should not contain any language stating that the interests asserted by the Minority Investors attach to the sale proceeds.

II. Findings and Conclusions

Section 363(b) permits debtors to sell estate property out of the ordinary course of business, subject to court approval. Debtors must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Oak River has articulated sufficient business justification for the sale. The sale

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will inject significant cash into the estate.

Section 363(f)(3) provides that the Court may authorize a sale free and clear of liens, if the "price at which such property is to be sold is greater than the aggregate value of all liens on such property." The purchase price of \$6.9 million exceeds the aggregate value of the liens asserted by the Los Angeles County Tax Collector (the "LA County Tax Collector") and the debtor-in-possession lender (the "DIP Lender"). Pursuant to §363(f)(3), the Court approves the sale of the Property free and clear of the liens, claims, and interests of the LA County Tax Collector and the DIP Lender, with such liens, claims, and interests to attach to the sale proceeds.

Section 363(f)(4) provides that the Court may authorize a sale free and clear of any claim that is in bona-fide dispute. Here, the mechanic's lien asserted by Prolien is in bona-fide dispute, being the subject of litigation pending before the State Court. Pursuant to §363(f)(4), the sale is free and clear of Prolien's mechanic's lien, which shall attach to the sale proceeds.

The Minority Investors have recorded a *Notice of Lis Pendens* against the Property. The Liberty Plan Administrator asserts that the *Notice of Lis Pendens* should not attach to the sale proceeds. Oak River does not oppose attachment of the *Notice of Lis Pendens* to the sale proceeds.

The Court declines to determine, in connection with the Sale Motion, whether the Minority Investors have any interest in the Property. The Liberty Plan Administrator's objection to the validity of the interests asserted by the Minority Investors was presented in reply papers. That deprived the Minority Investors of any opportunity to respond to the Liberty Plan Administrator's objection. Adjudicating the validity of the interest asserted by the Minority Investors would deprive them of due process, particularly in view of the fact that the Sale Motion proposed that the Minority Investor's interest would attach to the sale proceeds. Whatever interest the Minority Investors may or may not have against the Property shall attach to the sale proceeds.

Having reviewed the declaration of Gary Lorenzini, the real estate broker who marketed the Property, the Court finds that purchaser Yeung Sai Yeung is entitled to the protections of §363(m).

The claim of the LA County Tax Collector, in the amount of \$861,615.11 as of August 31, 2018, shall be paid directly from escrow. Oak River shall cooperate with the Tax Collector in the preparation of the proposed Sale Order to insure that the precise amounts to which the Tax Collector is entitled are reflected therein. The proposed Sale Order submitted by Oak River shall be endorsed as to form by the Tax Collector, pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 16, 2018

Hearing Room 1568

11:00 AM

CONT... Oak River Asset Management LLC

Chapter 11

(C).

Pursuant to Bankruptcy Rule 6004(f), Oak River is authorized to execute and deliver, on behalf of the estate, whatever documents are necessary to close the sale. Notwithstanding Bankruptcy Rule 6004(h), the Sale Order shall take effect immediately upon entry. Oak River is authorized to pay from the sale proceeds (a) closing costs and (b) undisputed secured claims. The balance of the funds shall remain in escrow pending further order of this court.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED. Within seven days of the hearing, Oak River shall submit an order—which shall be approved as to form by the Tax Collector—incorporating this tentative ruling by reference.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By

David B Golubchik

Jeffrey S Kwong

Eve H Karasik

Robert Thomas Bryson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-11345 Maria Hernandez Huerta

Chapter 7

#1.00 HearingRE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 GMC Terrain, VIN 2GKALMEK2G6103987 . (Wang, Jennifer)

Docket 26

Tentative Ruling:

8/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Movant regained possession of the subject vehicle on June 4, 2018, by voluntary surrender. "Declaration of Aaron Rangel" [Doc. No. 26] at ¶ 4.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

CONT... Maria Hernandez Huerta

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Hernandez Huerta

Represented By
Daniel A Higson

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-16530 Universal Wellness Foundation, Inc.

Chapter 7

#2.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 709 Bowcreek Drive, Diamond Bar, California 91765 with Proof of Service.

Docket 7

Tentative Ruling:

8/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Shane Ells in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

CONT... Universal Wellness Foundation, Inc.

Chapter 7

circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Universal Wellness Foundation, Inc. Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#3.00 Hearing
RE: [16] Motion to Use Cash Collateral Notice of Motion and Motion for Approval
of Cash Collateral Stipulation

fr. 5-16-18; 7-18-18

Docket 16

Tentative Ruling:

8/17/2018

Hearing required

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-15353 Jeffrey Allen Craig

Chapter 7

#4.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5700 East 23rd Street, Long Beach, California 90815 . (Ferry, Sean)

Docket 18

Tentative Ruling:

8/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$690,000.00 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$781,815.36. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

CONT... Jeffrey Allen Craig

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jeffrey Allen Craig

Represented By
Scott D Olsen

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-17921 Peter Barent Lewis

Chapter 7

#5.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1534 15th Street #2 Santa Monica, CA 90404 with Proof of Service. (Unruh, Carol)

Docket 11

Tentative Ruling:

8/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on June 15, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

CONT... Peter Barent Lewis

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Peter Barent Lewis

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-18064 Michele Lea Valencia

Chapter 7

#6.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Jeep Wrangler, VIN 1C4BJWDG5GL176003 . (Wang, Jennifer)

Docket 8

Tentative Ruling:

8/17/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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10:00 AM

CONT... Michele Lea Valencia

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Michele Lea Valencia

Represented By
Sam Benevento

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 20, 2018

Hearing Room 1568

10:00 AM

2:18-16120 Silvana Agostino

Chapter 7

#7.00 Hearing
RE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1115 East Sierra Madre Avenue, Glendora, CA 91741 . (Jafarnia, Merdaud)

Docket 19

***** VACATED *** REASON: RESCHEDULED 9-4-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Silvana Agostino

Represented By
Derik N Lewis

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01071 Goodrich v. Line Up, Inc., a California corporation

#1.00 Status Conference

RE: [1] Adversary case 2:17-ap-01071. Complaint by David M. Goodrich against Line Up, Inc., a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

fr. 9-12-17; 12-12-17; 6-5-18

Docket 1

Tentative Ruling:

8/20/2018

This hearing is VACATED and no appearances are required. The Status Report filed by the Chapter 7 Trustee (the "Trustee") establishes that the Trustee will most likely receive the final settlement payment on or before the date of the Status Conference. Unless otherwise ordered by the Court, no further Status Conferences will be conducted in this action.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Line Up, Inc., a California

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#2.00 STATUS CONFERENCE

RE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2395 Roanoke Road, San Marino, CA 91108 . (Wilkinson, Reilly)

fr: 2-20-18; 3-19-18; 4-23-18; 6-18-18

Docket 28

***** VACATED *** REASON: PER ORDER ENTERED ON 8-15-18**

Tentative Ruling:

6/13/2018

Hearing required.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Ogenesian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

FR. 2-13-18; 4-17-18; 6-5-18

Docket 1

Tentative Ruling:

8/20/2018

Plaintiff intends to dismiss this adversary proceeding with prejudice. Plaintiff shall file a stipulation providing for the dismissal of this action by no later than **September 4, 2018**. Unless otherwise ordered by the Court, no further status conferences will be conducted in this action.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

CONT... **Rideshare Port Management, LLC**
hearing.

Chapter 11

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman

Pro Se

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Pro Se

Hassan Mahmoudi

Pro Se

Howard Miller

Pro Se

Jose Diaz

Pro Se

Juan Martinez

Pro Se

Kaushaal Laxmee

Pro Se

Raymond Moradian

Pro Se

Roberto Martinez

Pro Se

Ronaldo Ramos

Pro Se

Valo Khalatian

Pro Se

Vince Olivar

Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#4.00 HearingRE: [32] Motion to Appoint Trustee or in the Alternative Appoint an Examiner (Adler, James)

Docket 32

Tentative Ruling:

8/20/2018

For the reasons set forth below, the Court DENIES the Motion.

Pleadings Filed and Reviewed:

- 1) Motion for Order Appointing A Chapter 11 Trustee Or In the Alternative, An Examiner, Pursuant to 11 U.S.C. § 1104 (the "Motion") [Doc. No. 28]
 - a) Declaration of James E. Alder (the "Alder Decl.")
 - b) Declaration of Margaret Waye (the "Waye Decl.")
 - c) Declaration of Roy Sanchez (the "Sanchez Decl.")
- 2) Debtor's Opposition to Motion (the "Opposition") [Doc. No. 50]
 - a) Declaration of Lilian Hsu (the "L. Hsu Decl.")
 - b) Declaration of George Hsu (the "G. Hsu Decl.")
- 3) Reply to the Opposition (the "Reply") [Doc. No. 57]
- 4) Cathay Bank's Evidentiary Objections In Support of its Motion (the "Evidentiary Objections") [Doc. No. 58]

I. Facts and Summary of Pleadings

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

CONT... Fu Kong Inc.

Chapter 11

Fu Kong Inc. (the "Debtor"), filed a voluntary Chapter 11 petition on June 26, 2018 (the "Petition") [Doc. No. 1]. Lillian Yu-Li Hsu is the Debtor's president, sole shareholder, and sole director; George Hsu was, until his termination on August 1, 2018, the Debtor's secretary.

The Petition, according to the Debtor, was precipitated by the Debtor's recent cash flow problems due to a slowdown in business in the last three to six months, and a delayed shipment due to production issues in China which delay resulted in a number of the Debtor's customers to cancel orders. The Debtor's ability to generate income was also interfered with for a few weeks due to the father of George Hsu having an emergency health issue.

The Debtor's secured lender, Cathay Bank (the "Secured Lender"), is the holder of a promissory note in the total current amount of \$1,574,163.00 (the "Loan"), secured by the Debtor's assets including inventory and accounts receivable. The Secured Lender's Loan is also secured by two real properties: (1) the Loan is secured by a second deed of trust on the Debtor's principals' residence located at 1324 N. Vosburg Dr., Azusa, CA 91702 (the "Vosburg Property"); and (2) the Loan is secured by a second deed of trust on the industrial warehouse leased by the Debtor located at 2455 Lee Avenue, S. El Monte, CA 91733 (the "El Monte Property"). On June 1, 2018, the Secured Lender filed a lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC070342 (the "State Court Action"), for failing to make payments on a business loan, seeking possession of the Debtor's assets and appointment of a receiver, foreclosure of the commercial warehouse leased by the Debtor, and foreclosure of Lillian and George Hsu's principal residence.

The Motion

On July 23, 2018, the Secured Lender filed the "Motion for Order Appointing A Chapter 11 Trustee Or In the Alternative, An Examiner, Pursuant to 11 U.S.C. § 1104" (the "Motion") [Doc. No. 28].

The Secured Lender contends that appointment of a trustee is warranted based on the past dishonesty and mismanagement by the Debtor's management. The Secured Lender points to the discrepancies between the financial statements provided by the Debtor to the Secured Lender pre-petition, and the financial representations made by the Debtor in the Debtor's Schedules. Specifically, Schedule A/B, ¶ 11, lists the

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, August 21, 2018

Hearing Room 1568

10:00 AM

CONT... Fu Kong Inc.

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amount of accounts receivable as \$3,250.00; however, in written financial statements provided by the Debtor to the Secured Lender pre-petition, the Debtor represented that as of December 31, 2017, it had \$1,200,370.78 in accounts receivable. The Secured Lender argues that the Debtor has failed to explain this discrepancy. Additionally, the Debtor's Statement of Financial Affairs, Part 1, states that the gross sales of the Debtor in 2017 totaled "\$1,200,00.00" [*sic*]; however, in the 2017 Financial Statements provided to the Secured Lender, the gross sales of the Debtor were stated as \$6,250,267.00. The Secured Lender argues that based on the Debtor's failure to explain this discrepancy goes to the dishonesty of the Debtor's management, and could be an attempt to conceal from \$5 to \$6 million. Furthermore, on the Petition Date, certain of the Debtor's creditors recorded junior Deeds of Trust against the principal residence of Lillian and George Hsu. The Deeds of Trust appear to secure a loan to the Debtor in the amount of \$1,065,000.00.

With respect to the mismanagement of the Debtor by the Debtor's current management, the Secured Lender argues that appointment of a trustee is necessary based on the Debtor's failure to maintain normal business records. Previously, the Secured Lender discovered that the Debtor "maintained no general ledger and that no accounts receivable ageings were available, no inventory ageings were available, and the Debtor's accounts payable ageings appear[ed] to be highly inaccurate" "Declaration of Margaret Waye" ("Waye Decl.") [Doc. No. 28] at ¶¶ 16, 20, 21, 22. This failure to maintain normal business records, the Secured Lender argues, constitutes gross mismanagement of the Debtor such that a Chapter 11 trustee is necessary.

The Opposition

On August 7, 2018, the Debtor filed the Opposition to the Motion (the "Opposition") [Doc. No. 50]. The Debtor acknowledges the Secured Lender's concerns regarding the discrepancies between the Debtor's bankruptcy schedules, and the figures in the financial statements provided to the Secured Lender in December 2017. The Opposition states that the figures provided to the Secured Lender were reported by George Hsu without the knowledge of the Debtor or Lillian Hsu, and that George Hsu was removed from his position as the Debtor's secretary, and no longer has any managerial duties.

With respect to the remaining allegations by the Secured Lender, the Debtor

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contends that appointment of a trustee is an extraordinary remedy, and the facts simply do not support appointment under the circumstances. First, the Opposition states that appointment would not be in the best interests of the Estate or its creditors, because appointment will result in substantial administrative expenses without providing a significant benefit that could not be obtained under the Debtor's current management. Second, in light of the firing of George Hsu, the Debtor argues that the misrepresentations in financial statements provided to the Secured Lender were made by the Debtor's "*former management* [emphasis in original] and do not harm or materially affect the estate." Opposition at 3, 6. Third, regarding the loan from Donna Chao, the proceeds of which the Motion alleges have disappeared, the Debtor states that the loan was borrowed in many installments beginning in early 2015 and has been spent on the Debtor's normal business expenses. Fourth, the Opposition argues that any violation of the State Court's temporary restraining order was inadvertent or, alternatively, the conduct of former management. And lastly, the Debtor states that it maintains normal business records, as evidenced by the documents provided in connection with the Renewed Cash Collateral Motion, including the certain audit report prepared by the Secured Lender's field examiner, Roy Sanchez, in August 2017.

The Reply

On August 14, 2018, the Secured Lender filed the Reply to the Opposition (the "Reply") [Doc. No. 57]. The Reply contends that the distinction made in the Opposition between "former" and "current" management is a distinction without a difference because George Hsu was not fired until August 1, 2018. Even after being fired, George Hsu appeared at the 341(a) meeting of creditors and, according to the Secured Lender, Lillian Hsu consulted him in order to answer certain questions about the Debtor during her examination. The Reply also argues that the misrepresentations made by George Hsu were substantive and have current relevance given the disparities between the pre-petition financial statements and the documents and figures submitted by the Debtor in connection with the Debtor's bankruptcy. Furthermore, the Secured Lender points out that in the Debtor's "7 Day Package" submitted to the United States Trustee ("UST"), the Debtor falsely states that "Debtor has not issued any financial statements in the two year period prior to the filing of this bankruptcy," notwithstanding the December 2017 financial statement provided by the Debtor to the Secured Lender, and the multiple loan applications made by the Debtor during the pre-

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Regarding the Opposition's argument that any violation of the State Court temporary restraining order was inadvertent, the Reply argues that the Debtor was represented by counsel when the restraining order was entered, and that the Debtor's June 15, 2018, bank statement shows that more than \$90,000.00 was withdrawn from the Debtor's bank account, and that these withdrawals came from the proceeds and payment of accounts receivable that the Debtor was restrained from withdrawing from under the State Court Order.

Insofar as the Opposition relies upon the audit performed by Roy Sanchez in support of the Debtor's contention that it does maintain normal business records, the Secured Lender argues that the audit report was based, in large part, on the false financial documentation provided by George Hsu; therefore, the audit report is not reliable evidence that the Debtor maintains normal business records.

The Evidentiary Objections

On August 14, 2018, the Secured Lender filed the "Evidentiary Objections in Support of [the Motion]" (the "Evidentiary Objections") [Doc. No. 58]. The Secured Lender objects (on various grounds) to the Declaration of Lillian Hsu and the Declaration of George Hsu, submitted in support of the Opposition.

II. Findings of Fact and Conclusions of Law

The Evidentiary Objections

For the reasons set forth below, the Secured Lender's Evidentiary Objections to the Declaration of Lillian Hsu and the Declaration of George Hsu are **OVERRULED**. To the extent the Secured Lender objects based on the respective declarations containing numerous statements that end with "to the best of my knowledge," "to the best of my knowledge, information, and belief," or any similar variation, the Court finds the objections lack merit. Additionally, the Court finds that as officers of the Debtor (in the case of George Hsu, a former officer of the Debtor), the Hsu's have the requisite personal knowledge to testify to the Debtor's operations, and the events and circumstances that arose in the ordinary course of business. *See, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines*

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Pilots Ass'n, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position).

The Court further notes that to the extent that declaration testimony purports to characterize the contents of evidence set forth in the record, the Court does not rely upon such testimony. Instead the Court has independently reviewed the evidence in the record, and draws its own conclusions as to whether the proffered evidence corroborates the position advanced by its proponent.

The Motion

Section 1104 of the Code provides as follows:

- (a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee-
 - (1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or
 - (2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.

11 U.S.C. § 1104(a)(1)–(2).

While it is undisputed that the party seeking appointment of a trustee bears the burden of persuasion, there is a dispute between the parties regarding the standard of proof to meet this burden. The Ninth Circuit has not addressed the approach a court should take in determining whether to appoint a trustee.

Although the Ninth Circuit has not addressed this issue, most courts agree that there is a presumption against the appointment of a trustee and favoring the

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continuation of current management, and many courts hold that the moving party has the burden of demonstrating "cause" for appointment of a trustee in a Chapter 11 case by clear and convincing evidence. *See, e.g., In re Munoz*, 866 F.3d 487, 497 (1st Cir. 2017); *In re G-1 Holdings, Inc.*, 385 F.3d 313, 317–18 (3d Cir. 2004); *In re Colorado-Ute Elec. Ass'n, Inc.*, 120 B.R. 164, 173 (Bankr. D. Colo. 1990). For example, the Third Circuit requires that the "party moving for appointment of a trustee . . . must prove the need for a trustee under either subsection [of § 1104(a)] by clear and convincing evidence." *In re G-1 Holdings, Inc.*, 385 F.3d at 317–18 (quoting *In re Marvel Entertainment Group, Inc.*, 140 F.3d 463, 473 (3d Cir. 1998)). The First and Fifth Circuits have also held that the moving party must meet its burden by "clear and convincing evidence." *In re Munoz*, 866 F.3d at 497; *In re Cajun Elec. Power Coop., Inc.*, 69 F.3d 746, 749 (5th Cir. 1995).

Notwithstanding these decisions, in *Grogan v. Garner*, 498 U.S. 279 (1991), a unanimous Court determined that the preponderance of the evidence standard should be applied when determining whether the exception to discharge under § 523(a)(2)(A) had been met. The Court explained that the statute "does not prescribe the standard of proof for the discharge exceptions" and that "[t]his silence is inconsistent with the view that Congress intended to require a special, heightened standard of proof." *Id.* at 286. Furthermore, in determining whether a heightened standard was appropriate, the Court noted that "[b]ecause the preponderance-of-the-evidence standard results in a roughly equal allocation of risks of error between litigants, we presume that this standard is applicable in civil actions between private litigants unless 'particularly important individual interests or rights are at stake.'" *Id.* (quoting *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389–90 (1934)). Thus, given the absence of any express congressional direction as to the standard of proof for "cause" under § 1104(a), the Court's holding in *Grogan* would seem to militate in favor of a preponderance of the evidence standard. *See In re Corona Care Convalescent Corp.*, 527 B.R. 379, 384 (Bankr. C.D. Cal. 2015).

The Court need not decide this question, however, because the Court finds that the evidence presented by the Secured Lender does not satisfy even the lower standard of preponderance of the evidence.

With regards to § 1104(a)(1), the Court finds that Secured Lender has simply not provided enough evidence of "cause" for appointment of a Chapter 11 trustee. The appointment of a Chapter 11 Trustee is not to be made lightly, and under either

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standard of proof, courts agree that there is a presumption against the appointment of a trustee and favoring the continuation of current management. *See, e.g., In re G-1 Holdings, Inc.*, 385 F.3d at 318; *Tradex Corp. v. Morse*, 339 B.R. 823, 831–32 (D. Mass. 2006) (adopting the preponderance of the evidence standard, and explaining that the " 'presumption' that current management can best run the debtor's business" does not necessarily require the heightened "clear and convincing" standard). This presumption is particularly relevant where, as here, the Debtor is a closely-held business. *See In re 4 C Solutions, Inc.*, 289 B.R. 354, 370 (Bankr. C.D. Ill. 2003) ("The preference for retention of current management is stronger where the debtor is a closely-held entity whose reputation and good will is closely identified with its owners and/or management team."). Here, the Debtor's business appears, in large part, to be reliant upon Lillian Hsu's existing relationships with suppliers and customers, as well as her ongoing efforts to establish new relationships with large customers. While the Secured Lender has presented evidence of certain pre-petition misrepresentations by George Hsu, which in turn form the basis of many of the arguments advanced by the Secured Lender with respect to certain discrepancies between pre-petition financial statements and the Debtor's financial projections in connection with the Cash Collateral Motion, the Debtor fired George Hsu on August 1, 2018, and the Court has made it clear that the Court expects that George Hsu will not be involved in any capacity in the Debtor's business operations moving forward.

Alternatively, the court may consider practical realities and necessities under a more flexible standard of § 1104(a)(2): the debtor in possession's past and present performance and prospects for rehabilitation, the trustworthiness of the debtor, the confidence or lack thereof of the business community and of creditors in the present management, and the benefits derived from the appointment of a trustee, balanced against the costs of the appointment. *In re Ionosphere Clubs, Inc.*, 113 B.R. 164 (Bankr. S.D.N.Y. 1990). Again, the Court finds that appointment of a trustee is inappropriate at this stage. As stated above, the Debtor is a closely-held business; thus, appointment of a Chapter 11 trustee who would have to spend a substantial amount of time to become familiar with the Debtor's business operations, would result in significant administrative expense to the Estate, to the detriment of the Debtor's creditors. The Court finds that such expense outweighs any benefits that might be derived from the appointment of a trustee. Furthermore, the UST, charged with supervising DIPs, stated on the record at the Cash Collateral hearing held on August 16, 2018 that it would not be taking a position on the Motion because the UST has not completed its investigation into the Debtor. Thus, under the circumstances,

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appointment of a Chapter 11 trustee at this stage in the Debtor's case would be premature.

For the same reasons the Court does not find that Movant has demonstrated "cause" pursuant to §1104(c).

III. Conclusion

Wherefore, the Court hereby DENIES Movant's Motion without prejudice.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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#5.00 Hearing
RE: [8] Motion for Order Authorizing Use of Cash Collateral

fr. 7-19-18

Docket 8

Tentative Ruling:

8/20/2018

For the reasons set forth below, the Court GRANTS the Renewed Motion on an interim basis. Subject to the conditions discussed below, the Debtor is authorized to use the cash collateral on an interim basis through and including October 23, 2018. The Debtor shall make monthly adequate protection payments to First General Bank in the amount of \$1,019.57, and \$100.00 per month to the remaining creditors as set forth in the Renewed Motion. The Court will conduct a further hearing on the use of cash collateral on **October 23, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **October 9, 2018.** Any opposition to the continued use of cash collateral must be submitted by no later than **October 9, 2018.**

Pleadings Filed and Reviewed:

- 1) Debtor's Supplemental Brief in Support of Motion for Order Authorizing Use of Cash Collateral (the "Renewed Motion") [Doc. No. 33]
 - a) Declaration of Jiazheng Lu (the "Supplemental Lu Declaration") [Doc. No. 33]
- 2) Response by First General Bank to the Renewed Motion (the "Response") [Doc. No. 38]
 - a) Declaration of Joe Chen (the "Chen Declaration") [Doc. No. 38]
- 3) Debtor's Emergency Motion for Order Authorizing Debtor Use of Cash Collateral (the "Cash Collateral Motion") [Doc. No. 8]
 - a) Order Granting the Cash Collateral Motion [Doc. No. 24]

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4) Omnibus Declaration of Jiazheng Lu (the "Lu Declaration") [Doc. No. 9]

I. Facts and Summary of Pleadings

Andrews & Son Tradings, Inc., dba Beston Shoes (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition") [Doc. No. 1]. The Debtor was founded in 2003 as a wholesaler of women's shoes, and since 2008 the Debtor has been an online wholesaler and retailer of women's shoes. "Omnibus Declaration of Jiazheng Lu" (the "Lu Declaration") [Doc. No. 9] at ¶ 3. The Debtor sells shoes online on multiple market places such as Amazon and eBay. *Id.* at ¶ 4. Between 2008 and 2017, the Debtor's sales volume steadily grew, and in 2017 the Debtor's annual sales was more than \$11 million. *Id.* The Debtor's business continued to grow, and around February 2018 the Debtor was approached by some working capital companies, with which the Debtor ultimately entered into certain high interest rate commercial loan agreements. *Id.* at ¶ 5. The Debtor was unable to make enough cash to service the debt, and the Debtor had to take out additional working capital loans to pay the existing debt. *Id.* at ¶ 7. Around May 2018, the Debtor was approached by Kings Cash Group ("KCG"), which offered the Debtor a large-scale debt consolidation if the Debtor entered into a merchant loan agreement for \$175,000.00. *Id.* The Debtor entered the merchant loan agreement with KCG on May 10, 2018. *Id.*

Ultimately, the Debtor could not continue to pay its daily withdrawals from the various merchant capital loans which totaled nearly \$7,000.00 per day. *Id.* KCG filed a lawsuit against the Debtor in New York, and obtained a judgment against the Debtor on June 19, 2018. *Id.* at ¶ 8. KCG subsequently levied the Debtor's general Bank of America operating account, which severely restricted the Debtor's cash flow. *Id.* On June 22, 2018, another of the Debtor's working capital lenders, EBF Partners, LLC, dba Everest Business Funding ("EBF"), *see id.* at ¶ 5, obtained a judgment against the Debtor in New York, and began informing the Debtor's clients to send payments that were owed to the Debtor directly to EBF, *id.* at ¶ 8. Consequently, the Debtor could not afford its monthly rental payments to its landlord 8 Net, Inc. ("8 Net") for its warehouse located at 18945-65 E. San Jose Avenue, City of Industry, CA 91749 (the "Industry Warehouse"), in the amount of \$40,000.00 per month. *Id.* at ¶ 9. The Debtor began moving its operations to two smaller warehouses located at 17583-17585 Railroad St., City of Industry, CA 91749 (the "Railroad Warehouse"),

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and 717 Nogales St., City of Industry, CA 91748 (the "Nogales Warehouse") with lower monthly rental expenses. *Id.* at ¶ 10. On June 6, 2018, 8 Net filed an unlawful detainer complaint against the Debtor for eviction from the Industry Warehouse; a default judgment was entered against the Debtor in the unlawful detainer action on June 29, 2018. *Id.* at ¶ 11. On June 30, 2018, the Debtor was informed that its existing inventory located at the Industry Warehouse was confiscated by 8 Net. *Id.* at ¶ 12. As a result, the Debtor filed the Petition to reorganize its debt. *Id.*

On the Petition Date, the Debtor filed the "Debtor's Emergency Motion for Order Authorizing Debtor Use of Cash Collateral" (the "Cash Collateral Motion") [Doc. No. 8]. The Court held a hearing on the Cash Collateral Motion on July 19, 2018. On July 23, 2018, the Court entered the Order Granting the Cash Collateral Motion (the "Cash Collateral Order") [Doc. No. 24], which authorized the Debtor to use the cash collateral on an interim basis, and set a continued hearing on the further use of the cash collateral.

The Cash Collateral Motion

Pursuant to the Cash Collateral Order, on August 7, 2018, the Debtor filed the "Supplemental Brief in Support of Motion for Order Authorizing Use of Cash Collateral" (the "Renewed Motion") [Doc. No. 33].

The Renewed Motion seeks an order authorizing the Debtor to use the cash collateral in accordance with the terms of the "Amended Budget", *see* "[Supplemental] Declaration of Jiazheng Lu" (the "Supplemental Lu Declaration") [Doc. No. 33], Ex. 1. The Amended Budget reflects what the Debtor believes is necessary to fund the Debtor's continued operations on an average monthly basis until plan confirmation or until a final hearing on the Cash Collateral Motion. *Id.* at ¶¶ 5–7. The Amended Budget incorporates updated projections to more accurately reflect the Debtor's actual income and expenses for the month of July 2018 and the projected figures through December 31, 2018. The Amended Budget reflects a reduction in monthly expenses due to the removal of merchandise sales for "Fashiongo," which was previously the Debtor's largest venue for sales. Just before the Petition Date, Fashiongo closed the Debtor's sellers account. At the time the Cash Collateral Motion was filed, the Debtor believed that Fashiongo would reinstate the Debtor's sellers account; however, Fashiongo has not yet reinstated the Debtor's account. The Debtor is currently negotiating with Fashiongo, and although the Debtor

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is optimistic that its seller account will be reinstated at some point, the Amended Budget assumes that the Debtor will not be conducting sales through Fashiongo. *Id.* at ¶ 5. Changes in the Amended Budget also include the removal of additional selling venues as the Debtor intends to focus its energy on a reduced number of venues to ensure maximum profitability. *Id.* at ¶ 7.

As set forth in the Amended Budget, in the 30-days following the Petition Date, the Debtor anticipates total income in the amount of \$63,120.00, gross profits in the amount of \$23,620.00, and a net income after expenses in the amount of \$3,954.00. *See* Amended Budget. As set forth in the Debtor's "Amended Profit and Loss" statements, *see id.*, the Debtor projects the following net income amounts through the end of 2018: (1) net income for August 2018 in the amount of \$3,856.00; (2) net income for September 2018 in the amount of \$3,945.00; (3) net income for October 2018 in the amount of \$3,956.00; (4) net income for November 2018 in the amount of \$4,156.00; and (5) net income for December 2018 in the amount of \$4,656.00.

The following entities claim a security interest in the Debtor's assets (collectively, the "Lenders"):

1. First General Bank, in the amount of \$100,000.00;
2. Amazon Capital Services, LLC, in the amount of \$750,000.00;
3. New Commercial Capital, Inc., in an unspecified/unknown amount;
4. Corporation Service Company, in an unspecified/unknown amount;
5. KCG, in the amount of \$249,512.85;
6. EBF, in the amount of \$300,000.00;
7. 8 Net, in the amount of \$40,000.00;
8. Knight Capital Funding, in the amount of \$300,000.00 (cash collateral: "alleged—no recording found");
9. Bank of the West, in an unspecified/unknown amount (cash collateral:

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"alleged—no recording found"); and

10. Employment Development Department, in the amount of \$47.18 (cash collateral: "alleged—no recording found").

See id. at ¶ 12.

The Debtor contends that based on the Debtor's post-petition operating results, including its accounts receivable (\$35,229.00), *see id.*, Ex. 2, and the Debtor's projected profit and loss statements through the end of 2018, *see id.*, Ex. 1, the Lenders interest in the cash collateral will not be depleted through the Debtor's continued operations, *id.* at ¶ 10. The Debtor asserts that the value of the collateral is not declining because at least half of the Debtor's inventory consist of women's shoes for the upcoming fall season, and because an additional 20-25% of the Debtor's inventory are men's dress shoes which traditionally hold their value over time. *Id.* at ¶ 9.

The Renewed Motion proposes to continue the following adequate protection terms set forth in the Cash Collateral Motion: (1) the Lenders will receive a replacement lien on post-petition assets having the same priority, scope, and rights under applicable law as the Lender's pre-petition lien, *see* Lu Declaration [Doc. No. 8] at ¶ 20; and (2) the Lenders will receive, through the Debtor's filing with the Court or otherwise as requested by the Lenders, monthly operating reports as required by the Office of the United States Trustee, which will show cash usage and monthly income statements, *see id.* Coupled with the value that will be preserved and generated through the Debtor's continued operations, the Debtor contends that the Lenders are adequately protected as required under 11 U.S.C. § 363. Notwithstanding the Debtor's position that the Lenders are adequately protected, the Debtor proposes to make additional monthly adequate protection payments in the amount of \$100.00 to the following Lenders: First General Bank; Amazon Capital Services, LLC; New Commercial Capital, Inc.; Kings Cash Group; EBF Partners; and Knight Capital Funding. Supplemental Lee Declaration at ¶ 12.

The Renewed Motion also notes that the Debtor's former landlord, 8 Net, has refused to return the estimated \$250,000.00 in inventory and equipment it confiscated when it locked out the Debtor from the San Jose Warehouse. The Debtor will be amending Schedules A/B to include causes of action against 8 Net for unlawful

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The Response

Pursuant to the Cash Collateral Order, on August 14, 2018, Secured Creditor First General Bank ("FGB") filed the Response to the Renewed Motion (the "Response") [Doc. No. 38].

The Response states that FGB has made two loans to the Debtor: (1) on March 9, 2015, FGB made a working capital loan to the Debtor in the amount of \$100,000.00 ("Loan 1"), "Declaration of Joe Chen" (the "Chen Declaration") [Doc. No. 38] at ¶ 5; and (2) on May 16, 2018, FGB loaned the Debtor an additional \$100,000.00 ("Loan 2"), *id.* at ¶ 9. Each of Loan 1 and Loan 2 (collectively, the "Loans") were evidenced by a loan agreement, promissory note, and commercial security agreement, whereby the Debtor granted FGB a security interest in all of its assets, now-existing and after-acquired, including proceeds thereof, which security interests were perfected by filing a UCC-1 financing statement. *Id.* at ¶¶ 5–8, 9–12; *see also id.*, Ex. 1–4 (Loan 1 documents) and Ex. 5–7, 12 (Loan 2 documents). The Debtor defaulted on the Loans. As of August 8, 2018, the Debtor owes FGB \$100,765.79 under Loan 1, and \$73,973.93 under Loan 2. The contract rate of interest for both Loans is approximately \$1,019.57 per month. *Id.* at ¶ 20. FGB's liens are senior to the liens held by the Debtor's other secured creditors.

The Response contends that both the Cash Collateral Motion and the Renewed Motion inaccurately state that FGB's security interest is limited to "A/R instruments, contract rights and other rights to money, including after-acquired general intangibles." Renewed Motion at 5. Contrary to the Debtor's representations (which FGB believes are inadvertent), FGB argues that its perfected security interests encompass all assets of the Debtor, as set forth in the respective commercial security agreements and UCC-1 financing statements. *See* Chen Declaration at ¶¶ 7–8, 11–12, and Ex. 4, 7, 8, and 11. Additionally, the Cash Collateral Motion and the Renewed Motion fail to include Loan 2.

With respect to the terms of adequate protection proposed by the Debtor, FGB contends that its secured claim is not adequately protected because it continues to generate post-petition interest at a rate of \$1,019.57 per month at present interest rates, and the Debtor's proposed adequate protection payment of \$100.00 is not sufficient.

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Furthermore, the Response objects to the Debtor's proposal to make payments of \$500.00 per month to creditors with liens that are junior to FGB's liens. FGB contends that, at a minimum, adequate protection requires FGB to receive its post-petition non-default contract interest of approximately \$1,019.57 per month, before any junior lienholder receives periodic payments from the Debtor. Unless FGB is paid its non-default contract rate of interest going forward, FGB objects to the use of any of its cash collateral to fund the payment of interest to junior lienholders.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368–69 (9th Cir. 1987).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984); *see Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.)*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

As an initial matter, the Court finds that FGB's respective security interests encompass all assets of the Debtor, as set forth in the respective commercial security agreements and UCC-1 financing statements. *See* Chen Declaration at ¶¶ 7–8, 11–12, and Ex. 4, 7, 8, and 11. Additionally, the Renewed Motion does not contain any information regarding whether EBF—which holds a judgment against the Debtor, and

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which directed the Debtor's customers pre-petition to make any payments owed to the Debtor directly to EBF—is continuing to receive payments owed to the Debtor by the Debtor's customers on account of its judgment. The Debtor should be prepared to brief the Court on this issue at the hearing.

The Court finds that the use of cash collateral is necessary for the Debtor's continued operations, and to the Debtor's reorganization efforts. Furthermore, the Court finds that the Debtor will suffer irreparable harm absent the interim use of cash collateral. *See* Fed. R. Bankr. P. 4001. Considering that the Debtor has not provided any inventory ageings, and the only evidence in the record with respect to the value of the inventory is the Supplemental Lu Declaration, the Debtor shall make monthly adequate protection payments to FGB in the amount of \$1,019.57, the non-default contract rate of interest. The Court finds the remaining terms of adequate protection proposed by the Debtor to be sufficient, which terms include (1) the Lenders being granted a replacement lien on the Debtor's post-petition assets, (2) the Debtor's monthly operating reports which will show the Debtor's cash usage and monthly income statements, and (3) the Debtor will make cash monthly adequate protection payments in the amount of \$100.00 to each of Amazon Capital Services, LLC; New Commercial Capital, Inc.; Kings Cash Group; EBF Partners; and Knight Capital Funding.

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Renewed Motion on an interim basis. Subject to the conditions set forth below, the Debtor is authorized to use the cash collateral on an interim basis through and including October 23, 2018. The Debtor shall make monthly adequate protection payments to First General Bank in the amount of \$1,019.57, and \$100.00 per month to the remaining creditors as set forth in the Renewed Motion. The Court will conduct a further hearing on the use of cash collateral on **October 23, 2018, at 10:00 a.m.** The Debtor must submit further evidence in support of the use of cash collateral by no later than **October 9, 2018**. Any opposition to the continued use of cash collateral must be submitted by no later than **October 9, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing

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Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang

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2:14-25055 Noam Bouzaglou

Chapter 7

Adv#: 2:14-01645 Haworth v. Bouzaglou

#1.00 Hearing re [74] Application for appearance and examination of judgment debtor
NOAM BOUZAGLOU

fr. 6-6-18

Docket 0

Tentative Ruling:

8/21/2018

Hearing required.

Party Information

Debtor(s):

Noam Bouzaglou

Represented By
Shai S Oved

Defendant(s):

Noam Bouzaglou

Represented By
Shai S Oved

Plaintiff(s):

Jeanne Haworth

Represented By
John P Byrne
Rachel M Sposato

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

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2:18-16133 M & A Enterprises, LLC

Chapter 7

#2.00 Cont'd Hearing

RE: [8] Motion For Entry Of Order Pursuant To 11 U.S.C. 543(D)(1) Maintaining Receiver Matthew Taylor As Custodian In Possession And Control Of Real Estate Of Debtor And Excusing Custodian From Compliance With 11 U.S.C. Section 543(A) And (B)
fr. 7-10/18

Docket 8

Tentative Ruling:

8/21/2018

See Cal. No. 3 below, incorporated by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
Steven Ibarra

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:18-16133 M & A Enterprises, LLC

Chapter 7

#3.00 HearingRE: [17] Motion to Convert Case From Chapter 7 to 11. LLC (Ibarra, Steven)

Docket 17

Tentative Ruling:

8/21/2018

For the reasons set forth below: (1) the Motion to Convert is DENIED; (2) the Motion to Retain Receiver is DENIED; and (3) the Emergency Motion for Receiver Authorization is GRANTED. The Receiver shall turnover Property of the Estate currently being held by the Receiver to the Chapter 7 Trustee pursuant to § 543(b)(1) forthwith.

Pleadings Filed and Reviewed:

- 1) Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b) (the "Receiver Motion") [Doc. No. 8]
 - a) Response of Rosendo Gonzalez, Interim Chapter 7 Trustee, to the Motion (the "Trustee's Receiver Response") [Doc. No. 26]
 - b) Debtor's Opposition to the Motion (the "Receiver Opposition") [Doc. No. 27]
 - c) Reply to the Opposition (the "Receiver Reply") [Doc. No. 32]
 - d) Debtor's Supplementary Opposition to the Receiver Motion (the "Supplemental Receiver Opposition") [Doc. No. 70]
- 2) Motion to Convert Case under 11 U.S.C. § 706(a) (the "Motion to Convert") [Doc. No. 17]
 - a) Notice of Opposition [to the Motion to Convert] and Request for a Hearing" (the "Conversion Opposition") [Doc. No. 37]
 - b) Reply to the Conversion Opposition (the "Conversion Reply") [Doc. No. 69]
- 3) Emergency Motion for Order Authorizing the Receiver to (A) Operate Business of Debtor *Nunc Pro Tunc* to May 29, 2018, As Authorized in the Receivership Order and (B) Use Cash Collateral On An Interim Basis *Nunc Pro Tunc* to May 29, 2018 (the "Emergency Receiver Authorization") [Doc. No. 46]

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CONT... M & A Enterprises, LLC

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I. Facts and Summary of Pleadings

M & A Enterprises, LLC (the "Debtor") filed a voluntary Chapter 7 petition on May 29, 2018 (the "Petition") [Doc. No. 1]. Rosendo Gonzalez was appointed as interim Chapter 7 trustee (the "Trustee").

On August 2, 2018, the Trustee filed the "Supplemental Response to Debtor's Motion to Convert Case From Chapter 7 to Chapter 11 and Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver" (the "Supplemental Trustee Response") [Doc. No. 58]. According to the Supplemental Trustee Response, the Trustee does not take any position regarding the motions discussed herein.

The Receiver Motion

On June 7, 2018, secured creditor Luis Munoz dba San Bernardino Apartments (the "Creditor") filed the "Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b)" (the "Receiver Motion") [Doc. No. 8]. On July 10, 2018, the Court entered the Order Setting Hearing on Motion to Convert and Continuing Hearing on Motion to Maintain Receiver [Doc. No. 43], which continued the hearing on the Motion to be held concurrently with the Debtor's Motion to Convert.

The property at issue is two adjacent apartment buildings located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Property"). The Creditor is the holder of the second and third deeds of trust secured by the Property.

In 2015, the Property was sold to Neram Village, Inc. ("Neram"). "Declaration of Joseph G. McCarty" (the "McCarty Decl.") [Doc. No. 9] at ¶ 4. As part of the sale transaction, the Creditor received two notes and deeds of trust: (1) the second deed of trust, which was an All Inclusive Trust Deed ("AITD") wrap around the first deed of trust from East West Bank in the original principal amount of \$3,432,154.81; and (2) the third deed of trust in the original principal amount of \$1,123,845.18 (collectively, the "Loans"). *Id.* at ¶ 3. Subsequently, and without notifying the Creditor, Neram encumbered the Property with a fourth deed of trust and fifth deed of trust. *Id.* at ¶ 4. The Debtor was the beneficiary of the fifth deed of trust. *Id.* On April 12, 2016, after

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Neram had failed to make payments to the Creditor, the Creditor commenced a judicial foreclosure action in the California Superior Court (the "State Court"). *Id.* at ¶ 5. The State Court appointed Eloisa Fernandez as receiver (the "Original Receiver"). *Id.* The Original Receiver made certain (necessary) repairs to the Property and Creditor advanced funds to pay for the repairs and other expenses of the Property. *Id.* at ¶ 6. On June 12, 2017, the Debtor commenced a foreclosure action on its fifth deed of trust, and moved to remove the Original Receiver. *Id.* at ¶ 7. The Creditor opposed the Debtor's motion and proposed that Matthew Taylor take over as receiver. *Id.* On June 19, 2017, the State Court entered an order appointing Mr. Taylor as receiver (the "Receiver"). *Id.*; *see also id.*, Exhibit 1 (the State Court Order). Over the objection of the Debtor to the discharge of the Original Receiver and to the amount paid for repairs, the State Court discharged the Original Receiver. *Id.* at ¶ 8. The Debtor subsequently filed a cross-complaint which contests the advances for the repairs and the expenses of the Property. *Id.* at ¶ 9. The Debtor's cross-complaint is still pending.

The Receiver Motion contends that the Receiver is currently fulfilling his duties to manage and maintain the Property; thus, the Receiver Motion requests that the Receiver be allowed to remain in possession of the Property. It is the position of the Creditor that there is no equity in the Property, and that the Petition was filed in bad faith to avoid foreclosure by the Creditor.

The Debtor's Opposition to Receiver Motion

On June 26, 2018, the Debtor filed the Opposition to the Receiver Motion (the "Receiver Opposition") [Doc. No. 27]. The Debtor opposes retention of the receiver under § 543, and requests that the receiver be discharged and provide all cash and accounting to the Debtor. The Receiver Opposition explains that the Debtor's case was filed as a Chapter 7 due to time limitations in getting bankruptcy documents on file, and due to the fact that the Debtor's present counsel is not experienced in Chapter 11. The Receiver Opposition notes that the Debtor intends to convert the case to Chapter 11 (the Debtor's Motion to Convert is discussed in more detail below). The Debtor states that the Debtor intends to file amended schedules which will show the Debtor having significantly more assets than was reflected in the initial Schedules. *See* "Supplemental Declaration of Managing Member of the Debtor, Miguel Arreola, in Support of the Opposition" ("Supp. Arreola Decl.") [Doc. No. 30] at ¶¶ 3–7; *see also* "Amended Schedule A/B" [Doc. No. 38]. Specifically, on the Petition date the

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Debtor had cash and secured notes in the approximate amount of \$5,880,431.00, as well as a pending judicial foreclosure lawsuit with a potential recovery of \$1,395,000.00. *Id.* at ¶ 7.

The Receiver Opposition further states that the Debtor has never had management control of the Property because the Property has been continuously managed by the respective receivers. Receiver Opposition at 5; *see also* Supp. Arreola Decl. at ¶ 9. The Receiver Opposition contends that, in the absence of previous mismanagement by the Debtor, there is no justification for the Receiver to remain in control of the Property, especially considering that retention of the Receiver would cause the Estate to incur further fees for the Receiver who is paid \$250 per hour. Receiver Opposition at 5.

The Reply to the Receiver Opposition

On July 3, 2018, the Creditor filed the Reply to the Opposition (the "Receiver Reply") [Doc. No. 32]. The Receiver Reply contends that: (1) the Opposition admits that the Debtor's Schedules are inaccurate, and the Court should not consider the Receiver Opposition or the Motion to Convert until the Schedules have been amended and the need for amendment has been adequately explained; and (2) excusing the Receiver from turnover at this time is in the best interest of creditors.

The Creditor contends that without the amended schedules, the Creditor's position remains that the Petition was filed in bad faith to avoid foreclosure, and that a reorganization is not in prospect. The Receiver Reply additionally sets forth certain facts regarding the Debtor's prepetition foreclosure on the fifth deed of trust, seemingly in an effort to call into question whether the Petition was filed in bad faith.

The Debtor's Supplemental Receiver Opposition

On August 14, 2018, the Debtor filed the "Supplementary Opposition to the Receiver Motion" (the "Supplemental Receiver Opposition") [Doc. No. 70]. The Supplemental Receiver Opposition states that since the hearing on the Receiver Motion on July 9, 2018, the Debtor filed the "Amended Schedule A/B" [Doc. No. 38] and "Amended Schedules (D), (E/F)" [Doc. No. 49] (collectively, the "Amended Schedules"), which show that the Debtor has assets totalling approximately \$6,895,000.00, and estimated secured and unsecured debts in the amount of \$4.5 to

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\$5.0 million. Additionally, John H. Bauer has substituted into the case for Steven Ibarra, the Debtor's original attorney who was, admittedly, inexperienced with Chapter 11 filings. The Debtor further argues that the cases cited in the Receiver Reply support the Debtor's position that a showing of property mismanagement by the Debtor is required for imposition of a property receiver.

The Debtor's Motion to Convert to Chapter 11

On June 22, 2018, the Debtor filed the "Motion to Convert Case from Chapter 7 to Chapter 11" (the "Motion to Convert") [Doc. No. 17], as well as the "Notice of Opportunity to Request a Hearing" pursuant to LBR 9013-1(o).

The Opposition to the Motion to Convert

On July 5, 2018, the Creditor filed the "Notice of Opposition [to the Motion to Convert] and Request for a Hearing" (the "Conversion Opposition") [Doc. No. 37]. The Conversion Opposition states that the Creditor opposes conversion of the case to Chapter 11 on the following grounds: (1) the Debtor's schedules are inaccurate and incomplete and a reorganization is not in prospect; (2) the Petition was filed in bad faith and the Debtor is attempting to abuse the bankruptcy process in order to further delay the Creditor's foreclosure on the Property; and (3) the Court should not consider the Receiver Opposition or the Motion to Convert until the Schedules have been amended and the need for amendment has been adequately explained.

The Creditor contends that conversion is not appropriate because the Debtor's pre-petition conduct coupled with the inadequacies and incompleteness of the Debtor's Schedules show that the Petition was filed in bad faith. Further, that the Motion to Convert is an attempt to further delay the Creditor's pending foreclosure, and is an abuse of the bankruptcy process because no reorganization is in prospect. The Conversion Opposition argues that the Debtor's "Amended Schedule A/B" [Doc. No. 38] does not correct the deficiencies in the Debtor's original Schedules, and the addition of substantial assets that were not disclosed in the Petition suggest that the Amended Schedule A/B is not real, but rather another attempt to delay the pending foreclosure proceedings.

The Reply to the Conversion Opposition

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On August 14, 2018, the Debtor filed the Reply to the Conversion Opposition (the "Conversion Reply") [Doc. No. 69]. The Conversion Reply states that the Debtor has never had management control of the Property because the Property has been continuously managed by the respective receivers; thus, the Creditor's arguments in this regard are unfounded, and are not sufficient to meet the standard of bad faith established in case law to deny conversion.

The Emergency Receiver Authorization

On July 20, 2018, the Receiver filed the "Emergency Motion for Order Authorizing the Receiver to (A) Operate Business of Debtor *Nunc Pro Tunc* to May 29, 2018, As Authorized in the Receivership Order and (B) Use Cash Collateral On An Interim Basis *Nunc Pro Tunc* to May 29, 2018" (the "Emergency Receiver Authorization") [Doc. No. 46]. On July 23, 2018, the Court entered the "Order Providing Notice of the Court's Intent to Grant [the Emergency Receiver Authorization]" [Doc. No. 50].

The Emergency Receiver Authorization requests authorization for the Receiver to operate the Debtor's business *nunc pro tunc* to May 29, 2018 pursuant to the State Court's Receivership Order, and authorization for the Receiver to use cash collateral *nunc pro tunc* to May 29, 2018, on an interim basis as necessary for the Receiver to continue to comply with the Receivership Order and carry out his duties thereunder. The Emergency Receiver Authorization was filed in order that the status quo be maintained through the continued hearing on the Receiver Motion, and the hearing on the Motion to Convert.

The Objection to the Emergency Receiver Authorization

On August 1, 2018, the Creditor filed the Objection to the Emergency Receiver Authorization (the "Objection") [Doc. No. 57]. The Creditor objects to the Emergency Receiver Authorization for the following reasons: (1) it was not properly served on the Debtor's secured creditors; (2) the Creditor is entitled to adequate protection in the form of a replacement lien; and (3) the Receiver should be making monthly payments on the East West Bank Loan in the amount of \$17,281.85 per month.

With respect to the payments on the East West Bank Loan, the Creditor states that

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since the Petition Date, the Creditor has been required to make payments on the East West Bank Loan to keep it from going into default.

II. Findings of Fact and Conclusions of Law

The Motion to Convert

Pursuant to 11 U.S.C. § 706(a), a "debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under section 1112, 1208, or 1307 of this title." In *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007), the Supreme Court held that the apparently absolute right of the debtor to convert a chapter 7 case to another chapter could be curtailed in the "atypical" case of a fraudulent or "bad faith" debtor, in order "to prevent an abuse of process." *Id.* at 375 & n.11. Whether to convert a Chapter 7 case to one under Chapter 11 is within the discretion of the bankruptcy court. See *In re Levesque*, 473 B.R. 331, 339 (B.A.P. 9th Cir. 2012); *In re Daughtrey*, 896 F.3d 1255, 1273–74 (11th Cir. 2018) ("whether to convert a Chapter 7 case to one under Chapter 11 is within the "sound discretion of the court" and depends upon whether conversion would "inure to the benefit of all parties in interest").

The Motion to Convert is DENIED. The court finds that, under the circumstances, denial of the Motion to Convert is warranted in order "to prevent an abuse of process." *Id.* at 375 & n.11. In *Marrama*, the Court held that a Chapter 7 debtor forfeited his right to convert to Chapter 13 by engaging in prepetition bad faith conduct, where the debtor had misrepresented the value of certain of his estate property and that he had not transferred it during the preceding year. In *In re Levesque*, 473 B.R. 331 (B.A.P. 9th Cir.), the Ninth Circuit BAP relied upon the Court's reasoning in *Marrama*, and affirmed the decision of the bankruptcy court's denial of the debtors' motion to convert from Chapter 7 to Chapter 11 where there was evidence of bad faith and abuse of the bankruptcy process. *Id.* at 340. As the Court stated at the outset of its opinion in *Marrama*, "The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate Debtor." *Id.* at 367. The principal purpose of Chapter 11 is to permit the Debtor an opportunity to reorganize its secured and unsecured debts.

Here, the Debtor's pre-petition conduct, including its conduct in relation to the State Court Action, the fact that this bankruptcy was filed as a face sheet filing on the eve of foreclosure, and the fact that the subsequent amendments to the Schedules

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show that the Debtor's debt consists entirely of secured claims, militate in favor of curtailing the Debtor's right to convert in order to prevent abuse of the bankruptcy process. The Court is not confident in the Debtor's ability to reorganize given the entire history of the State Court Action, coupled with the fact that the Debtor's debts are all secured. Furthermore, the case arises from a dispute between the Debtor its secured creditors, and thereby demonstrates an intent to delay or frustrate the legitimate efforts of the Debtor's secured creditors to enforce their rights. *See In re C-TC 9th Ave. Partnership*, 113 F.3d 1304, 1309–1311 (2d. Cir. 1997); *In re FMO Associates II, LLC*, 402 B.R. 546, 551–552 (Bankr. E.D.N.Y. 2009).

Based on the foregoing, the Court DENIES the Motion to Convert.

The Receiver Motion

Section 541 of the Bankruptcy Code provides that the commencement of a case under Title 11 creates an estate consisting of all legal and equitable interests of the debtor in property as of the commencement of the case. Section 323(a) provides that "[t]he trustee in a case under this title is the representative of the estate." Thus, after the estate is created and a trustee is appointed, "although the trustee is not vested with title of the debtor," 3 COLLIER ON BANKRUPTCY ¶ 323.02 (Richard Levin & Henry J. Sommer eds., 16th ed.), the trustee is the authorized individual through whom the estate acts as its representative under § 323(a).

Section 543 of the Bankruptcy Code provides, in pertinent part:

- (a) A custodian with knowledge of the commencement of a case under this title concerning the debtor may not make any disbursement from, or take any action in the administration of, property of the debtor, proceeds, product, offspring, rents, or profits of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
- (b) A custodian shall—
 - (1) deliver to the trustee any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the case; and

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(2) file an accounting of any property of the debtor, or proceeds, product, offspring, rents, or profits of such property, that, at any time, came into the possession, custody, or control of such custodian.

...

(d) After notice and hearing, the bankruptcy court—

(1) may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is not insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property

11 U.S.C. § 543(a)(b)(d).

Here, the Court finds that retention of the Receiver would not be in the best interest of creditors or the Estate; therefore, the Court DENIES the Receiver Motion. Having determined that this case should remain in Chapter 7, the Court finds that the Creditor has not established a basis for the Court to excuse compliance with the turnover requirements of § 543.

The Receiver shall turnover "any property of the debtor held by or transferred to such custodian, or proceeds, product, offspring, rents, or profits of such property, that is in such custodian's possession, custody, or control" to the Chapter 7 Trustee forthwith. With respect to the requirement under § 543(b)(2) that the Receiver file an accounting, the Court finds that the "Declaration of Matthew Taylor Re Accounting of Funds Received and Distributed in His Capacity as Receiver" [Doc. Nos. 71, 72] satisfies this requirement.

The Emergency Receiver Authorization

The Emergency Receiver Authorization is GRANTED. The Receiver is authorized to operate the Business of the Debtor *nunc pro tunc* to May 29, 2018, and to use cash collateral on an interim basis *nunc pro tunc* to May 29, 2018.

III. Conclusion

Based on the foregoing: (1) the Motion to Convert is DENIED; (2) the Motion to Retain Receiver is DENIED; and (3) the Emergency Motion for Receiver

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Authorization is GRANTED. The Receiver shall turnover Property of the Estate currently being held by the Receiver to the Chapter 7 Trustee pursuant to § 543(b)(1) forthwith.

The Court will prepare the order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
Steven Ibarra

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#4.00 Status Hearing RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

8/21/2018

On August 5, 2016, the Court approved the application of the Official Committee of Unsecured Creditors (the "Committee") to employ Weiland Golden Goodrich LLP ("Weiland") as local co-counsel. Bankr. Doc. No. 288. On May 25, 2018, the Court entered an order vesting the Committee with exclusive authority, on behalf of the Debtor and the estate, to investigate, initiate, prosecute, and settle any and all avoidance actions and claims against the estate. Bankr. Doc. No. 288. The Court also expanded the scope of Weiland's employment, authorizing Weiland to prosecute the avoidance actions. *Id.*

On June 6, 2018, the Committee filed 27 preference actions, seeking to recover transfers made by the Debtor to various creditors within the ninety-day period prior to the filing of the petition. The recoveries sought range from \$11,548.40 to \$221,886.00. In most of the preference actions, the recovery sought is \$50,000 or less.

Weiland did not file a Status Report in any of the 27 actions until after the Court issued *Orders to Comply*. The Court expects that in the future, Weiland will timely file Status Reports pursuant to the Local Rules of the Court and this judge, and will timely comply with all other orders issued by the Court.

Weiland has elected not to serve the complaints "in an effort to conserve costs and resolve the claims without protracted litigation." To provide Weiland additional time to negotiate potential settlements, a continued Status Conference shall be held on **November 13, 2018, at 10:00 a.m.**

In each Status Report filed in connection with the continued Status Conferences, Weiland shall advise the Court whether the action has settled. For those actions which

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have not settled, Weiland shall obtain an Alias Summons, and shall serve the Summons and Complaint upon each defendant. Each Summons and Complaint must be served upon the non-settling defendants by no later than **November 6, 2018**. Litigation deadlines will be set for those actions that have not settled at the continued Status Conference.

Weiland did not submit a Status Report in connection with Adv. No. 2:18-ap-01172-ER, *Committee v. US Foods, Inc.*, notwithstanding the issuance of the *Order to Comply*. As the omission appears to be inadvertent, the Court will not impose sanctions. The Court reiterates that at future Status Conferences, the Court expects Weiland to diligently comply with its obligations. Future failures to comply will not be dealt with so leniently.

In one of these actions, Adv. No. 2:18-ap-01195-ER, Defendant McKesson Health Solutions Holdings, LLC ("McKesson") filed an Answer out of an abundance of caution, notwithstanding Weiland's failure to serve the Summons and Complaint. By Answering the Complaint, McKesson has waived any objections to service. Accordingly, the Court will exercise jurisdiction over McKesson. Weiland is not required to obtain an alias summons in this action. With respect to Adv. No. 2:18-ap-01195-ER, the Court HEREBY FINDS and ORDERS as follows:

- 1) The Court lacks constitutional authority to enter final judgment in this preference action absent consent of all the parties. *See Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012). Because McKesson has not consented to entry of a final judgment by this Court, the Court will prepare and transmit to the District Court a Report and Recommendation containing proposed findings and a proposed judgment.
- 2) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **9/13/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **12/25/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **1/24/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **2/12/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not

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- available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **2/19/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **2/23/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **3/12/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of

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Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(i)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(i)(ii).
 - i) Trial is set for the week of **3/25/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

With respect to Adv. No. 2:18-ap-01195-ER, the Court will enter a *Scheduling Order* and Weiland shall submit an order assigning the matter to mediation. With respect to the remaining actions, the Court will prepare and enter orders setting the continued Status Conferences.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By

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Samuel R Maizel
John A Moe

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Defendant(s):

Southland Medical Dialysis, Inc. Pro Se

Plaintiff(s):

Official Committee of Unsecured
Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#5.00 Status HearingRE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#6.00 Status HearingRE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01173 Official Committee of Unsecured Creditors of Garde v. BETA Healthcare

#7.00 Status HearingRE: [1] Adversary case 2:18-ap-01173. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against BETA Healthcare Group. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

BETA Healthcare Group

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#8.00 Status Hearing RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#9.00 Status Hearing RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#10.00 Status HearingRE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#11.00 Status HearingRE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#12.00 Status HearingRE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

American Red Cross of California

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#13.00 Status HearingRE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01180 Official Committee of Unsecured Creditors of Garde v. L.A. Good Samaritan

#14.00 Status HearingRE: [1] Adversary case 2:18-ap-01180. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against L.A. Good Samaritan Pathology Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

L.A. Good Samaritan Pathology

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#15.00 Status HearingRE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01182 Official Committee of Unsecured Creditors of Garde v. Cardioimage

#16.00 Status HearingRE: [1] Adversary case 2:18-ap-01182. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Cardioimage Dynamics, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Cardioimage Dynamics, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#17.00 Status HearingRE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#18.00 Status Hearing RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#19.00 Status HearingRE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#20.00 Status HearingRE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#21.00 Status HearingRE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#22.00 Status HearingRE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#23.00 Status HearingRE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#24.00 Status HearingRE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 22, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#25.00 Status HearingRE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, August 22, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#26.00 Status HearingRE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. Nordian Healthcare

#27.00 Status HearingRE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordian Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Nordian Healthcare Solutions, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
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2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#28.00 Status HearingRE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#29.00 Status HearingRE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#30.00 Status HearingRE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

Docket 1

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
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Wednesday, August 22, 2018

Hearing Room 1568

11:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#100.00 HearingRE: [40] Motion to Withdraw as Attorney with proof of service.

Docket 40

Tentative Ruling:

8/21/2018

For the reasons set forth below, the Motion to Withdraw is GRANTED.

Pleadings Filed and Reviewed:

- 1) Motion to Withdraw as Counsel [Doc. No. 40] (the "Motion")
 - a) Notice of Motion to Withdraw [Doc. No. 41]
- 2) No opposition is on file

I. Facts and Summary of Pleadings

Robert Reganyan ("Counsel"), counsel for Defendant Kevin Thomas Roy, moves to withdraw from representation. Counsel states that he agreed to represent the Defendant on a limited basis for purposes of filing a Rule 12(b)(6) motion, and that thereafter, Counsel continued to informally assist the Defendant without compensation on several future matters. In support of the Motion, Defendant submits a declaration stating that he is using all his resources to defend the underlying State Court Action and cannot afford to pay Counsel.

Counsel previously attempted to withdraw from representation by filing a purported *Substitution of Attorney* form. On August 3, 2017, the Court struck the purported substitution from the record. Doc. No. 15. The Court explained that Counsel could withdraw only upon leave of Court.

No Opposition to the Motion is on file.

II. Findings and Conclusions

Local Bankruptcy Rule ("LBR") 2091-1(a) requires that counsel obtain leave of court to withdraw from representation. LBR 2091-1(e)(2) provides that "no ... withdrawal will be allowed that will cause unreasonable delay in prosecution of the

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CONT... **Kevin Thomas Roy**

Chapter 7

case or proceeding to completion."

On June 22, 2018, the Court stayed prosecution of this action pending resolution of the underlying State Court Action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable. Doc. No. 37. A Status Conference is set for September 11, 2018, at 10:00 a.m. *Id.*

Because this action has been stayed, Counsel's withdrawal will not cause undue delay. The Motion is GRANTED. Once a final, non-appealable judgment has been entered in the State Court Action and the stay of prosecution of this action is lifted, the Court strongly advises Defendant to retain counsel. The Court further advises Defendant that notwithstanding the absence of counsel, he remains responsible for complying with all orders of the Court—including the timely filing of a Joint Status Report in connection with the upcoming Status Conference.

Counsel shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

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Central District of California
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CONT... Kevin Thomas Roy

Chapter 7

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, August 22, 2018

Hearing Room 1568

11:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

#101.00 HearingRE: [64] Application for Compensation First Interim Application for Attorneys Fees and Reimbursement of Costs of Steinberg, Nutter & Brent, Law Corp.; Declarations of Peter T. Steinberg and Simin Hashemizadeh in Support Thereof; with Exhibits A, B, C, D, E, F, and G; and Proof of Service for Peter T Steinberg, Debtor's Attorney, Period: 3/13/2018 to 6/28/2018, Fee: \$33,155.00, Expenses: \$2,409.80.

Docket 64

Tentative Ruling:

8/21/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

The Objection of the United States Trustee to the First Interim Application [Doc. No. 71] is SUSTAINED. Pursuant to the "Order Granting Application to Employ Steinberg, Nutter & Brent" [Doc. No. 26], the effective date of employment was March 15, 2018. Thus, the Objection is sustained to the extent the Fee Application includes fees incurred prior to the effective date of employment in the amount of \$635.00.

Fees: \$32,520.00 (33,155.00 less the reduction of \$635.00)

Expenses: \$2,409.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#102.00 HearingRE: [693] Application for Compensation Application Of JD Brothers LLC For An Order Granting Administrative Expense Treatment For Substantial Contribution To Estate For Work As (1) Chair Of The Unsecured Creditors Committee; (2) Creditors Committee Member; and (3) Individual Creditor for JD Brothers LLC, Creditor's Attorney, Period: 3/21/2016 to 7/2/2018, Fee: \$28,550.00, Expenses: \$2,100.72.

Docket 693

Tentative Ruling:

8/21/2018

For the reasons set forth below, the Motion is GRANTED IN PART and DENIED IN PART. JD's request for administrative expense priority for expenses in the amount of \$2,100.72 is GRANTED. JD's request for administrative expense priority for fees incurred by its attorney, C. Alex Naegele, in the amount of \$28,550.00 is DENIED.

Pleadings Filed and Reviewed:

- 1) Application of JD Brothers LLC for an Order Granting Administrative Expense Treatment for Substantial Contribution to Estate for Work as (1) Chair of the Unsecured Creditors Committee; (2) Creditors Committee Member; and (3) Individual Creditor [Doc. No. 693] (the "Motion")
 - a) Notice of Hearing on [Motion] [Doc. No. 695]
- 2) Objection of Benjamin Kirk to the Application of JD Brothers LLC for an Order Granting Administrative Expense Treatment for Substantial Contribution to Estate for Work as (1) Chair of the Unsecured Creditors Committee; (2) Creditors Committee Member; and (3) Individual Creditor [Doc. No. 713] (the "Opposition")
- 3) Reply to Objection of Benjamin Kirk to Application of JD Brothers LLC for an Order Granting Administrative Expense Treatment for Substantial Contribution to Estate for Work as (1) Chair of the Unsecured Creditors Committee; (2) Creditors Committee Member; and (3) Individual Creditor [Doc. No. 715] (the "Reply").

I. Facts and Summary of Pleadings

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CONT... Liberty Asset Management Corporation

Chapter 11

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

On June 9, 2016, the Court granted Liberty's application to employ Lawrence R. Perkins as Chief Restructuring Officer ("CRO"), with such employment effective as of March 28, 2016. Doc. No. 94.

On June 18, 2018, the Court confirmed a Plan of Liquidation (the "Plan"), proposed by Liberty's Official Committee of Unsecured Creditors (the "Committee"). Doc. No. 665. The Plan provides for the liquidation of Liberty's assets, with such liquidation to be overseen by a Plan Administrator. Bradley D. Sharp of Development Specialists, Inc. ("DSI") is presently serving as the Plan Administrator. Mr. Sharp has retained Pachulski Stang Ziehl & Jones LLP, the law firm that advised the Committee, to represent him in overseeing the liquidation.

JD Brothers LLC ("JD") moves for allowance of an administrative expense claim pursuant to §§503(b)(3)(D), (b)(3)(F), and (b)(4). JD seeks fees in the amount of \$28,550.00 and expenses in the amount of \$2,100.72. The fees are sought for the work that attorney C. Alex Naegele performed advising JD, which served as the Chair of the Official Committee of Unsecured Creditors (the "Committee"). Benjamin Kirk opposes the Motion.

JD's Motion for Allowance of an Administrative Expense Claim

JD makes the following arguments and representations in support of the Motion:

Because of the unique manner in which this case unfolded, counsel for the Committee was responsible for performing most of the work. The issues with the Debtor's insiders made it such that there was not even really a Debtor client for the Committee to consult, and there were no records. JD, in its capacity as Chair of the Committee, was required to invest substantial time and resources communicating with the Committee's counsel regarding the direction of the case. Specifically, JD had responsibility for day-to-day management of the Committee. In this role, the Chair reviewed and commented on nearly every pleading, e-mail, and document sent by counsel for the Committee. The work JD performed was essential to the ultimate confirmation of the Committee's liquidating plan.

Mr. Naegele's billing rate of \$250 per hour is well below the market rate of \$450 per hour of similarly qualified professionals. Mr. Naegele has been selected as a

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Northern California Super Lawyer "rising star" in the field of business bankruptcy for the years 2016, 2017, and 2018. The fees of \$28,550.00 and expenses of \$2,100.72 are modest when compared to the benefit realized by the estate as a result of JD's work.

Benjamin Kirk's Opposition

Benjamin Kirk makes the following arguments in Opposition to the Motion:

JD is not entitled to an administrative expense claim for any legal fees incurred by its outside counsel for work performed assisting JD in fulfilling its responsibilities as Chair of the Committee. Section 503(b)(3)(F) allows, as an administrative expense, the "actual, necessary expenses ... incurred by ... a member of a committee appointed under section 1102" However, §503(b)(4) does not allow as an administrative expense fees incurred by a Committee members' professionals. Thus, the plain language of the statute bars the Court from awarding the relief sought by JD.

Even if JD's professional, Mr. Naegele, was entitled to an administrative expense claim, JD has failed to show that JD has made a substantial contribution to the case. There is no evidence that Mr. Naegele did anything other than the basic things an attorney would need to do for his client under the circumstances. Mr. Naegele's time records reflect that he did little more than review the Debtor's schedules and pleadings, work on an objection to a fee application that Mr. Naegele's own time entries indicate he subsequently withdrew, lobby the United States Trustee to sit on the Committee, and prepare for and attend the Debtor's first meeting of creditors. These activities are routinely undertaken by unsecured creditors such as JD in a Chapter 11 case.

It is true that a liquidating plan was ultimately confirmed. But there is no evidence that tasks undertaken by Mr. Naegele on JD's behalf were more than incidental to that result. JD hired Naegele to protect and preserve its \$24 million claim. At most, it can be said that Mr. Naegele did that.

JD's Reply in Support of the Motion

JD makes the following arguments in its Reply to Benjamin Kirk's Opposition:

Benjamin Kirk lacks standing to object to the Motion. JD's application for an administrative expense claim was directed not against Kirk but against the funds in the estate. Mr. Kirk holds only an equity interest in the Debtor. Because there is only \$4-5 million to distribute to unsecured creditors, and \$80 million or more in claims,

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CONT... **Liberty Asset Management Corporation**

Chapter 11

Mr. Kirk will never receive a distribution on account of his equity interest. Thus, Mr. Kirk will not be adversely affected by an order awarding JD an administrative expense claim. Because no party that has standing has objected, the Motion should be granted.

To the extent the Court entertains Mr. Kirk's arguments, then Mr. Kirk must necessarily have standing, which means Mr. Kirk must have a pecuniary interest in the estate. Such a pecuniary interest would amount to an unsecured claim against the estate. But Mr. Kirk cannot assert such a pecuniary interest, because he failed to timely file a proof of claim, and he has failed to pay the \$75 million dollar judgment entered against him and in favor of the estate.

Even if Mr. Kirk had standing, his arguments lack merit. Pursuant to §503(b)(3)(D), the "actual, necessary expenses" of a creditor "in making a substantial contribution in a case under chapter ... 11" are entitled to administrative expense status. In the Ninth Circuit, the "principal test of substantial contribution is 'the extent of benefit to the estate.'" *Cellular 101, Inc. v. Channel Communications, Inc. (In re Cellular 101, Inc.)*, 377 F.3d 1092, 1096–97 (9th Cir. 2004). Here, the work JD performed as Committee Chair was necessary and benefitted the estate. The Court ordered mediations that JD was required to attend. JD was required to sign declarations, which JD was required to review given its fiduciary responsibilities to the Committee.

II. Findings and Conclusions

A. Benjamin Kirk Lacks Standing to Object

To have standing to object, a party must be "a 'person aggrieved'" by the decision of the Court. *Duckor Spradling & Metzger v. Baum Trust (In re P.R.T.C., Inc.)*, 177 F.3d 774, 777 (9th Cir. 1999). A party is aggrieved if he or she is "directly and adversely affected pecuniarily by an order of the bankruptcy court"; the Court's order must diminish the party's "property, increase [his] burdens, or detrimentally affect [his] rights." *Id.* at 777.

Benjamin Kirk lacks standing to object to the Motion because he will not be adversely pecuniarily affected by an order awarding JD an administrative expense claim. Mr. Kirk asserts that he holds 100% of the equity in Liberty. Testimony elicited in connection with a previous hearing established that Lucy Gao may hold a 20–50% beneficial interest in Liberty. The Court has never ruled upon the issue of who holds Liberty's equity, and makes no such ruling today. However, assuming *arguendo* that Mr. Kirk and Ms. Gao are the holders of Liberty's equity, allowance of JD's administrative expense claim would not affect Mr. Kirk's ability to receive a

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Chapter 11

distribution from the estate.

Under the Plan, Mr. Kirk is a member of Class 4. The only way that Class 4 could receive any distribution in connection with the liquidation of Liberty's assets would be if the Committee succeeds in collecting upon the \$74 million judgment against Mr. Kirk and Ms. Gao. Absent that judgment, the Committee anticipates that between \$11.9 million and \$13.8 million will be available for distribution to general unsecured creditors. General unsecured claims are estimated to be between \$75 million and \$80 million. Therefore, Mr. Kirk and Ms. Gao would not receive a distribution unless the Committee collected upon its judgment against them. Of course, if the Committee collected upon the judgment, the distribution would be economically meaningless since it would merely return to Mr. Kirk and Ms. Gao the funds that had been collected from them.

B. Under the Plain Language of the Statute, JD is Not Entitled to an Administrative Expense Claim for Fees Incurred by its Counsel for Work Performed as the Chair of the Committee

Section 503(b)(3) allows, as an administrative expense, the "actual, necessary expenses" incurred by:

(D) a creditor, an indenture trustee, an equity security holder, or a committee representing creditors or equity security holders other than a committee appointed under section 1102 of this title, in making a substantial contribution in a case under chapter 9 or 11 of this title [or] ...

(F) a member of a committee appointed under section 1102 of this title, if such expenses are incurred in the performance of the duties of such committee

Section 503(b)(3) expressly excludes allowance of "compensation and reimbursement specified in" §503(b)(4)—that is, "compensation for professional services rendered by an attorney or an accountant" of an entity whose expenses are allowable under § 503(b)(3). Section 503(b)(4) allows compensation for professionals employed by entities whose expenses are allowable under §503(b)(3)(A), (B), (C), (D), and (E). However, §503(b)(4) does not allow compensation for professionals employed by entities whose expenses are allowable under §503(b)(3)(F)—that is, a member of an official committee of creditors or equity security holders.

As one court has explained:

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Relevant here, official committee members' professional fee expenses are not included in § 503(b). The problem is not that such expenses are not listed—the list is not exhaustive—but instead that the structure of § 503(b)(3) and (4) glaringly exclude professional fee expenses for official committee members. *See* 11 U.S.C. § 503(b)(3), (4).⁴ Specifically, § 503(b)(3) allows for the payment of "actual, necessary expenses" incurred in situations listed in § 503(b)(3)(A) through (F), all of which involve work contributing to the bankruptcy case. *See* 11 U.S.C. § 502(b)(3). Section 503(b)(3)(F) provides for the payment of the expenses incurred by official committee members in performing committee work. Section 503(b)(3), however, explicitly excludes *professional fee* expenses—that is, the cost of hiring lawyers or accountants—from the expenses it authorizes. *Id.* § 503(b)(3). Professional fee expenses are instead covered by § 503(b)(4). That section authorizes professional fee expenses for any entity that qualifies for expenses under § 503(b)(3)(A) through (E). *Id.* § 502(b)(4). Importantly, entities eligible for expenses under § 503(b)(3)(F)—members of an official committee—are not covered by § 503(b)(4). *Id.* Consequently, § 503(b)(3) and 503(b)(4) work together to guarantee full payment for any professional fee expense incurred in a situation covered by § 503(b)(3)(A) through (E), but not (F).

Davis v. Elliot Management Corp. (In re Lehman Bros. Holdings Inc.), 508 B.R. 283, 290 (S.D.N.Y. 2014).

Collier on Bankruptcy, the leading treatise, explains that in certain instances a committee member may be entitled to allowance of an administrative expense claim:

The exclusion of subparagraph (F) does not mean that a committee member is never entitled to have such member's professional fees awarded administrative expense status. Although a committee appointed under section 1102 is excluded from the "substantial contribution" provision in section 503(b)(3)(D), an individual committee member that makes a "substantial contribution" under section 503(b)(3)(D) as a creditor or equity security holder, *independent of the work of the committee*, is eligible to seek administrative expense status for professional fees under section 503(b)(4).

[4 Collier on Bankruptcy P 503.11 \(16th ed. 2018\) \(emphasis added\)](#).

Here, JD's professional Mr. Naegele is not entitled to fees under §503(b)(4), on account of JD's expenses under §503(b)(3)(D), because the work JD performed was not independent of the work of the Committee. To the contrary, throughout the

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Motion JD emphasizes that the work it performed was in furtherance of its role as Committee Chair. Accordingly, Mr. Naegele is not entitled to an administrative expense claim under §503(b)(4)'s incorporation of §503(b)(3)(D).

Further, basic principles of statutory construction do not permit allowance of fees for JD's professionals pursuant to §503(b)(4)'s incorporation of §503(b)(3)(D). Section 503(b)(3)(D) allows administrative expense status for fees incurred by professionals employed by a "creditor ... in making a substantial contribution" Although JD is a creditor, §503(b)(3)(F) contains a more specific provision applicable to the type of claim asserted by JD. Under §503(b)(3)(F), expenses incurred by a committee member "in the performance of the duties of such committee" are allowed. Unfortunately for JD, §503(b)(4) does not allow the expenses of professionals employed by a creditor serving on a committee. It would not be appropriate for the Court to allow fees for JD's professional under a generalized provision where a more specific provision does not provide for the allowance of such fees.

However, under the plain language of §503(b)(3)(F), JD is entitled to expenses incurred performing its duties on the Committee. Accordingly, the Court will allow the \$2,100.72 in expenses sought in the Motion.

The Court's ruling is in no way intended to derogate the work performed by JD as Chair of the Committee. Having reviewed the Motion and the time records submitted by JD's counsel, the Court agrees that JD's efforts as Committee Chair were instrumental in facilitating confirmation of the Plan. Unfortunately, under these circumstances, the statute does not permit the Court to award administrative expense status for fees incurred by JD's professionals.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik

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Liberty Asset Management Corporation

Chapter 11

Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

#103.00 HearingRE: [67] Application for Compensation First Interim Application for Fees and Reimbursement of Costs for Tamar Terzian, Patient Care Ombudsman; Declaration of Tamar Terzian in Support Thereof with proof of service for Tamar Terzian, Ombudsman Health, Period: 5/1/2018 to 6/30/2018, Fee: \$4620.00, Expenses: \$20.00.

Docket 67

Tentative Ruling:

8/21/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$4,620.00

Expenses: \$20.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, August 23, 2018

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10:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#1.00 HearingRE: [39] Motion For Summary Judgment (Du Wors, John)

Docket 39

Tentative Ruling:

8/22/2018

For the reasons set forth below, Zeta is entitled to summary judgment that the transfers at issue are exempt from avoidance pursuant to §547(c)(2)(A) and §547(c)(2)(B).

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 U.S.C. §§547(b), 550(a), and 551] and (2) Disallowance of any Claims Held by Defendant [11 U.S.C. §502(d)] [Doc. No. 1] (the "Complaint")
- 2) Notice of Defendant's Motion for Summary Judgment and Defendant's Motion for Summary Judgment [Doc. No. 39] (the "Motion")
 - a) Declaration of William Ettenger in Support of Defendant's Motion for Summary Judgment [Doc. No. 40] (the "Ettenger Decl.")
 - b) Notice of Errata and Correction Regarding Defendant's Motion for Summary Judgment (containing inadvertently omitted Expert Declaration of Brian N. Benenhaley) [Doc. No. 46] (the "Benenhaley Decl.")
 - c) Notice of Errata and Correction Regarding Defendant's Motion for Summary Judgment (containing inadvertently omitted CV or Brian N. Benenhaley) [Doc. No. 50]
 - d) Declaration of John Du Wors in Support of Defendant's Motion for Summary Judgment [Doc. No. 52]
- 3) Opposition to Defendant's Motion for Summary Judgment [Doc. No. 42] (the "Opposition")
 - a) Evidentiary Objections to the Expert Declaration of Brian N. Benenhaley [Doc. No. 43]
 - b) Evidentiary Objections to Declaration of William Ettenger in Support of Defendant's Motion for Summary Judgment [Doc. No. 44]
 - c) Statement of Genuine Issues in Support of Opposition to Defendant's Motion

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for Summary Judgment [Doc. No. 45]

- d) Supplemental Declaration of Jeffrey S. Kwong in Support of Opposition to Defendant's Motion for Summary Judgment [Doc. No. 51]
- 4) Reply in Support of Defendant's Motion for Summary Judgment [Doc. No. 47] (the "Reply")
 - a) Defendant's Response to Evidentiary Objections to Declaration of William Ettenger in Support of Defendant's Motion for Summary Judgment [Doc. No. 48]
 - b) Defendant's Response to Evidentiary Objections to the Expert Declaration of Brian N. Benenhaley [Doc. No. 49]

I. Facts and Summary of Pleadings

In this preference action, the Chapter 7 Trustee (the "Trustee") seeks to avoid transfers totaling \$601,723.52 made by the Debtor to Zeta Interactive ("Zeta") during the ninety-day period prior to the date of the filing of the petition (the "Petition Date"). The Trustee further seeks disallowance of any claim asserted by Zeta, pursuant to § 502(d).

The Debtor is a failed Internet-based financial services business. Zeta provides marketing solutions to help brands acquire, grow, and retain customers. Zeta provided services to the Debtor between 2011 and 2016.

Zeta moves for summary judgment in its favor. For purposes of the §547(c) preference defense, Zeta asserts that it conducts business within the affiliate-marketing industry. Zeta offers the testimony of Brian Benenhaley, whom it asserts is an expert in the affiliate marketing industry, in support of its contention that payment practices within that industry are highly variable. Based upon Mr. Benenhaley's testimony, Zeta argues that the payments which the Trustee seeks to avoid were made within the ordinary course of the business of the Debtor and Zeta. In the alternative, Zeta asserts that the payments were made according to ordinary business terms within the affiliate marketing industry.

The Trustee opposes the Motion, contending that a preference action involves factually intensive issues that are not appropriately disposed of in the context of summary judgment. The Trustee contends that there are disputed issues of material fact over the ordinariness of the transfers. Specifically, the Trustee argues that Zeta has focused only on transfers made by the Debtor subsequent to June 2016, even though the Debtor's business relationship with Zeta commenced in 2011. The Trustee

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asserts that the dispute as to the appropriate time period to be used to assess the ordinariness of the transfers precludes entry of summary judgment.

The Trustee further asserts that Zeta has not established that the affiliate marketing industry is the appropriate industry for purposes of determining whether the transactions at issue were made in the ordinary course of business. The Trustee's position is that the general advertising industry, rather than the more specialized affiliate marketing industry, is the appropriate industry.

In Reply to the Trustee's Opposition, Zeta asserts that the Trustee has failed to demonstrate the existence of a genuine dispute as to any material fact. Zeta notes that the Trustee has not disputed the parties' payment history, the absence of communications between the Debtor and Zeta, or that Zeta did not know the Debtor's financial condition. Zeta asserts that these facts are sufficient to support judgment that the payments are exempt from avoidance under §547(c).

II. Evidentiary Rulings

In support of its contentions regarding payment practices in the affiliate marketing industry, Zeta offers the testimony of Brian N. Benenhaley. Zeta asserts that Mr. Benenhaley should be treated as an expert witness under Federal Rule of Evidence ("FRE") 702. The Trustee asserts that Mr. Benenhaley's testimony is inadmissible for the following reasons:

- 1) The testimony is not reliable because it is based only on payments made by the Debtor to Zeta from June 30, 2015 to January 31, 2017, even though the parties' business relationship extended from 2011 to 2017. To opine as to whether the payments were made according to ordinary business terms or in the ordinary course of business, Mr. Benenhaley was required to review payments over the entirety of the parties' business relationship.
- 2) The testimony is not reliable because it is not supported by any objective data, statistics, or reports.
- 3) Zeta has not made a sufficient showing that Mr. Benenhaley is qualified as an expert in affiliate marketing.

The Trustee's objections to the admissibility of Mr. Benenhaley's testimony are overruled, and the Court will treat Mr. Benenhaley as an expert witness under FRE 702. Mr. Benenhaley's declaration sufficiently establishes his qualifications to testify as an expert in the area of affiliate marketing. In his declaration, Mr. Benenhaley states that he co-founded Reachsmart Interactive/AdDrive Affiliate Network

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("ReachSmart") in 2000. Benenhaley Decl. at ¶5. Mr. Benenhaley was employed by Reachsmart from 2000 to 2014, serving as Chief Operating Officer, General Counsel, and a member of the Board of Directors. *Id.* While at Reachsmart, Mr. Benenhaley developed protocols for the creation and deployment of websites, advertising campaigns, and affiliate marketing programs, helping the company grow from an idea to an enterprise with \$35 million in annual revenue. *Id.* At Reachsmart, Mr. Benenhaley negotiated agreements with advertisers and publishers and monitored accounts receivable from advertisers and accounts payable to publishers. *Id.* During his tenure the business facilitated payments of hundreds of millions of dollars between advertisers and publishers. *Id.* Mr. Benenhaley has given presentations on affiliate marketing and performance-based advertising on several occasions, including a presentation at the Directing Marketing Association headquarters in New York. *Id.*

[Note 1]

Federal Rule of Evidence ("FRE") 702 provides:

- A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:
- a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
 - b) the testimony is based on sufficient facts or data;
 - c) the testimony is the product of reliable principles and methods; and
 - d) the expert has reliably applied the principles and methods to the facts of the case.

Under FRE 702, an expert may be qualified by "experience" or "training." Here, Mr. Benenhaley's declaration amply establishes that he has sufficient experience and training to testify regarding payment practices in the affiliate marketing industry. Mr. Benenhaley's declaration shows that he has first-hand, on-the-ground experience in this very industry. As noted by one bankruptcy court, witnesses who have worked in the industry at issue "may be prime candidates for providing relevant testimony." *Stanziale v. Southern Steel & Supply, LLC (In re Conex Holdings, LLC, 518 B.R. 269, 286 (Bankr. D. Del. 2014).*

The Trustee takes issue with Mr. Benenhaley's testimony because it is not accompanied by any statistical reports or other academic research. While studies and other scientific reports are often useful, it is a fallacy to assume that expert testimony

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not accompanied by such reports lacks credibility. Particularly in a nascent industry such as Internet-based affiliate marketing, testimony of industry practitioners such as Mr. Benenhaley can be just as useful as academic studies.

The Trustee also asserts that Mr. Benenhaley's opinions are not reliable because he based his conclusions only on payments made by the Debtor to Zeta between June 30, 2015 and January 31, 2017, even though the parties' business relationship extended from 2011 to 2017. The Trustee's objection lacks merit. As Zeta explains in its reply papers, it chose to streamline its Motion by focusing only upon transfers subsequent to June 30, 2016, because the amounts owed to Zeta by the Debtor increased dramatically subsequent to June 2016.

The Court further notes that although the Trustee attacks Mr. Benenhaley for presenting only those transactions subsequent to June 30, 2016, the Trustee did not present to the Court any evidence of payment transactions between the Debtor and Zeta before June 2016. In opposing a motion for summary judgment, a party must cite "to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials" Civil Rule 56(c)(1)(A). To support his position that Mr. Benenhaley's testimony is unreliable because it relies only on transactions subsequent to June 30, 2016, the Trustee was required to present to the Court a history of transactions prior to that date, and point out the ways in which the transactions prior to June 2016 differed materially from the transactions subsequent to June 2016. Because the Trustee could have easily presented such evidence to the Court yet failed to do so, the Court is entitled to presume that the transaction history presented by Zeta accurately reflects the business dealings between the parties.

The Trustee also objects to the Declaration of William Ettenger, Zeta's in-house-counsel. The Trustee asserts that Mr. Ettenger's testimony lacks foundation because his declaration does not specify how long he was employed at Zeta. The Trustee's objections lack merit. Mr. Ettenger's declaration establishes that in his capacity as Zeta's in-house counsel, he is familiar with Zeta's business operations and billing and payment practices. Ettenger Decl. at ¶2. The fact that Mr. Ettenger's declaration does not identify the precise period during which he has been employed at Zeta does not undermine his credibility.

III. Findings and Conclusions

Summary judgment is appropriate "if the movant shows that there is no genuine

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dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

A. Material Facts as to Which there is No Genuine Dispute

Having reviewed the Motion and supporting evidence and declarations, the Opposition, and the pleadings on file, the Court finds that there is no genuine dispute as to the following material facts:

1. The Debtor and Zeta's Business

The Debtor, Blue Global, is a failed Internet-based financial services business. Zeta provides marketing solutions for helping brands to acquire, grow, and retain customers. Ettenger Decl. at ¶3. Zeta offers a range of services, including Internet-based advertising known as "affiliate marketing." *Id.* at ¶4. Zeta provided affiliate marketing services to the Debtor between 2011 and 2016. *Id.* at ¶5.

The Debtor used Zeta's services to promote its website and associated services. *Id.* at ¶6. Zeta provided a suite of ad creation, optimization, and marketing services. *Id.* at ¶7. Zeta was paid on a pay-per-lead model, meaning that for every consumer that clicked on a link in one of Zeta's Internet ads, was transited to the Debtor's website, and then provided contact information to the Debtor, the Debtor owed Zeta a payment. *Id.* at ¶8.

2. Payment Characteristics Within the Affiliate Marketing Industry

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Payment practices within the affiliate marketing industry are highly variable, particularly when compared to practices in more traditional forms of media and advertising. Benenhaley Decl. at ¶5. In traditional advertising, an advertiser pays a publisher such as a TV station, newspaper, or website owner a set rate based upon a certain number of impressions. *Id.* The rate may vary based upon the audience of the television program or website, or the circulation of the publication, but the rate is set before the deployment of the media and often paid in advance. *Id.* There is no variance based upon the effectiveness of the advertisement in generating consumer action. *Id.*

Affiliate marketing is entirely different. *Id.* An advertiser generally promises to pay a publisher a set amount for each consumer action that is recorded that is attributed to the advertisement. *Id.* There is no guarantee an advertiser will receive any payment regardless of how many times the advertisement is displayed. *Id.* The advertiser earns payment only when a consumer clicks on an ad (cost per click) or submits information (cost per lead) or makes a purchase (cost per acquisition). *Id.*

This is made possible by affiliate market attribution technology, which allows the advertiser to identify the source of any traffic to their website from a particular advertisement. *Id.* It is accordingly difficult for an advertiser or a publisher to know how much money will be due from month to month. *Id.* at ¶9. Affiliate marketers must wait until the end of the applicable reporting period (which can be daily, weekly, or monthly depending on the campaign) to finalize invoices, based on how many consumers responded to the advertisement. *Id.* This uncertainty is the primary contributing factor for payment unpredictability. *Id.*

However, there are additional factors that lead to the extreme variance in payment practices often encountered in affiliate marketing. *Id.* Reconciliation of the total number of consumer actions is also a major contributing factor to variances in payment schedules. *Id.* at ¶10. In every affiliate relationship, there is an advertiser and a publisher. Each entity keeps their own track of qualifying actions. *Id.* The total counts of qualifying actions compiled by the advertiser and publisher rarely match. Sometimes, the counts vary widely and the advertiser and publisher must negotiate a compromise. *Id.*

Affiliate publishers also rotate ad campaigns heavily based on response rates, leading to further unpredictability. *Id.* at ¶11. Affiliate marketing agreements do not mandate a set number of impressions. *Id.* This results in publishers heavily rotating advertisements looking for ads that produce the best economic performance for them based on consumer response and the rate paid by the advertiser per qualifying action.

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Id. Thus, it is impossible to forecast even the number of impressions a publisher will generate for any particular advertisement in any reporting period, as publishers rotate ads based on consumer sentiment, quality/freshness of ad creative, and changes in the rates advertisers are willing to pay for qualifying actions. *Id.*

The final factor that is a major contributor to the unpredictability of payment schedules in affiliate marketing is the unique way credit risk is allocated. *Id.* at ¶12. Although some of the world's largest advertisers and content distribution networks engage in affiliate marketing, the majority of affiliate marketers are much smaller and less well known. *Id.* Thus, affiliate marketers often find themselves doing a considerable volume of business with an unfamiliar partner with little credit history. *Id.* Most affiliate agreements are between entities where representatives of the respective businesses have never met in person. *Id.* Advertisers want to vet publishers thoroughly to minimize the risk of fraud, and publishers often aggressively manage the extension of credit to avoid over-exposure for non-payment. *Id.* Publishers often demand accelerated payments at intervals that would be unthinkable in conventional advertising. *Id.* Weekly, bi-weekly, and even daily payments are common, particularly when a publisher is succeeding at drawing consumers to the advertiser's website. *Id.*

Publishers often set credit limits that result in campaigns being taken out of rotation when an advertiser owes a certain amount until a payment is made to reduce the outstanding balance below the limit. *Id.* These payments often come in the form of partial payments made between the issuance of invoices. *Id.* On the converse side, long delays in payments can occur based on sequential liability clauses included in the agreements between affiliate networks and publishers. *Id.*

It is common in the industry for affiliate networks to reserve the right to withhold payment to publishers until such time as the network receives payment from the advertiser. *Id.* Networks routinely use this to justify making accelerated payments to active publishers who are driving good quality leads and delaying payments to other publishers who have either stopped providing traffic to a campaign or are producing a lower quantity/quality of leads to the advertiser. *Id.*

3. The Debtor's Financial Condition and Payments Made by the Debtor to Zeta

On March 17, 2016, the Debtor entered into a Consent Order with the New York State Department of Financial Services (the "NY Department"). Among other things, the Consent Order required the Debtor to make the following payments to the NY Department:

- 1) \$100,000 by no later than April 1, 2016;

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- 2) \$100,000 by no later than May 31, 2016;
- 3) \$200,000 by no later than December 31, 2016;
- 4) \$150,000 by no later than June 1, 2017;
- 5) \$150,000 by no later than December 31, 2017;
- 6) \$150,000 by no later than June 1, 2018;
- 7) \$150,000 by no later than December 31, 2018.

Consent Order at ¶28 (attached to Proof of Claim 19-1).

The Debtor made the first payment of \$100,000 by the April 1, 2016 deadline. *See Agreement to Amend the Payment Terms Under the March 17, 2016 Consent Order and Establish a Custodial Account for Future Payments* (the "NY Modification Agreement") (attached to Proof of Claim 19-1) (reciting the history of payments made by the Debtor under the Consent Decree). On May 24, 2016, the Debtor informed the NY Department that it would be unable to make the second payment of \$100,000 by May 31, 2016 as required by the Consent Order. *Id.* During the month of June 2016, the Debtor made the following payments to the NY Department:

- 1) \$10,000 payment made on June 3, 2016;
- 2) \$10,000 payment made on June 10, 2016;
- 3) \$10,000 payment made on June 17, 2016;
- 4) \$10,000 payment made on June 24, 2016.

Id.

On July 19, 2016, the Debtor and the NY Department entered into the NY Modification Agreement, which required the Debtor to initiate recurring Automated Clearing House ("ACH") transfers to the NY Department of at least \$10,000 every seven days into a custodial account until the outstanding penalty amount of \$860,000 was satisfied.

The payments required under the Consent Decree, and the payments required under the amended payment schedule imposed by the NY Modification Agreement, imposed a financial burden upon the Debtor. Deposition of Christopher Kay [Doc. No. 51].

The Debtor made the following payments to Zeta prior to the date of the filing of the petition (the "Petition Date") (payments which the Trustee seeks to avoid are in **bold**):

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Invoice Date	Sales Amount	Payment Date	Amount Received	Days Between Invoice Date and Payment Date
6/30/2015	\$55,300.00	8/5/2015	\$55,300.00	36
7/31/2015	\$100,169.95	9/10/2015	\$100,169.95	41
8/31/2015	\$119,596.31	10/14/2015	\$119,596.31	44
9/30/2015	\$110,172.16	11/10/2015	\$110,172.16	41
10/31/2015	\$100,226.62	12/10/2015	\$100,226.61	40
11/30/2015	\$61,698.33	1/6/2016	\$61,698.33	37
12/31/2015	\$143,616.48	2/2/2016	\$143,616.48	33
1/31/2016	\$86,940.20	3/1/2016	\$86,940.20	30
2/29/2016	\$154,929.72	4/15/2016	\$25,000.00	46
2/29/2016		4/22/2016	\$25,000.00	53
2/29/2016		4/25/2016	\$29,929.72	56
2/29/2016		4/27/2016	\$75,000.00	58
3/17/2016: Debtor enters into Consent Decree with NY Department				
3/31/2016	\$60,079.52	4/29/2016	\$60,079.52	29
4/30/2016	\$49,504.40	6/8/2016	\$49,504.40	39
5/31/2016	\$88,215.32	7/22/2016	\$88,215.32	52
6/30/2016	\$96,679.57	8/16/2016	\$56,680.00	47
6/30/2016		8/19/2016	\$40,000.00	50
7/31/2016	\$121,019.91	9/12/2016	\$60,509.52	43
7/31/2016		9/19/2016	\$60,509.96	50
Payments within 90 days of the Petition Date:				
8/31/2016	\$198,808.42	10/28/2016	\$198,808.42	58
9/30/2016	\$192,880.51	11/4/2016	\$47,897.00	35
9/30/2016		11/14/2016	\$47,897.00	45
9/30/2016		11/15/2016	\$96,293.94	46
10/31/2016	\$210,555.38	12/16/2016	\$210,827.16	46
11/30/2016	\$175,321.22			

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12/31/2016	\$166,760.00			
1/31/2017	\$26,860.00			

B. Zeta is Entitled to Summary Judgment in its Favor

Section 547(b) permits the Trustee to avoid "any transfer of an interest of the debtor in property" if the transfer was:

- 1) to or for the benefit of a creditor;
- 2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- 3) made while the debtor was insolvent;
- 4) made—
 - a) on or within 90 days before the date of the filing of the petition; or
 - b) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- 5) that enables such creditor to receive more than such creditor would receive if—
 - a) the case were a case under chapter 7 of this title;
 - b) the transfer had not been made; and
 - c) such creditor received payment of such debt to the extent provided by the provisions of this title.

§547(b)(1)–(5).

For purposes of §547(b), a "transfer" means:

- a) the creation of a lien;
- b) the retention of title as a security interest;
- c) the foreclosure of a debtor's equity of redemption; or
- d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - i) property; or
 - ii) an interest in property.

§101(54).

It is the Trustee's burden to establish all the elements of §547(b) by a

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preponderance of the evidence. §547(g); *Hall-Mark Electronics Corp. v. Sims (In re Lee)*, 179 B.R. 149, 155 (B.A.P. 9th Cir. 1995) *aff'd*, 108 F.3d 239 (9th Cir. 1997). Section 547(c) sets forth certain defenses to transfer liability. The Defendant has the burden of establishing that the §547(c) defenses apply, again under the preponderance of the evidence standard. §547(g).

Section 547(c)(2) provides preference defendants with an affirmative "ordinary course of business" defense. The defense recognizes that preference payments made in the "ordinary course of business" should not be avoided. "[T]he purpose of this [defense] is to leave undisturbed normal financial relations because it does not detract from the general policy of the preference section to discourage unusual action by either the debtor or his creditors during the debtor's slide into bankruptcy." *Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 789 (9th Cir. 2007) (quoting H.R.Rep. No. 595, at 373–74 (1997), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6329).

Section 547(c)(2) provides that an otherwise preferential transfer is not subject to avoidance if he transfer was:

- a) made in the ordinary course of business or financial affairs of the debtor and the transferee; or
- b) made according to ordinary business terms.

§547(c)(2).

In determining whether transfers are ordinary in relation to past practices under § 547(c)(2)(A), courts consider the following factors:

- 1) the length of time the parties were engaged in the transactions at issue;
- 2) whether the amount or form of tender differed from past practices;
- 3) whether the debtor or creditor engaged in any unusual collection or payment activity; and,
- 4) whether the creditor took advantage of the debtor's deteriorating financial condition.

Irving Sulmeyer v. Suzuki (In re Grand Chevrolet, Inc.), 25 F.3d 728, 732 (9th Cir. 1994), *as amended on denial of reh'g* (June 24, 1994).

Although some decisions have stated that the §547(c)(2)(A) inquiry is "subjective," application of §547(c)(2)(A) does not require evaluation of the parties'

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state of mind. *Edmund J. Wood v. Stratos Product Development, LLC (In re Ahaza Sys., Inc.)*, 482 F.3d 1118, 1125 n. 6 (9th Cir. 2007).

To establish that a payment was "made according to ordinary business terms" under §547(c)(2)(B), a creditor defending a preference action must show the following:

First the creditor must establish the "broad range" of business terms employed by similarly situated debtors and creditors, including those in financial distress, during the relevant period. *In re Jan Weilert RV, Inc.*, 315 F.3d at 1197–98. Second, the creditor must show that the relevant payments were "ordinary in relation to [these] prevailing business terms." *See In re Kaypro*, 218 F.3d at 1074. In general, § 547(c)(2)(C) should not pose a particularly high burden for creditors. *See In re Jan Weilert RV, Inc.*, 315 F.3d at 1198(holding only payments which are so unusual as to be "aberration[s] in the relevant industry" do not satisfy [§547(c)(2)(B)]).

In re Healthcentral.com, 504 F.3d at 791.

Evaluation of a creditor's §547(c)(2) defense requires the Court to first identify the industry in which the creditor and debtor operate. *Id.* at 791–92. Once that determination has been made, the Court can then assess whether the payments were ordinary in relation to the business terms prevailing within that industry. *Id.*

Where the debtor and creditor have engaged in a long-term business relationship, a transaction is "ordinary" under §547(c)(2)(A) and §547(c)(2)(B) only in cases in which "the debt and its payment are ordinary in relation to past practices between the debtor and this particular creditor." *Ahaza Sys., Inc.*, 482 F.3d at 1124 (internal citation omitted). In other words, to assess what is "ordinary" among parties who have interacted repeatedly, the Court must "inquire into the pattern of interactions between the *actual* creditor and the *actual* debtor in question, not about what transactions would have been 'ordinary' for either party with *other* debtors or creditors." *Id.*

1. Zeta is Entitled to Summary Judgment on its Claim that the Transfers Were Made Within the Ordinary Course of Business or Financial Affairs of the Debtor and Zeta Pursuant to §547(c)(2)(A)

For purposes of the §547(c)(2) defenses, the Court finds that there can be no genuine dispute that the Debtor operates within the affiliate marketing industry. As set forth above, the Court finds that Mr. Benenhaley is qualified to offer expert opinion as

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to the industry in which the Debtor operates. Mr. Benenhaley has provided a detailed description of why the affiliate marketing industry is the appropriate industry. Specifically, Mr. Benenhaley has explained that the affiliate marketing industry, unlike the general advertising industry, requires customers to make payments only in response to customer action (as opposed to general up-front payments). Mr. Ettenger, Zeta's in-house counsel, has testified that the Debtor paid Zeta on a pay-per-lead model. That is, the Debtor owed Zeta a payment for every consumer that (a) clicked on a link in one of Zeta's Internet ads, (b) was transited to the Debtor's website, and (c) thereafter provided contact information to the Debtor. Given Mr. Benenhaley's testimony that pay-per-lead transactions are characteristics of the affiliate marketing industry, Mr. Ettenger's testimony further establishes that there can be no genuine dispute that the affiliate marketing industry is the appropriate industry for purposes of §547(c).

The Trustee makes the conclusory assertion that the general advertising industry, as opposed to the more specialized affiliate marketing industry, is the appropriate industry. However, the Trustee has not submitted an expert declaration contesting Mr. Benenhaley's testimony that the Debtor and Zeta operate within the affiliate marketing industry. A party asserting that a fact is genuinely disputed within the context of a motion for summary judgment must cite "to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials" Civil Rule 56(c)(1)(A). The Trustee cannot create a genuine dispute as to the issue of the appropriate industry through mere conclusory assertions, where Zeta has offered credible expert testimony explaining in detail why the affiliate marketing industry is the appropriate for §547(c)(2) purposes. To create a genuine dispute, the Trustee would have been required to submit expert testimony controverting the conclusions reached by Mr. Benenhaley.

The Supreme Court has held that an affidavit containing conclusory allegations not supported by specific facts is not sufficient to defeat entry of summary judgment:

The object of this provision [Civil Rule 56(c)] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit.... Rather, the purpose of Rule 56 is to enable a party who believes there is no genuine dispute as to a specific fact essential to the other side's case to demand at least one sworn averment of that fact before the lengthy process of litigation continues.

Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888–89 (1990).

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The Ninth Circuit has similarly held that an affidavit containing only vague assertions cannot defeat entry of summary judgment. In *Sullivan v. Dollar Tree Stores*, 623 F.3d 770, 779 (9th Cir. 2010), the parties disputed whether Dollar Tree was a "successor in interest" to Factory 2-U under the Family and Medical Leave Act of 1993. *Sullivan*, 623 F.3d at 770. Critical to adjudication of the successor in interest issue was a finding as to how many personnel employed at Factory 2-U had continued to work for Dollar Tree. The court held that Plaintiff's testimony that "[m]ost of the same personnel continued to work when Dollar Tree took Factory 2-U over at my store" was too vague to create a genuine dispute as to a material fact, where Dollar Tree had provided detailed factual assertions about which employees it hired and for what purposes. *Id.* at 779.

Here, the Trustee has not submitted any type of affidavit at all (much less a vague and conclusory affidavit) refuting Mr. Benenhaley's expert testimony that the Debtor and Zeta operate within the affiliate marketing industry. Like the parties against whom summary judgment was entered in *Lujan* and *Sullivan*, the Trustee accordingly has failed to show that the fact that the Debtor and Zeta conducted business within the affiliate marketing industry is subject to genuine dispute.

Next, the Court finds that there can be no genuine dispute that the period of June 30, 2015 to January 31, 2017 provides an appropriate frame of reference for assessing whether the transactions are exempted from avoidance under §547(c)(2). The Trustee contends that there is a genuine dispute as to the appropriate time period, but once against he offers no concrete evidence to back up this assertion. For example, the Trustee attacks Mr. Benenhaley's decision to rely upon the June 2015–January 2017 time range, but he fails to present evidence showing that payment practices during that time period differed materially from payment practices outside that time period. Zeta has explained that it chose the June 2015–January 2017 time range because the Debtor's payments to Zeta substantially increased during that time frame. The Trustee's conclusory attacks upon the time range are not sufficient to create a genuine dispute.

The June 2015–January 2017 time range provides an appropriate baseline for assessing the ordinariness of the transactions because it encompasses a period in which the Debtor was not experiencing financial distress. Mr. Kay has testified that the Debtor began experiencing financial distress on March 17, 2016, after the Debtor entered into a Consent Decree with the NY Department. The June 2015–January 2017 time range includes twelve payments before the Consent Decree and twelve payments after the Consent Decree.

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A review of the Debtor's payment history shows that there can be no genuine dispute that the payments which the Trustee seeks to avoid were made in the ordinary course of business between the Debtor and Zeta. There can be no genuine dispute that payments for invoices from June 2015 through July 2016 were made between 30 and 60 days from the issuance of applicable invoices, with an average payment term of net 42.5 days. Benenhaley Decl. at ¶14. Nor can there be any genuine dispute that payments between August and October 2016 range from net 35 to net 58 days with an average payment term of net 46 days.

Benenhaley's testimony further establishes that there can be no genuine dispute as to the following facts, which establish that the transactions at issue are exempt from avoidance under §547(c)(2)(A). Benenhaley's testimony establishes the absence of a genuine dispute as to: (1) the fact that the payments which the Trustee seeks to avoid are consistent with affiliate marketing industry standards and the prior history of the parties; and (2) the fact that there is nothing unusual concerning partial payments rendered for the September 30, 2016 invoice, since partial payments are common in the industry.

Further, Mr. Ettenger has testified that Zeta was unaware of the Debtor's financial position, and the Trustee has failed to present any evidence establishing any genuine dispute as to this lack of awareness. This further establishes that Zeta is entitled to judgment in its favor under §547(c)(2)(A).

2. Zeta is Entitled to Summary Judgment on its Claim that the Transfers Were Made According to Ordinary Business Terms

As noted, Mr. Benenhaley's declaration testimony establishes the absence of any genuine dispute as to the types of payment arrangements made in the ordinary course of business among parties transacting in the affiliate marketing industry. His declaration further establishes an absence of any genuine dispute as to the facts necessary to show that Zeta is entitled to judgment in its favor under §547(c)(2)(B).

As set forth above, to establish that the transactions were made according to ordinary business terms, Zeta must "establish the 'broad range' of business terms employed by similarly situated debtors and creditors, including those in financial distress, during the relevant period." *Healthcentral*, 504 F.3d at 791. Zeta must then show that the transactions at issue were "ordinary in relation to [these] prevailing business terms."

Mr. Benenhaley's declaration establishes an absence of a genuine dispute as to the following facts. Payment practices within the affiliate marketing industry are highly

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variable, particularly when compared to practices in more traditional forms of media and advertising. The variability results from the fact that advertisers receive payment only in response to customer action. Affiliate publishers rotate ad campaigns heavily based on response rates, leading to further unpredictability. Affiliate marketing agreements do not mandate a set number of impressions. This results in publishers heavily rotating advertisements looking for ads that produce the best economic performance.

Considering the high variability in payment practices in the affiliate marketing industry, the Court finds that the transfers which the Trustee seeks to avoid were made according to ordinary business terms. Mr. Benenhaley testifies that in the affiliate marketing industry, "it is not uncommon to see payment patterns that range from net 7 days (or less) up to net 90 days from the date of invoice with partial payments being a common occurrence." Benenhaley Decl. at ¶13. As noted, the Trustee has not introduced any expert testimony controverting Mr. Benenhaley's conclusions. The payment terms here are well within the ordinary range of net 7 to net 90 days in the affiliate marketing industry.

The Trustee asserts that a genuine dispute exists regarding the prevailing payment practices within the affiliate marketing industry. The Trustee points to an agreement between the Debtor and Zeta governing media purchases which is titled *Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Lease* (the "Agreement"). The Agreement requires the Debtor to pay Zeta within thirty days of receiving an invoice. Pointing to Mr. Ettenger's testimony that the terms and conditions set forth in the Agreement are contained in all of the Debtor's purchase orders, the Trustee asserts that the Agreement supports a finding that "net 30" payment terms are ordinary in the affiliate marketing industry.

The Trustee's attempt to generate a disputed issue of fact based on inconsistencies between the payment terms set forth in the Agreement and the payment practices that the Debtor and Zeta actually adhered to is unavailing. In determining whether transfers are ordinary for the industry, the issue is the standard payment practices, not the terms that are standard in boilerplate contracts. In *Matter of Tolona Pizza Prod. Corp.*, 3 F.3d 1029, 1031 (7th Cir. 1993), the creditor's invoices imposed payment terms of net 7 days. Noting that the creditor and most of its competitors "pay little or no attention to the terms stated on their invoices, allow most customers to take up to 30 days to pay, and allow certain favored customers to take even more time," the *Tolona* court found that the relevant inquiry was actual payment practices, not payment terms set forth on an invoice. *Tolona*, 3 F.3d at 1033. Here, the Trustee has

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presented no testimony contradicting Mr. Benenhaley's description of an industry with broadly flexible payment patterns. The Trustee's focus on the alleged inconsistency between the terms set forth in the Agreement, on the one hand, and the Debtor's payment practices and the description of payment practices in the affiliate marketing industry set forth in Mr. Benenhaley's declaration, on the other hand, is nothing more than an exercise in misdirection.

IV. Conclusion

Based upon the foregoing, Zeta is entitled to summary judgment that the transfers at issue are exempt from avoidance pursuant to §547(c)(2)(A) and §547(c)(2)(B). Zeta shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Zeta also submitted Mr. Benenhaley's curriculum-vitae ("CV") in support of its contention that he is qualified as an expert. However, the CV was inadvertently omitted from Mr. Benenhaley's declaration and was not filed with the Court until August 20, 2018—only three days before the date of the hearing on the Motion. As a result, the Trustee did not have a meaningful opportunity to respond or object to the CV. Therefore, the Court does not rely upon the CV in determining whether Mr. Benenhaley is qualified as an expert. The CV is unnecessary because Mr. Benenhaley's declaration contains a detailed description of his education, work history, and relevant qualifications.

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

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Defendant(s):

ZETA INTERACTIVE

Represented By
John Du Wors

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong
Lindsey L Smith

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim
Jeffrey S Kwong

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Adv#: 2:17-01533 Williams v. Searle et al

#2.00 HearingRE: [24] Motion to Compel deposition of Defendant

Docket 24

Tentative Ruling:

8/22/2018

For the reasons set forth below, Defendant's Motions to Compel are both GRANTED. Plaintiff's Motion to Compel Defendant's Deposition is GRANTED.

Pleadings Filed and Reviewed:

- 1) Complaint for: (1) Determination of the Dischargeability of Debt Pursuant to 11 U.S.C. §523(a)(2) [Doc. No. 1] (the "Complaint")
- 2) Answer of Defendant Darren James Searle dba Stonecraft Masonry to Complaint for Determination of Dischargeability of Debt Pursuant to 11 U.S.C. §523(a)(2) [Doc. No. 4] (the "Answer")
- 3) Defendant's Motions to Compel:
 - a) Defendant's Motion to Compel Responses to Interrogatories:
 - i) Motion of Defendant Darren Searle dba Stonecraft Masonry to Compel Production of Verifications, Responses and Further Responses to Interrogatories [Doc. No. 20]
 - ii) Opposition of Plaintiff to the Motion to Compel Further Responses to Interrogatories [Doc. No. 28]
 - iii) Defendant Darren Searle dba Stonecraft Masonry Reply Brief to Plaintiff's Opposition to Motion to Compel Further Responses to Interrogatories [Doc. No. 31]
 - b) Defendant's Motion to Compel Document Production:
 - i) Motion of Defendant Darren Searle dba Stonecraft Masonry to Compel Production of Documents, Further Responses and Verification [Doc. No. 22]
 - ii) Opposition of Plaintiff to the Motion to Compel Further Responses to the Request for Production of Documents [Doc. No. 27]
 - iii) Defendant Darren Searle dba Stonecraft Masonry Reply Brief to Plaintiff's

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Opposition to Motion [to] Compel Production of Documents [Doc. No. 32]

- 4) Plaintiff's Motion to Compel Defendant's Deposition:
- a) Motion of Plaintiff to Compel the Deposition of Defendant [Doc. No. 24]
 - b) Defendant Darren Searle dba Stonecraft Masonry Opposition to Plaintiff's Motion to Compel Deposition and Request for Sanctions [Doc. No. 29]
 - c) Reply to Opposition to Motion of Plaintiff to Compel the Deposition of Defendant [Doc. No. 33]

I. Facts and Summary of Pleadings

Plaintiff Robin Williams ("Plaintiff") alleges that Darren James Searle dba Stonecraft Masonry ("Defendant") is indebted to her in the amount of \$33,000, and that such indebtedness is excepted from Defendant's discharge pursuant to §523(a)(2) (A). Specifically, Plaintiff alleges that in 2017, she paid Defendant \$28,000 to remodel her property. Plaintiff alleges that Defendant failed to properly complete the work, requiring Plaintiff to spend an additional \$5,000 (in addition to the \$28,000 she had already paid Defendant) to complete the remodeling.

Defendant maintains that prior to the disputed 2017 remodeling work, he had performed residential work for Plaintiff in 2010, 2011, and 2014. According to Defendant, Plaintiff was satisfied with this work and kept re-hiring Defendant to perform additional work. Defendant states that at the time the disputed 2017 job had almost been completed, Plaintiff brought her boyfriend and cousin onto the worksite. According to Defendant, the boyfriend and cousin criticized the job, creating a work environment so toxic that the other subcontractors performing work walked off the job. Defendant asserts that the boyfriend and cousin deliberately created these toxic conditions, hoping that the subcontractors would leave so that they could take over the project and reap a financial windfall.

Summary of Papers Filed in Connection with Defendant's Motions to Compel

Defendant moves to compel Plaintiff to respond to interrogatories to which Plaintiff objected. The disputed interrogatories seek information regarding Defendant's theory that the 2017 job was disrupted by the conspiracy allegedly orchestrated by Plaintiff's cousin and boyfriend, as well as information regarding the work Defendant performed for Plaintiff prior to 2017. Plaintiff objects to the interrogatories on the ground that they seek information outside the scope of the litigation and unlikely to lead to the discovery of admissible evidence. Defendant

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asserts that the information sought through the interrogatories is relevant to his defense that the 2017 job was disrupted by the actions of Plaintiff's boyfriend and cousin.

Defendant also moves to compel Plaintiff to produce (1) documents relating to the 2017 remodeling work, (2) documents, photographs, or other communications evidencing Plaintiff's dissatisfaction with work performed by Defendant prior to 2017, (3) communications between Plaintiff and her boyfriend and cousin, and (4) documents evidencing work performed by other contractors on Plaintiff's residence in 2017. Plaintiff objects that the requests for production are vague, ambiguous, and overbroad, and seek information outside the scope of the litigation and unlikely to lead to the discovery of admissible evidence. Defendant asserts that the documents are necessary to establish his defense that Plaintiff was satisfied with the work Defendant performed prior to 2017, and became dissatisfied with the 2017 work only because of the bad-faith interference of Plaintiff's cousin and boyfriend.

Plaintiff argues that both Motions to Compel should be denied, because Defendant failed to make a good-faith attempt to meet and confer with Plaintiff prior to filing the Motions, as required by Civil Rule 37(a)(1). According to Plaintiff, Defendant provided Plaintiff only two business days to respond to Defendant's multiple objections to Plaintiff's discovery responses.

Plaintiff further asserts that the interrogatories and requests for production that Defendant served were missing pages. Defendant denies that any pages were missing, and states that Plaintiff never sent Defendant a meet-and-confer letter complaining about missing pages.

Summary of Papers Filed in Connection with Plaintiff's Motion to Compel Defendant's Deposition

Plaintiff moves to compel Defendant's deposition, and requests that Defendant be sanctioned in the amount of \$2,380.00 for failing to attend a properly noticed deposition. Plaintiff states that she initially noticed Defendant's deposition for July 19, 2018, and subsequently agreed to continue the deposition to July 30, 2018, to take place after mediation. Plaintiff states that on Sunday, July 29, 2018, at 5:02 p.m., Defendant e-mailed her and stated that he would not appear for the deposition. Plaintiff states that as a result of this late cancellation, she was unable to cancel a court recorder, and incurred fees in the amount of \$350.00.

Defendant acknowledges that he failed to appear at the July 30, 2018 deposition. Defendant states that he did not feel comfortable attending the deposition without an

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attorney against the backdrop of the discovery dispute regarding Plaintiff's objections to Defendant's discovery requests. Defendant states that he is now seeking counsel, and requests a continuance of the trial date.

II. Findings and Conclusions

A. Defendant's Motions to Compel are Granted

As a preliminary matter, the Court notes that subsequent to the filing of the Motions, Plaintiff has verified her responses to Defendant's interrogatories and requests for production. Therefore, Defendant's request for an order compelling Plaintiff to verify her discovery responses is now moot.

Civil Rule 37(a)(1) provides: "On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action." Production of documents may be compelled if "a party fails to produce documents or fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 34." Civil Rule 37(a)(3)(B)(iv). For purposes of Civil Rule 37, "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond."

"Parties are permitted to discover any relevant nonprivileged matter. Fed.R.Civ.P. 26(b)(1). This rule is construed very broadly, encompassing 'any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.' Discovery is not limited to the issues raised only in the pleadings, but rather it is designed to define and clarify the issues." *Miller v. Pancucci*, 141 F.R.D. 292, 296 (C.D. Cal. 1992). "The party opposing discovery bears the burden of resisting disclosure." *Rogers v. Giurbino*, 288 F.R.D. 469, 478-79 (S.D. Cal. 2012).

For the reasons set forth below, the Court will order Plaintiff to respond to Defendant's interrogatories and requests for production. With respect to Defendant's attempts to meet and confer with Plaintiff to resolve the discovery dispute without Court action, the Court agrees with Plaintiff that, as a matter of professional courtesy, Defendant should have provided Plaintiff more than two business days to respond to the discovery dispute. However, that fact alone does not support denial of the Motions. The information sought by Defendant is relevant to the claims and defenses in this litigation, and Defendant is entitled to that information in order to prepare his defense.

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Interrogatory No. 4

Interrogatory No. 4 provides: "State all jobs you paid defendants for before the 2017 job." Plaintiff asserts that Interrogatory No. 4 is vague and ambiguous because the term "2017 job" is not defined. Plaintiff further objects that Interrogatory No. 4 seeks information beyond the scope of the litigation, because Defendant's claim that he performed work for Plaintiff prior to 2017 has no bearing upon the disputed 2017 work that is the subject of this action.

Plaintiff's objections are overruled. First, within the context of this litigation, the term "2017 job" is not vague or ambiguous. Rather, "2017 job" clearly refers to the work performed in connection with the written agreement that Defendant allegedly entered into with Plaintiff on May 2, 2017. *See* Complaint at ¶5. Second, the information sought is not beyond the scope of the litigation. Defendant's theory is that Plaintiff had been satisfied with the quality of Defendant's work in the past, and that Plaintiff was dissatisfied with the 2017 work only because that project was sabotaged by Plaintiff's cousin and boyfriend. Information regarding work that Defendant performed for Plaintiff prior to 2017 is therefore relevant.

Plaintiff shall respond to Interrogatory No. 4.

Interrogatory No. 5

Interrogatory No. 5 provides: "Identify any sub-contractors you paid for any work you had done to your home in 2017." Plaintiff asserts that Interrogatory No. 5 seeks information outside the scope of the litigation, because Defendant seeks information related to every repair or improvement on the property in 2017, not just those repairs related to the jobs that Defendant was contracted to perform.

Plaintiff's objection is overruled. The identity of other sub-contractors is relevant because such sub-contractors may be able to testify regarding the quality of the work performed by the Defendant during roughly the same time frame. Given that identifying all sub-contractors who performed work on the property in 2017 will not prove unduly burdensome for Plaintiff, the Court declines to limit the scope of the interrogatory to contractors who performed work directly related to the work Defendant performed. Even contractors who did not work on the same areas of the home as Defendant might have observations or information regarding Defendant's work. Limiting the scope of the interrogatory as requested by Plaintiff would also likely generate future disputes as to what repair jobs were related to the jobs that Defendant performed.

Plaintiff shall respond to Interrogatory No. 5.

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Interrogatory Nos. 6–7

Interrogatory No. 6 provides: "Identify all contact information for your boyfriend Jeff." Interrogatory No. 7 provides: "Identify all contact information for the man you introduced to [Defendant] Darren Searle as your cousin during the 2017 job." Plaintiff asserts that Interrogatory Nos. 6–7 seek information outside the scope of the litigation, and further asserts that an appropriate protective order should be put in place to prevent Defendant from harassing people closely associated with Plaintiff.

Plaintiff's objections and request for a protective order are overruled. As noted, Defendant's theory is that Plaintiff had been satisfied with the quality of Defendant's work in the past, and that Plaintiff became dissatisfied with the 2017 work only after the project was sabotaged by Plaintiff's cousin and boyfriend. The identity of the cousin and boyfriend are therefore highly relevant to this litigation. There is no merit to Plaintiff's unsubstantiated allegation that Defendant is likely to harass Plaintiff's cousin or boyfriend.

Plaintiff shall respond to Interrogatory Nos. 6–7.

Interrogatory No. 22

Interrogatory No. 22 provides: "Identify all subcontractors who you claim had to finish or repair defendant's work for the 2017 job." Plaintiff responded to Interrogatory No. 22 as follows: "No subcontractors were used. Plaintiff hired new contractors to repair and complete Defendant's defective work."

Defendant asserts that Plaintiff's response is evasive and in bad-faith, because the context makes clear that Defendant was seeking the identity of any person Plaintiff hired to complete repairs. Plaintiff contends that Defendant is now attempting to enlarge the scope of Interrogatory No. 22 to cover both contractors and subcontractors, which Plaintiff asserts is impermissible. Plaintiff cites *Black's Law Dictionary*, which defines a subcontractor as "one who is awarded a portion of an existing contract by a contractor." Plaintiff states that under this definition, she did not hire any subcontractors. Defendant retorts that even under the definition set forth in *Black's Law Dictionary*, Plaintiff's response is evasive. Defendant contends that as the owner-builder of her home, Plaintiff should be considered the contractor, and therefore that anyone Plaintiff hired to work on her home would automatically be deemed a subcontractor.

The Court finds that Plaintiff's response to Interrogatory No. 22 is evasive. Interrogatory No. 22 clearly seeks the identity of all individuals who performed

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repairs on the work that Defendant performed. That information is highly relevant, as it goes to the amount of damages. Plaintiff's attempt to avoid responding to Interrogatory No. 22 by deliberately misconstruing the interrogatory, and relying upon a hyper-technical definition of "subcontractor," was not in good faith. Plaintiff shall identify any individual or firm who performed construction work or repairs related to the work that Defendant performed in 2017.

Interrogatory Nos. 10–18

Plaintiff asserts that Interrogatory Nos. 10–18 were never served upon her; Defendant disputes this contention.

The Court declines to make any findings regarding whether Interrogatory Nos. 10–18 were served upon the Plaintiff. The interrogatories are now set forth in Defendant's Motion, so there can be no dispute that Plaintiff is aware of them. Further, there is no merit to Plaintiff's contention that Interrogatory Nos. 10–18 are duplicative. The Court finds that Interrogatory Nos. 10–18 seek relevant information likely to lead to the discovery of admissible evidence.

Plaintiff shall respond to Interrogatory Nos. 10–18.

Request for Production No. 3

Request for Production ("RFP") No. 3 seeks: "Your complete job file including any correspondence, contracts or agreements between you and defendant for construction work on your home at 26064 Regents Park Circle in Valencia for the 2017 job." Plaintiff asserts that RFP No. 3 seeks documents beyond the scope of this litigation.

Plaintiff's objection is overruled. Correspondence between Plaintiff and Defendant regarding the 2017 construction work that is the subject of this litigation is highly relevant. To the extent that they have not already been produced, Plaintiff shall produce all documents responsive to RFP No. 3.

RFP No. 5

RFP No. 6 seeks: "Any documents, photographs, e-mails and text messages between you and Stonecraft Masonry about your dissatisfaction with Stonecraft's work for all jobs Stonecraft did for you before the 2017 job." Plaintiff asserts that RFP No. 5 is vague because the term "2017 job" is not defined. Plaintiff further asserts that the request is beyond the scope of this litigation, on the ground that Defendant's claim that he conducted work for Plaintiff prior to 2017 is irrelevant to the 2017 work that is

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at issue. Finally, Plaintiff contends that the discovery is not proportional to the needs of the case.

Plaintiff's objections are overruled. First, within the context of this litigation, the term "2017 job" is not vague or ambiguous. Rather, "2017 job" clearly refers to the work performed in connection with the written agreement that Defendant allegedly entered into with Plaintiff on May 2, 2017. *See* Complaint at ¶5. Second, the information sought is not beyond the scope of the litigation. Defendant's theory is that Plaintiff had been satisfied with the quality of Defendant's work in the past, and that Plaintiff was dissatisfied with the 2017 work only because that project was sabotaged by Plaintiff's cousin and boyfriend. Information regarding work that Defendant performed for Plaintiff prior to 2017 is therefore relevant. Third, the discovery sought is proportional to the needs of the case. Defendant's primary theory is that Plaintiff's dissatisfaction with the 2017 work was the fault of Plaintiff's cousin and boyfriend. Evidence regarding Plaintiff's satisfaction with Defendant's work performed prior to 2017 is relevant to this theory.

To the extent that they have not already been produced, Plaintiff shall produce all documents responsive to RFP No. 5.

RFP No. 6

RFP No. 6 seeks: "Any documents including contracts, agreements, invoices, checks and correspondence between you and any other sub-contractor, craftsman, trade, vendor or supplier for any construction work you had done to your homes in 2017." Plaintiff asserts that RFP No. 6 seeks information beyond the scope of the litigation, because the request seeks documents pertaining to every repair made by Plaintiff and is not confined to the repairs that Defendant was contracted to perform.

Plaintiff's objection is overruled. Plaintiff alleges that she was required to spend \$5,000 to repair damages caused by Defendant's allegedly incomplete work. Therefore, the amount Plaintiff paid other contractors is relevant. To the extent that they have not already been produced, Plaintiff shall produce all documents responsive to RFP No. 6.

RFP Nos. 8-9

RFP No. 8 seeks: "Any documents between you and your boyfriend Jeff, including any e-mails or text messages about the quality or the work Stonecraft did for you in 2017." RFP No. 9 seeks: "Any documents including any e-mails or text messages between you and the man you introduced to Darren Searle as your cousin about the

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work Stonecraft did for you in 2017." Plaintiff objects to RFP Nos. 8–9 on the ground that the discovery sought is not proportional to the needs of the case. Plaintiff objects to RFP No. 9 on the grounds that it does not identify the name of the recipient of the text message.

Plaintiff's objections are overruled. The discovery sought is proportional, because it is highly relevant to Defendant's primary theory that the 2017 job was sabotaged by Plaintiff's boyfriend and cousin. Plaintiff's objection to Defendant's failure to identify the name of the person identified as Plaintiff's cousin lacks merit. There is no indication that Plaintiff is unable to ascertain the identity of this person.

To the extent that they have not already been produced, Plaintiff shall produce all documents responsive to RFP No. 6.

RFP Nos. 15–23

Plaintiff asserts that RFP Nos. 15–23 were never served upon her; Defendant disputes this contention.

The Court declines to make any findings regarding whether RFP Nos. 15–23 were served upon the Plaintiff. The RFPs are now set forth in Defendant's Motion, so there can be no dispute that Plaintiff is aware of them.

The Court finds that RFP Nos. 15–23 seek relevant information likely to lead to the discovery of admissible evidence. To the extent that they have not already been produced, Plaintiff shall produce all documents responsive to RFP Nos. 15–23, except that Plaintiff is not required to produce tax returns for the year 2017. The Court finds that Plaintiff's tax returns have only minimal relevance. However, Plaintiff is required to produce bank statements (which may be redacted to conceal confidential information) in response to RFP No. 23. Bank statements are relevant because they could establish the amount that Plaintiff paid to other contractors; those payments go to the issue of Plaintiff's damages.

Plaintiff shall respond to the interrogatories and requests for production by no later than **September 7, 2018**.

B. Plaintiff's Motion to Compel Defendant's Deposition is Granted

As set forth above, the Court may enter an order compelling a party to respond to discovery. Civil Rule 37(a)(1). Here, Plaintiff properly noticed Defendant's deposition, and Defendant failed to appear at the deposition. Plaintiff is entitled to depose Defendant. The Court will enter an order compelling Defendant to appear for his deposition.

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Chapter 7

Defendant states that he was not comfortable to appear for his deposition without an attorney. Absence of an attorney was not an acceptable reason for Defendant to refuse to appear at his deposition. This action has been pending since November 14, 2017. Defendant had ample opportunity to retain counsel.

Defendant states that he is now seeking to retain counsel. If Defendant wishes to retain counsel, he must do so by no later than **September 7, 2018**. Defendant must submit to a deposition on or before **September 14, 2018**. The September 14 deadline provides Defendant sufficient time to retain counsel, should he wish to do so.

C. The Court Declines to Award Sanctions to Either Plaintiff or Defendant

Civil Rule 37(a)(5)(A) provides that where a motion to compel discovery is granted, the "court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees." However, if any of the following three circumstances apply, the Court must not order the payment of expenses:

- i. The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action;
- ii. The opposing party's nondisclosure, response, or objection was substantially justified; or
- iii. Other circumstances make an award of expenses unjust.

Civil Rule 37(a)(5)(A)(i)–(iii).

Here, both Plaintiff and Defendant have failed to comply with their discovery obligations. Defendant failed to appear for his deposition. Plaintiff asserted numerous objections to Defendant's interrogatories and requests for production which were not substantially justified. Because both parties have engaged in sanctionable conduct, an award of expenses to either party would be unjust.

D. The Court Sua Sponte Continues the Pretrial Conference and Trial Dates

A Pretrial Conference is set for September 11, 2018; trial is set for the week of September 24, 2018. To provide Defendant an opportunity to retain counsel, and to provide the parties time to complete discovery as ordered herein, the Court *sua sponte* continues the Pretrial Conference to **November 13, 2018, at 11:00 a.m.** Trial is continued to the week of **November 26, 2018**. The remaining litigation deadlines are continued as follows:

- 1) The deadline to disclose expert witnesses is **September 21, 2018**.

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- 2) The deadline to disclose rebuttal expert witnesses is **October 21, 2018**.
- 3) The last day to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **October 29, 2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 4) The last day for dispositive motions to be heard is **October 23, 2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 5) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **October 29, 2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The Motion *in Limine* filed by the Defendant, currently set for September 11, 2018, shall be heard on November 13, 2018, at 11:00 a.m.—the date of the continued Pretrial Conference. Briefing deadlines shall be in accordance with the Local Bankruptcy Rules.
- 7) The *Order Establishing Procedures for the Adjudication of Evidentiary Objections* [Doc. No. 18] remains in effect; however, the deadlines set forth therein shall be calculated based on the November 13 Pretrial Conference.

III. Conclusion

For the reasons set forth above, Defendant's Motions to Compel are both GRANTED. Plaintiff's Motion to Compel Defendant's Deposition is GRANTED. The trial dates and corresponding litigation deadlines are modified as set forth above. The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.**

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CONT... Darren James Searle

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Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#3.00 HearingRE: [24] Motion to Compel deposition of Defendant

Docket 24

Tentative Ruling:

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#4.00 HearingRE: [22] Motion of defendants Darren Searle dba Stonecraft Masonry to compel production of documents, further responses and verification.

Docket 22

Tentative Ruling:

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

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10:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#5.00 HearingRE: [20] Motion of defendants Darren Searle dba Stonecraft Masonry to compel production of verifications, responses and further responses to interrogatories.

Docket 20

Tentative Ruling:

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#6.00 HearingRE: [79] Application to Employ Coldwell Banker Residential Broker as Real Estate Broker Chapter 7 Trustee's Notice Of Application And Application To Employ Real Estate Broker And Enter Into Exclusive Listing Agreement; Memorandum Of Points And Authorities And Statement Of Disinterestedness, with proof of service (Shechtman, Zev)

Docket 79

Tentative Ruling:

8/22/2018

For the reasons set forth below, the Trustee's application seeking to employ a real estate broker is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Notice of Application and Application to Employ Real Estate Broker and Enter into Exclusive Listing Agreement [Doc. No. 79] (the "Application")
- 2) Chapter 7 Trustee's Supplement in Support of Application to Employ Real Estate Broker and Enter into Exclusive Listing Agreement

I. Facts and Summary of Pleadings

The Chapter 7 Trustee seeks authorization to employ Coldwell Banker Residential Broker ("Coldwell Banker") through its agents, William Friedman and Lisa Ta (the "Broker") as his real estate broker, at the expense of the estate, for the purpose of marketing real property located at 359 W. Langston Street, Upland, California (the "Property"). See Chapter 7 Trustee's Notice of Application and Application to Employ Real Estate Broker and Enter into Exclusive Listing Agreement [Doc. No. 79] (the "Application").

On June 14, 2018, the Court entered final judgment (the "Judgment") in favor of the Trustee in an avoidance action. The Judgment ordered Ronald Peterson and two LLCs controlled by Ronald to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. After Ronald failed to turnover the Property, the Trustee obtained a *Writ of Possession* to enforce the Judgment. On August 10, 2018, the

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CONT... Anne Lan Peterson

Chapter 7

United States Marshal obtained possession of the Property, and the Property was turned over to the Trustee.

No Opposition to the Application is on file.

II. Findings and Conclusions

Section 327 authorizes the Trustee, with the Court's approval, to employ professionals to assist the Trustee in carrying out his duties under the Bankruptcy Code. The Property is an asset of the estate that the Trustee is required to liquidate. A broker is necessary to liquidate the Property. The Application is GRANTED in its entirety.

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
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Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01424 Gonzalez, Chapter 7 Trustee v. Vineland Sunshine Properties, LLC, a

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01424. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Vineland Sunshine Properties, LLC, a California Limited Liability Company. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 6-25-18

Docket 1

***** VACATED *** REASON: 7/2/2018 Adv Dismissed**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Vineland Sunshine Properties, LLC,

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 6-25-18; 9-24-18

Docket 1

*** VACATED *** REASON: 7/2/2018 - ADV dismissed

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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9:00 AM

2:16-19567 West Coast Physiatry Inc.

Chapter 7

Adv#: 2:17-01493 Wolkowitz v. Lagman

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01493. Complaint by Edward M. Wolkowitz against Caren Lagman. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Smith, Lindsey)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 2-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

West Coast Physiatry Inc.

Represented By
Kevin Liu

Defendant(s):

Caren Lagman

Pro Se

Plaintiff(s):

Edward M. Wolkowitz

Represented By
Lindsey L Smith

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Lindsey L Smith

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Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-25-18

Docket 1

***** VACATED *** REASON: CONTINUED 9-26-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01444 TIMOTHY J. YOO, Chapter 7 Trustee v. GLOBAL AGORA

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01444. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against GLOBAL AGORA. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-25-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

GLOBAL AGORA

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

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Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:17-12621 Alissa Finley

Chapter 7

Adv#: 2:17-01321 Finley v. United States Department Of Education et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01321. Complaint by Alissa Finley against United States Department Of Education, Navient Corporation. (Fee Not Required). Complaint to Determine Dischargeability of Student Loan Debt (Attachments: # 1 Exhibit 1 # 2 Exhibit 2 # 3 Exhibit 3) Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Bogard, Lane)

FR. 3-26-18; 5-29-18

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERD 6-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alissa Finley

Represented By
Lane K Bogard

Defendant(s):

United States Department Of
Navient Corporation

Pro Se
Pro Se

Plaintiff(s):

Alissa Finley

Represented By
Lane K Bogard

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:18-11909 Raymond Express International,LLC

Chapter 7

#7.00 TRIAL
RE: [6] Amended involuntary petition

fr. 4-10-18

Docket 6

***** VACATED *** REASON: PER ORDER ENTERED 8-3-18**

Tentative Ruling:

4/9/2018

Tentative Ruling:

The litigation deadlines set forth below shall govern the trial on the involuntary petition.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
 - a) Addendum to Involuntary Petition [Doc. No. 6]
 - b) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 7]
 - i) Proof of Service of Summons and Notice of Status Conference [Doc. No. 9]
- 2) Answer and Affirmative Defenses of Raymond Express International, LLC to Involuntary Petition [Doc. No. 10]

I. Facts and Summary of Pleadings

On February 21, 2018, Korean Air Lines Co., Ltd., Asiana Airlines, Inc., and Sunjin Logistics Co., Ltd. (collectively, the "Petitioning Creditors") commenced this involuntary Chapter 7 petition against Raymond Express International, LLC (the "Alleged Debtor"). The Alleged Debtor is a logistics company that transports perishable goods requiring refrigeration. On March 16, 2018, the Alleged Debtor answered the involuntary petition. This hearing is a status conference on the involuntary petition.

II. Findings and Conclusions

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Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Where a petition is timely controverted, the court must enter an order for relief against the alleged debtor if, after trial, the court determines that "the debtor is generally not paying such debtor's debts as such debts become due unless such debts are the subject of a bona fide dispute as to liability or amount." § 303(h).

During the period between the commencement of an involuntary petition and the issuance of an order for relief, the Alleged Debtor enjoys the protections of the automatic stay but is not required to comply with many of the obligations imposed upon Debtors who commence voluntary petitions. To minimize the length of this period of uncertainty, the Court's policy is to set compressed litigation deadlines governing the trial on the involuntary petition.

The following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **5/15/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **5/29/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **6/28/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **7/17/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest previous date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **7/24/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for

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CONT...

Raymond Express International,LLC

Chapter 7

- dispositive motions to be heard is the next closest previous date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **7/28/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest previous date which is available for self-calendaring.)
 - 7) A Pretrial Conference is set for **8/14/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - 8) Trial is set for the week of **8/27/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court FURTHER ORDERS that the matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Petitioning Creditors will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Raymond Express International,LLC

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Debtor(s):

Raymond Express International,LLC Pro Se

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Hearing Room 1568

9:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#8.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-26-18 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
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Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01525 Official Unsecured Creditors Committee for Liberty v. Tsang et al

#9.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01525. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Steven Tsang, Cathy Tsang, ELSV LLC. (14 (Recovery of money/property - other)) (Greenwood, Gail)

Docket 1

***** VACATED *** REASON: CONTINUED 11-26-18 at 9:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Steven Tsang

Pro Se

Cathy Tsang

Pro Se

ELSV LLC

Pro Se

David Tsang

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By
Gail S Greenwood

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01540 Liberty Asset Management Corporation v. Pan

#10.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01540. Complaint by Liberty Asset Management Corporation against Yonggan Pan. (Fee Not Required). / Complaint for: (1) Slander of Title; (2) Disallowance of Claim [11 U.S.C. § 502(b); (3) Avoidance of Lien; [FRBP 7001] (4) Declaratory Relief; (5) Violation of Cal. Civ. Code § 2943; (6) Punitive Damages; and (7) Attorneys' Fees and Costs (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (91 (Declaratory judgment)),(81 (Subordination of claim or interest)) (Golubchik, David)

Docket 1

***** VACATED *** REASON: DEFAULT JUDGMENT ENTERED 2-27-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Yonggan Pan

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By

David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:17-17199 John Fuchs

Chapter 11

#11.00 TRIAL re [112] Objection to Claim #14 by Claimant Mikhaeil Rouil Corporartion, Inc.
dba ServiceMaster Professional Restoration

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED ON 7-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:17-17199 John Fuchs

Chapter 11

#12.00 TRIAL re [113] Objection to Claim #4 by Claimant Rainbow International of Van Nuys

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED ON 6-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Fuchs

Represented By
John R Fuchs
Gail S Gilfillan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

9:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

Adv#: 2:17-01530 Rideshare Port Management, LLC v. Lichterman et al

#13.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01530. Complaint by Rideshare Port Management, LLC against Alex Lichterman, Carlos Lizardo, Edward Smith, Gary Oganessian, Hassan Mahmoudi, Howard Miller, Jose Diaz, Juan Martinez, Kaushaal Laxmee, Raymond Moradian, Roberto Martinez, Ronaldo Ramos, Valo Khalatian, Vince Olivar. (Charge To Estate). for Declaratory Relief Regarding Applicability of the Automatic Stay; Preliminary Injunctive Relief Pursuant to 11 U.S.C. Sections 105, 362, 1107, 1121, 1129, FRBP 7065, FRCP 65(a) and (d) and LBR 7065-1(a) and (b)(2); Temporary Restraining Order with Notice to the Affected Party Pursuant to FRBP 7065, FRCP 65(b) and (d) and LBR 7065-1(a) and (b)(1) (Attachments: # 1 Exhibit Exhibit 1 # 2 Exhibit Exhibits 2-4) Nature of Suit: (91 (Declaratory judgment)),(72 (Injunctive relief - other)) (Frey, Sandford)

Docket 1

***** VACATED *** REASON: DISMISSED 8-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

Defendant(s):

Alex Lichterman

Pro Se

Carlos Lizardo

Pro Se

Edward Smith

Pro Se

Gary Oganessian

Pro Se

Hassan Mahmoudi

Pro Se

Howard Miller

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

9:00 AM

CONT... Rideshare Port Management, LLC Chapter 11

Jose Diaz Pro Se

Juan Martinez Pro Se

Kaushaal Laxmee Pro Se

Raymond Moradian Pro Se

Roberto Martinez Pro Se

Ronaldo Ramos Pro Se

Valo Khalatian Pro Se

Vince Olivar Pro Se

Plaintiff(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#100.00 Hearing
RE: [70] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1804, 1806 & 1808 South Chapel Avenue, Alhambra, California 91801 with Proof of Service. (Yabes, Gilbert)

fr. 6-25-18

Docket 70

Tentative Ruling:

No appearances required. For the reasons set forth below, the hearing is VACATED as moot.

On August 15, 2018 at 11:00 a.m., the Court held a hearing on the Trustee's "Amended Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder As Good Faith Purchaser Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale" (the "Sale Motion") [Doc. No. 104]. The Court adopted the tentative ruling as its final ruling [Doc. No. 114], which ruling granted the Sale Motion and authorized the sale of the property known as 1806 S. Chapel Avenue, Alhambra, CA 91801.

Thus, in light of the sale of the property that is the subject of the instant Motion for Relief From Stay, the Motion is moot.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

10:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, August 27, 2018

Hearing Room 1568

10:00 AM

2:18-18146 Juan Leura and Monic M Rodriguez Leura

Chapter 7

#101.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C2F5 3GH5 46234 .

Docket 8

Tentative Ruling:

8/23/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, August 27, 2018

Hearing Room 1568

10:00 AM

CONT... Juan Leura and Monic M Rodriguez Leura

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Cameron Schlagel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Juan Leura

Represented By
Christie Cronenweth

Joint Debtor(s):

Monic M Rodriguez Leura

Represented By
Christie Cronenweth

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 4, 2018

Hearing Room 1568

10:00 AM

2:18-16120 Silvana Agostino

Chapter 7

#1.00 HearingRE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1115 East Sierra Madre Avenue, Glendora, CA 91741 . (Jafarnia, Merdaud)

Docket 19

Tentative Ruling:

8/29/2018

For the reasons set forth herein, the Motion is DENIED without prejudice. The Motion was not served on all lienholders in a manner authorized by Fed. R. Bankr. P. 7004. The Movant may refile the Motion with service upon all lienholders in a manner authorized by FRBP 7004. To the extent any of the lienholders are insured depository institutions, Bankruptcy Rule 7004(h) generally requires that, subject to limited exceptions, an insured depository institution be served by certified mail addressed to an officer of the institution.

Party Information

Debtor(s):

Silvana Agostino

Represented By
Derik N Lewis

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 4, 2018

Hearing Room 1568

10:00 AM

2:18-17390 Teri Breier

Chapter 7

#2.00 Hearing
RE: [5] Motion for Turnover of Property ; Declaration of Debtor in support; Notice of Motion; proof of service (Sawdayi, Devin)

fr. 7-26-18

Docket 5

***** VACATED *** REASON: PER ORDER ENTERED 8-31-18**

Tentative Ruling:

8/31/2018

For the reasons set forth in the concurrently issued order, this hearing is
VACATED

Party Information

Debtor(s):

Teri Breier

Represented By
Devin Sawdayi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 4, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#3.00 HearingRE: [65] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2935 N. Mountain and 2936 N. Loma Avenue, San Bernardino, CA 92404 . (Yaspan, Robert)

Docket 65

Tentative Ruling:

For the reasons set forth below, the hearing on the Motion is CONTINUED to **October 15, 2018 at 10:00 a.m.** The deadline for the parties to file any supplemental briefing is no later than 10-days before the continued hearing, *i.e.* **October 5, 2018.** Any supplemental briefing shall be limited to responding to the arguments raised in the Motion for Relief from Stay.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "Motion") [Doc. No. 65]
- 2) Debtor's Opposition to the Motion (the "Debtor Opposition") [Doc. No. 74]
 - a) Declaration of James H. Pike (the "Pike Decl.")
 - b) Declaration of Miguel Arreola (the "Arreola Decl.")
 - c) Declaration of John H. Bauer (the "Bauer Decl.")
- 3) Trustee's Opposition to the Motion (the "Trustee Opposition") [Doc. No. 76]
- 4) Debtor's Supplemental Opposition to the Motion (the "Supplemental Opposition") [Doc. No. 82]
- 5) Trustee's Response to the Supplemental Opposition [Doc. No. 83]
- 6) Creditor's Reply to the Oppositions (the "Reply") [Doc. No. 84]

I. Facts and Summary of Pleadings

M & A Enterprises, LLC (the "Debtor") filed a voluntary Chapter 7 petition on May 29, 2018 (the "Petition") [Doc. No. 1]. Rosendo Gonzalez was appointed as

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Tuesday, September 4, 2018

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10:00 AM

CONT... **M & A Enterprises, LLC**
interim Chapter 7 trustee (the "Trustee").

Chapter 7

Factual Background

The property at issue consists of two adjacent apartment buildings located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Property"). The Creditor is the holder of the second and third deeds of trust secured by the Property.

In 2015, the Property was sold to Neram Village, Inc. ("Neram"). "Declaration of Joseph G. McCarty" (the "McCarty Decl.") [Doc. No. 9] at ¶ 4. As part of the sale transaction, the Creditor received two notes and deeds of trust: (1) the second deed of trust, in the original principal amount of \$3,432,154.81, which was an All Inclusive Trust Deed ("AITD") wrapping around the first deed of trust from East West Bank; and (2) the third deed of trust in the original principal amount of \$1,123,845.18 (the indebtedness secured by such deeds of trust collectively, the "Loans"). *Id.* at ¶ 3. Subsequently, and without notifying the Creditor, Neram encumbered the Property with a fourth deed of trust and fifth deed of trust. *Id.* at ¶ 4. The Debtor was the beneficiary of the fifth deed of trust. *Id.* On April 12, 2016, after Neram had failed to make payments to the Creditor, the Creditor commenced a judicial foreclosure action in the California Superior Court (the "State Court"). *Id.* at ¶ 5. The State Court appointed Eloisa Fernandez as receiver (the "Original Receiver"). *Id.* The Original Receiver made certain necessary repairs to the Property and Creditor advanced funds to pay for the repairs and other expenses of the Property. *Id.* at ¶ 6.

On June 12, 2017, the Debtor commenced in the State Court a foreclosure action on its fifth deed of trust, and moved to remove the Original Receiver. *Id.* at ¶ 7. The Creditor opposed the Debtor's motion and proposed that Matthew Taylor take over as receiver. *Id.* On June 19, 2017, the State Court entered an order appointing Mr. Taylor as receiver (the "Receiver"). *Id.*; *see also id.*, Exhibit 1 (the State Court Order). Over the objection of the Debtor to the discharge of the Original Receiver and to the amount paid for repairs, the State Court discharged the Original Receiver. *Id.* at ¶ 8. The Debtor subsequently filed a cross-complaint which contests the advances for the repairs and the expenses of the Property. *Id.* at ¶ 9. The Debtor's cross-complaint is still pending.

On August 22, 2018, the Court held a hearing on, among other motions, the

**United States Bankruptcy Court
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CONT... M & A Enterprises, LLC

Chapter 7

Debtor's "Motion to Convert Case under 11 U.S.C. § 706(a)" (the "Motion to Convert") [Doc. No. 17], and the "Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b)" (the "Receiver Motion") [Doc. No. 8]. After considering the Motion to Convert and the Receiver Motion, the related papers, and the arguments raised by counsel for the respective parties at the hearing, the Court denied both the Motion to Convert and the Receiver Motion. *See* Doc. No. 75 (the Court's final ruling after hearing); "Order Denying Motion to Convert" [Doc. No. 77]. Furthermore, the Court ordered the Receiver to turn over all property of the estate under the Receiver's control to the Trustee. Doc. No. 75.

The Motion

On August 13, 2018, Luis Munoz, and N. Loma and N. Mountain Ave. Properties, LLC, (collectively, the "Movant" or the "Creditor") filed the "Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362" (Real Property) (the "Motion") [Doc. No. 65]. The Motion seeks relief from the automatic stay under §§ 362(d)(1) and (d)(2) with respect to the Property.

The Movant contends that "cause" exists for relief from the stay under § 362(d)(1) because: (1) the Movant's interest in the Property is not adequately protected by an equity cushion; and (2) the bankruptcy case was filed in bad faith, based on the fact that the Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents; and (3) for other cause. Motion at ¶ 4(a). The Motion additionally requests relief from stay pursuant to § 362(d)(2) because, pursuant to § 362(d)(2)(A), the Debtor has no equity in the Property, and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization. *Id.* at ¶ 4(b).

The Motion includes an appraisal of the Property by CBRE Valuation and Advisory Services dated August 6, 2018 (the "CBRE Appraisal") [Doc. No. 65, Ex. D]. According to the CBRE Appraisal, the fair market value of the Property is \$5,900,000.00. According to the Movant, the Property is encumbered by a First Deed of Trust in favor of East West Bank, a Second Deed of Trust in favor of the Movant, Luis Munoz, in the amount of \$4,422,564.00 (amount of Second Deed of Trust included as a wrap-around with the First Deed of Trust), a Third Deed of Trust in

**United States Bankruptcy Court
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CONT... M & A Enterprises, LLC

Chapter 7

favor of the Movant, Luis Munoz, in the amount of \$1,386,488.00, and a Fourth Deed of Trust in favor of Hahn Tran in the amount of \$250,000.00. "Real Property Declaration of Luis Munoz" (the "Munoz Decl.") [Doc. No. 65] at ¶ 8. The Movant alleges that the total amount of its claim with respect to the Property is \$5,894,948.83. *Id.* at ¶ 8. In sum, the Movant alleges that the amount of the total debt against the Property is \$6,062,450.00. *Id.* at ¶ 11(e). Based on these amounts, the Movant contends that the Movant is not adequately protected by an equity cushion in the Property, and that there is no equity in the Property.

With respect to the Movant's argument that there is "cause" for relief from stay under § 362(d)(1) because the Petition was filed in bad faith, the Movant contends that the Debtor is attempting to abuse the bankruptcy process in order to further delay the Creditor's foreclosure on the Property, and that the Debtor's schedules are inaccurate and incomplete. The Movant argues that the Debtor's "Amended Schedule A/B" [Doc. No. 38] does not correct the deficiencies in the Debtor's original Schedules, and the addition of substantial assets that were not disclosed in the Petition suggest that the Amended Schedule A/B is not real, but rather another attempt to delay the pending foreclosure proceedings.

Lastly, the Motion requests that if the Court is inclined not to grant relief from stay, that the Court order the Debtor to make monthly adequate protection payments on the Movant's secured loans in the amount of \$17,281.85 on the Second Deed of Trust wrap-around, and \$6,020.00 on the Third Deed of Trust.

The Debtor's Opposition

On August 21, 2018, the Debtor filed the "Debtor's Opposition to the [Motion]" (the "Debtor Opposition") [Doc. No. 74]. The Opposition contends, among other things, that (1) the Movant's interest is protected by an adequate equity cushion, and that there is equity in the Property, and (2) the Petition was filed in good faith.

The Debtor submits an appraisal of the Property by Cushman & Wakefield Western, Inc., dated August 10, 2018 (the "Cushman Appraisal") [Doc. No. 74, Ex. A]. According to the Cushman Appraisal, the fair market value of the Property is \$6,850,000.00. The Opposition asserts that Movant inflates the total indebtedness against the Property. The Debtor contends that the total debt against the Property, some of which the Debtor disputes, is \$5,282,141.00. The Debtor contends that the

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CONT... M & A Enterprises, LLC

Chapter 7

Movant's claim includes inflated attorney's fees, and the Debtor additionally disputes the amounts the Movant claims that it spent to repair the Property. Thus, based on the Debtor's calculations there is gross equity in the Property in the amount of \$1,567,859.00. Based on the Debtor's figures regarding indebtedness and the Cushman Appraisal submitted by the Debtor, there is \$787,550.00 in gross equity. The Opposition further argues that the Movant inflates the balances for the First Deed of Trust and the Second Deed of Trust by failing to credit certain payments made on the First Deed of Trust, and based on the Loan Statements for the respective loans, *see* Debtor Opposition at Ex's. D and E. If the balances are adjusted accordingly, the amount of gross equity available is further increased.

The Debtor additionally argues that the Petition was not filed in bad faith, and that the Movant seeks to gain a cash windfall through Chapter 7. The Opposition further states that the Debtor has never had management control of the Property because the Property has been continuously managed by the respective receivers.

The Trustee's Opposition

On August 23, 2018, the Trustee filed the "Trustee's Opposition to the [Motion]" (the "Trustee Opposition") [Doc. No. 76]. The Trustee requests that the Motion be denied, or in the alternative, that the hearing on the Motion be continued for not less than 30 days to afford the Trustee an opportunity to determine whether there is any equity in the Property, and to evaluate the Movant's claim and lien against the Property. The Trustee explains that, in light of the Court's ruling denying the Motion to Convert on August 22, 2018, the Trustee has not had time to thoroughly review the Motion and the records of the Receiver and the Debtor, to determine whether there is any equity in the Property, or to evaluate the Movant's alleged secured claim and lien on the Property.

The Debtor's Supplemental Opposition

On August 27, 2018, the Debtor filed the "Supplemental Opposition to the Motion" (the "Supplemental Opposition") [Doc. No. 82]. The Supplemental Opposition contends: (1) the Debtor's Appraisal reveals that there is substantial equity in the Property, and that a Chapter 11 case is in prospect; (2) the Creditor opposes conversion to Chapter 11 in order to obtain a huge cash windfall through Chapter 7; (3) the Creditor's claimed loan balances are improperly inflated, and Chapter 11 is the

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CONT... M & A Enterprises, LLC

Chapter 7

most appropriate means to determine the loan balances; (4) the Chapter 7 Trustee does not oppose conversion to Chapter 11; and (5) the case is appropriate for immediate conversion to Chapter 11. The Supplemental Opposition includes evidence of a payoff statement provided to the Debtor by East West Bank for the First Deed of Trust, which conflicts with the payoff amount asserted by the Creditor.

To the extent the Supplemental Opposition raises arguments that are not relevant to the instant Motion, specifically those related to converting the case to Chapter 11, the Court will not consider such arguments in connection with the Motion at bar. To the extent the Supplemental Opposition raises arguments that are related to the Motion before the Court, the Court will consider such arguments at the continued hearing.

The Reply to the Oppositions

On August 28, 2018, the Creditor filed the "Reply to the Oppositions to [the Motion]" (the "Reply") [Doc. No. 84]. The Reply argues that cause exists for relief from stay and that the Appraisals confirm a lack of equity in the Property. Furthermore, the Reply contends that the Debtor's Opposition confirms that the Debtor is attempting to use this bankruptcy case to relitigate issues which have already been determined by the State Court. The Creditor states that the amounts listed in the Motion as being owed on the Creditor's loans are the correct amounts, and the Creditor submits spreadsheets in support of the amounts owing as Exhibits "1-3" attached to the "Declaration of Robert Yaspan" (the "Yaspan Decl.") [Doc. No. 84]. The Reply additionally argues that the Debtor's bankruptcy was filed in bad faith.

With respect to the request by the Trustee in the Trustee's Opposition, the Creditor contends that the Trustee has had adequate time to evaluate the Estate's assets, and that any further delay will prejudice the Creditor. The Creditor has continued to make payments on the First Deed of Trust to prevent foreclosure, and to maintain the status quo. Specifically, the Creditor has made monthly payments on the First Deed of Trust of \$17,281.86 in June, July, and August, with the September payment coming due on September 15, 2018. To the extent the Court is inclined to do anything other than grant relief from stay, the Creditor requests that the Court order that monthly adequate protection payments be made to the Creditor in the amount of payments due on the First, Second, and Third Deeds of Trust, which total \$23,301.85 per month, from the

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Tuesday, September 4, 2018

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

Petition Date until the case is closed or dismissed.

II. Findings and Conclusions

For the purposes of granting the Trustee's request for a continuance only, the court finds that there is equity in the subject property sufficient for the purpose of adequately protecting Creditor for the limited period of time until the continued hearing.

Based on the foregoing, the hearing on the Motion is **CONTINUED to October 15, 2018 at 10:00 a.m.** The deadline for the parties to file any supplemental briefing is no later than 10-days before the continued hearing, *i.e.* **October 5, 2018.** Any supplemental briefing shall be limited to responding to the arguments raised in the Motion for Relief from Stay.

The Trustee shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

**United States Bankruptcy Court
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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

**United States Bankruptcy Court
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Wednesday, September 5, 2018

Hearing Room 1568

10:00 AM

2:09-24437 Magda Angela Eslabon Catipon

Chapter 7

Adv#: 2:09-01909 nuVision Federal Credit Union v. Catipon

#1.00 Hearing re [30] On The Validity Of The Claim Of Exemption Filed By Magda Angela Eslabon Catipon

Docket 0

Tentative Ruling:

9/4/2018

The Judgment Debtor's Claim of Exemption is GRANTED IN PART and DENIED IN PART. The Judgment Debtor shall be permitted to garnish \$400 per month of the Judgment Debtor's wages.

Pleadings Filed and Reviewed:

- 1) Order Setting Hearing on the Validity of the *Claim of Exemption* Filed by Magda Angela Eslabon Catipon for September 5, 2018, at 10:00 a.m. [Doc. No. 32]
 - a) Certificate of Service [Doc. No. 34]
- 2) Notice of Opposition to Claim of Exemption [Doc. No. 30]
- 3) Response to Opposition to Claim of Exemption [Doc. No. 36]
- 4) Reply of Plaintiff in Support of Opposition to Claim of Exemption [Doc. No. 37]

I. Facts and Summary of Pleadings

On January 10, 2011, the Court entered judgment in favor of NuVision Federal Credit Union ("Judgment Creditor") and against Magda Angela Eslabon Catipon ("Judgment Debtor") in the amount of \$17,886.21, plus costs in the amount of \$250.00. *See* Doc. No. 11 (the "Judgment").

Judgment Creditor has attempted to garnish Judgment Debtor's wages in order to enforce the Judgment. Judgment Debtor has claimed an exemption in her wages in an attempt to defeat the wage garnishment. Judgment Debtor states that she can afford to pay no more than \$50 per pay period on account of the Judgment. Judgment Debtor states that her base rate of pay is \$21.56 per hour, and that her gross monthly pay is approximately \$3,800 per month. Judgment Debtor states that her monthly living expenses are as follows:

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Magda Angela Eslabon Catipon

Chapter 7

- 1) \$400 for food, household supplies, cleaning supplies, and home maintenance supplies.
- 2) \$100 for clothing.
- 3) \$150 for entertainment (cable, internet, newspapers, haircuts and nail polishes, and movies).
- 4) \$100 for laundry (using a nearby coin-operated laundry).
- 5) \$400 remittance to paralyzed brother who cares for three children, aged 9, 16, and 17.
- 6) \$70 levied for taxes.
- 7) \$402 for automobile payments, \$181.25 for auto insurance, and \$300 for gasoline, registration, and repair and maintenance.
- 8) \$1500 for rent.

Judgment Creditor states that Judgment Debtor can reduce her expenses. Judgment Creditor notes that the Judgment Debtor is paying over \$400 per month for a luxury SUV, an Infiniti QX50, which was leased on May 6, 2017. Judgment Creditor argues that Judgment Debtor can also reduce her expenses for entertainment by at least \$75 per month. Finally, Judgment Creditor asserts that Judgment Debtor's remittances to her disabled family member are not entitled to priority over the judgment.

II. Findings and Conclusions

Under California law, all property of a judgment debtor is "subject to enforcement of a money judgment" unless an exemption applies. California Code of Civil Procedure ("CCP") § 695.010(a). CCP § 706.051 provides that "the portion of the judgment debtor's earnings that the judgment debtor proves is necessary for the support of the judgment debtor ... is exempt from levy under this chapter." In determining the amounts that are necessary for support of the judgment debtor, the Court notes that the "exemption laws are designed to facilitate the debtor's financial rehabilitation and have the effect of shifting social welfare costs from the community to judgment creditors.... Consequently, the exemption statutes should be construed, so far as practicable, to the benefit of the judgment debtor." *Ford Motor Credit Co. v. Waters*, 83 Cal. Rptr. 3d 826, 830 (Cal. App. Dep't Super. Ct. 2008).

Here, the Judgment Debtor is spending approximately \$880 per month to lease and operate a luxury SUV, an Infiniti QX50. Such an expensive vehicle is not necessary for the Judgment Debtor's support. The Court finds that the Judgment Debtor is entitled to exempt only \$480 per month for vehicle ownership and operating

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expenses. This amount is more than sufficient to enable the Judgment Debtor to have access to an economy vehicle, and will allow the Judgment Creditor to levy upon \$400 per month of the Judgment Debtor's wages.

The Court does not find it appropriate to require the Judgment Debtor to reduce her remittances to her brother. Although under a strict construction of the statute, such expenses are not necessary for the Judgment Debtor's support, the remittances are akin to a charitable contribution that, under the circumstances, the Court believes should remain exempt from levy. Further, it appears that payments to the brother in exchange for childcare services allow the Judgment Debtor to remain gainfully employed. In sum, Judgment Creditor's levy of \$400 per month will allow the Judgment Creditor to be repaid upon the Judgment within a reasonable amount of time.

Based upon the foregoing, all but \$400 per month of the Judgment Debtor's wages are exempt from levy. The Judgment Creditor is entitled to garnish \$400 per month to satisfy the Judgment.

The Judgment Creditor shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Magda Angela Eslabon Catipon

Represented By
Hasmik Jasmine Papian

Defendant(s):

Magda Angela Eslabon Catipon

Pro Se

Plaintiff(s):

nuVision Federal Credit Union

Represented By

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Alana B Anaya

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#2.00 Hearing
RE: [56] Motion For Summary Judgment Notice Of Motion And Motion For
Partial Summary Judgment, Or, Alternatively, Summary Adjudication Of Issues;
Memorandum Of Points And Authorities (Fox, Steven)

Docket 56

***** VACATED *** REASON: CONTINUED 10-10-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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CONT...

Timothy M Rosen

Sonia Singh

Chapter 7

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Hearing Room 1568

10:00 AM

2:18-18116 West Manchester LLC A California Limited Liability

Chapter 7

#3.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. 2630 W Manchester Bl Tr A UBO Equity, 2622 W Manchester Bl Tr A UBO Equity . (Arias, Jose) Additional attachment(s) added on 7/16/2018 (Arias, Jose).

Docket 1

Tentative Ruling:

9/4/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Certificate of Service of Summons and Notice of Status Conference [Doc. No. 5]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

Based upon the foregoing, the involuntary petition is DISMISSED. The Court will prepare and enter an appropriate order.

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CONT... West Manchester LLC A California Limited Liability

Chapter 7

Debtor(s):

West Manchester LLC A California

Pro Se

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2:18-18329 Edwin Wellington Terry

Chapter 7

#4.00 Status HearingRE: [1] Chapter 7 Involuntary Petition Against an Individual - Sonny)
Additional attachment(s) added on 7/20/2018 (Milano, Sonny).

Docket 1

Tentative Ruling:

9/4/2018

The involuntary petition is DISMISSED for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against an Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Certificate of Service of Summons and Notice of Status Conference [Doc. No. 5]

The Petitioning Creditor has failed to file a proof of service establishing that the Summons, Notice of Status Conference, and Involuntary Petition were served upon the Alleged Debtor. The Summons issued to the Petitioning Creditor clearly informs the Petitioning Creditor of the obligation to serve the Summons, Notice of Status Conference, and Involuntary Petition upon the Alleged Debtor. The Summons further advises the Petitioning Creditor that failure to properly effectuate service may result in dismissal of the involuntary petition.

Local Bankruptcy Rule 1010-1 provides in relevant part: "The court may dismiss an involuntary petition without further notice and hearing if the petitioner fails to ... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court."

Based upon the foregoing, the involuntary petition is DISMISSED. The Court will prepare and enter an appropriate order.

Party Information

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Debtor(s):

Edwin Wellington Terry

Pro Se

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2:16-13575 Liberty Asset Management Corporation

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**#5.00 Hearing re [700] Plan Administrator's Objection To Claim Number 30-2 Filed By
Great Vista Real Estate Corporation**

Docket 0

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 30 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 30-2 Filed by Great Vista Real Estate Corporation [Doc. No. 700] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 701]
- 2) Response to the Plan Administrator's Objection to Claim 30-2 Filed by Great Vista Real Estate Corporation [Doc. No. 733] (the "Opposition")
- 3) Plan Administrator's Reply in Support of Objection to Great Vista Real Estate Corporation's Claim Number 30-2 [Doc. No. 744] (the "Reply")

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

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B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 30-2, Asserted by Great Vista Real Estate Corporation

On October 29, 2016, Tsai Luan Ho aka Shelby Ho filed Proof of Claim No. 30-2 ("Claim 30") on behalf of her wholly-controlled entity Great Vista Real Estate Corporation ("Great Vista"). Claim 30 seeks a recovery of "\$450,000 advanced; \$200,00[0] indemnity claim for attorney's fees and costs incurred in two lawsuits." Great Vista was Ms. Ho's real estate brokerage company.

D. Summary of the Plan Administrator's Objection to Claim 30, Great Vista's Opposition to the Claim Objection, and the Plan Administrator's Reply in Support of the Claim Objection

The Plan Administrator asserts that Claim 30 must be disallowed for the following reasons:

- 1) Great Vista seeks recovery of \$450,000 under a purported investment agreement dated September 2, 2010, which was subject to a written Settlement Agreement dated September 2, 2011. The Settlement Agreement required payment more than four years prior to the Petition Date. Because the statute of limitations for breach of a written contract in California is four years, Claim 30 is time-barred.
- 2) In support of its claim for \$200,000 in attorneys' fees, Great Vista attaches to Claim 30 the Great Vista Note, dated September 22, 2014. The Great Vista Note requires Liberty to pay \$200,000 to Great Vista. Ms. Ho could recall only limited information about the Great Vista Note. She could not remember whether the indebtedness represented by the Great Vista Note had been loaned by her or her friend.
- 3) Great Vista filed a Chapter 11 petition for bankruptcy on January 10, 2018. Great Vista did not schedule Liberty as a creditor, and did not schedule Claim 30 among its assets. Having failed to schedule Claim 30 as an asset, Great Vista cannot now take a contrary position and assert it is owed the amounts set forth in Claim 30.

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Great Vista asserts that Claim 30 is valid for the following reasons:

- 1) The Plan Administrator has failed to demonstrate that the Settlement Agreement giving rise to Claim 30 is invalid. The mere fact that Ms. Ho could recall only limited information about Claim 30 does not defeat the valid documentation supporting the claim.

In Reply to Great Vista's Opposition, the Plan Administrator makes the following arguments:

- 1) Great Vista has failed to respond to the Plan Administrator's core arguments. First, Great Vista has not responded to the Plan Administrator's contention that the \$450,000 claimed in connection with the Settlement Agreement is time-barred. Second, Great Vista has not responded to the Plan Administrator's argument that the \$200,000 Great Vista Note is a sham because it was not scheduled in Great Vista's Chapter 11 petition.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts

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back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, the \$450,000 portion of Claim 30 arising in connection with the Settlement Agreement is not enforceable under California law because it is time barred. Cal. Code Civ. Proc. §337(1) provides that an action to recover for breach of a written contract must be commenced within four years. The Settlement Agreement is dated September 2, 2011. Great Vista has supplied no evidence indicating that it took any action to enforce the Settlement Agreement prior to September 2, 2015.

The \$200,000 portion of Claim 30 arising in connection with the Great Vista Note is disallowed because Great Vista has failed to demonstrate that the Great Vista Note is a legitimate obligation of Liberty. Great Vista failed to schedule the Great Vista Note in its own Chapter 11 petition, suggesting that the obligation was not valid. Great Vista has failed to supply sufficient evidence attesting to the validity of the obligation given Great Vista's contrary representations in its own Chapter 11 case.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 30 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on

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December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#6.00 Hearing re [689] Plan Administrator's Objection To Claim Number 38 Filed By Hopkins & Carley, ALC

Docket 0

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 38 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 38 Filed by Hopkins & Carley, ALC [Doc. No. 689] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 690]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the

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deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 38-1, Asserted by Hopkins & Carley

On October 16, 2017, Hopkins & Carley filed Claim No. 38-1 ("Claim 38"). Claim 38 seeks \$59,258.76 and is based upon an arbitration award against Lucy Gao personally; Liberty is not referenced in the award.

D. Summary of the Plan Administrator's Objection to Claim 38

The Plan Administrator asserts that Claim 38 must be disallowed for the following reasons:

- 1) Claim 38 is based on an arbitration award against Lucy Gao. Liberty is not the obligor and is not referenced anywhere within the arbitration award.
- 2) Claim 38 was filed one year after the Claims Bar Date. Hopkins & Carley was not provided notice of the Claims Bar Date because it is not a creditor of Liberty.

No opposition to the Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show

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facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, Claim 38 is unenforceable against Liberty because it is based upon an arbitration award against Lucy Gao. Nothing within the arbitration award establishes Liberty's liability.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 38 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

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David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#7.00 Hearing re [687] re Plan Administrator's Objection To Claim Number 8 Filed By Wynne Partners Development, Inc.

Docket 0

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 8 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 8 Filed by Wynne Partners Development, Inc. [Doc. No. 687] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 688]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the

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deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 8-1, Asserted by Wynne Partners Development, Inc.

On August 25, 2016, Wynne Partners Development, Inc. ("Wynne") filed Claim No. 8-1 ("Claim 8"). Wynne asserts \$600,000 for "liability for claims asserted by Country Club Villas HOA." There are no attachments to Claim 8 and there is no description of the basis for the alleged liability.

D. Summary of the Plan Administrator's Objection to Claim 8

The Plan Administrator asserts that Claim 8 must be disallowed for the following reasons:

- 1) Prior to confirmation of the Plan, the Official Committee of Unsecured Creditors to Liberty (the "Committee") contacted Wynne for more information about Claim 8, but received no response. Accordingly, the Plan Administrator disputes any liability to Wynne. Claim 8 should be disallowed because Liberty has no record of obligations owed to Wynne for claims asserted by Country Club Villas HOA. Claim 8 does not attach any information, such as a demand or complaint, reflecting the liability alleged. Further, Claim 8 does not describe any connection between Liberty and the Country Club Villas HOA or any connection between Liberty and Wynne.

No opposition to the Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R.

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216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, Claim 8 is unenforceable against Liberty because Wynne has failed to provide any evidence corroborating the validity of the indebtedness alleged, and Claim 8 contains no evidence substantiating the alleged indebtedness. Because Wynne has failed to establish the validity of its claim by a preponderance of the evidence, the Claim Objection is SUSTAINED and Claim 8 is DISALLOWED in its entirety.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

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Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

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#8.00 Hearing re [710] Plan Administrator's Objection To Claim Number 12 Filed By Lucy Gao;

Docket 0

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 12 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 12 Filed by Lucy Gao [Doc. No. 710] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 711]
- 2) Reply of Creditor Lucy Gao to Objection to Claim #12 by Plan Administrator [Doc. No. 735] (the "Opposition")
 - a) Proof of Service of Reply of Creditor Lucy Gao to Objection to Claim #12 by Plan Administrator [Doc. No. 736]
- 3) Response to Lucy Gao's Reply to Plan Administrator's Objection to Claim Number 12 [Doc. No. 745] (the "Reply")

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole

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shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 12, Asserted by Lucy Gao

On October 5, 2016, Lucy Gao filed Claim No. 12-1 ("Claim 12"), asserting a general unsecured claim in the amount of \$2.5 million for "funds advanced to Debtor various purposes—money loaned."

D. Summary of the Plan Administrator's Objection to Claim 12, Lucy Gao's Opposition to the Claim Objection, and the Plan Administrator's Reply in Support of the Claim Objection

The Plan Administrator asserts that Claim 12 must be disallowed for the following reasons:

- 1) Claim 12 contains no attachments or descriptions of the basis for the alleged liability. Prior to confirmation of Liberty's Plan, the Committee deposed Ms. Gao in connection with the Committee's adversary proceeding against Mr. Kirk and Ms. Gao. When questioned about Claim 12, Ms. Gao testified in general terms that the Claim arose on account of (a) property located at 200 South Bushnell in Alhambra that was sold in 2012 or 2013 for which she was allegedly owed money, (b) legal fees, (c) damage to her credit and reputation, (d) her "profit," and (e) monies owed to her because she helped Mr. Kirk establish Liberty's business. The Claim should be disallowed because Liberty has no record of obligations owed to Ms. Gao or of any liability to Ms. Gao.

Ms. Gao asserts that Claim 12 is valid for the following reasons:

- 1) The Plan Administrator has disregarded the fact that a Proof of Claim has *prima facie* validity. It was not Ms. Gao's burden to establish the claim's validity at a deposition that was taken in an unrelated adversary proceeding. Instead, it is the Plan Administrator's burden to set forth facts

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showing why the claim is not valid. The Plan Administrator has not carried its burden of establishing that the Claim is invalid.

The Plan Administrator makes the following arguments in its Reply to Ms. Gao's Opposition to the Plan Administrator's Claim Objection:

- 1) Claim 12 is not substantiated by a promissory note, a confirming memorandum, any e-mails, demand letters, wire transfers, cancelled checks, or bank statements. Ms. Gao did not even file a declaration in support of her Opposition to the Plan Administrator's Claim Objection.
- 2) Ms. Gao's representation on Claim 12 that Liberty owes her \$2.5 million is simply not credible evidence of any alleged loan. She has not met her burden with respect to the claim. This Court has previously found that Ms. Gao used Liberty's money (and Liberty's investors' money) to buy real estate which she put into companies she owned. To give any weight to Ms. Gao's naked assertion that Liberty owes her \$2.5 million with no supporting documentary evidence or testimony is simply not reasonable, in light of the fact that the Court has found that Ms. Gao diverted Liberty's assets and breached her fiduciary duties to Liberty. *See generally* Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,410,695.29, Doc. No. 141, Adv. No. 2:16-ap-01337-ER.
- 3) The Claim fails to state whether the alleged indebtedness is based on a written or oral agreement. If the indebtedness is based upon a writing, such writing was not attached to the claim, in violation of Bankruptcy Rule 3001(c). Failure to comply with Rule 3001's requirements causes the claim to lose its *prima facie* validity.
- 4) The claim does not contain even basic information, such as the date upon which the indebtedness was allegedly incurred. In response to the Plan Administrator's Claim Objection, Ms. Gao did not come forward with any evidence with respect to the date (or any other terms) of the alleged loan.
- 5) The claim should be barred because per Ms. Gao's own testimony, the funds advanced were an equity contribution. Ms. Gao described the claim as representing "her profit" for helping Mr. Kirk establish the business.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance

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with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Binder Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Pursuant to Bankruptcy Rule 3001(f), Claim 12 is not entitled to *prima facie* validity because it was not filed in accordance with the Bankruptcy Rules. For example, the claim does not specify even basic information, such as the date upon which the indebtedness was incurred. The claim does not specify whether it is based upon a writing or upon an oral agreement. If the claim was based on a writing, such writing is not attached. A claim consisting of such cursory information is not entitled to *prima facie* validity.

In connection with the Committee's adversary proceeding against Mr. Kirk and Ms. Gao, the Court has found that Ms. Gao violated her fiduciary duties to Liberty by diverting its assets. See generally Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,410,695.29, Doc. No. 141, Adv. No. 2:16-ap-01337-ER. It is completely appropriate for the Court to give any weight to the validity of Claim 12 against the backdrop of these findings. In view of its prior findings regarding Ms. Gao's breach of her fiduciary duties to Liberty, the

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Court will not accord *prima facie* validity to a Proof of Claim filed by Ms. Gao that lacks even the most basic of corroborating information, such as the date upon which the indebtedness was incurred.

Because Claim 12 is not entitled to *prima facie* validity and because Ms. Gao has failed to proffer any additional evidence substantiating the indebtedness at issue, the Plan Administrator's Claim Objection is SUSTAINED and the Claim 12 is DISALLOWED in its entirety.

The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

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#9.00 Hearing
RE: [703] Motion to Reconsider (related documents 623 Objection to Claim, 657 ORDER disallowing claim(s) (BNC-PDF)) (Henshaw, David) CORRECTION: Correct judge's initials are ER. Modified on 8/2/2018 (Lomeli, Lydia R.).

Docket 703

***** VACATED *** REASON: HEARING IS ON 9-18-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#10.00 Hearing re [707] Plan Administrator's Objection To Claim Number 33 Filed By Washe LLC;

Docket 0

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 33 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 33 Filed by Washe LLC [Doc. No. 707] (the "Claim Objection")
 - a) Notice of Objection to Claim [Doc. No. 708]
- 2) Response to the Plan Administrator's Objection to Claim Number 33 Filed by Washe LLC [Doc. No. 734] (the "Opposition")
- 3) Plan Administrator's Reply in Support of Objection to Washe LLC's Claim Number 33-1 [Doc. No. 743] (the "Reply")

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and

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identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. The Plan Administrator's Characterization of Claim 33, Asserted by Washe LLC

Shelby Ho convinced her longtime friend, Sophia Huang, to lead a group of investors to invest over \$30 million with Liberty. In September 2014, in an effort to secure a refund by Liberty to Ms. Huang, Ms. Ho and her attorney formed an entity, Washe LLC, with Mr. Kirk's consent, for the stated purpose of "obtain[ing] and hold[ing] property for the benefit of Sophia Huang" and recovering funds owed to Ms. Huang by Liberty. Ms. Ho is or was the sole member of Washe, and purportedly acted as a trustee for Ms. Huang.

Immediately after Washe was formed, Mr. Kirk deeded four separate properties from investment entities of Liberty to Washe for no consideration. After transfer of the properties to Washe, Ms. Ho, on behalf of Washe, granted liens in favor of Ms. Huang.

In late 2014, Ms. Ho caused another Liberty entity, 544 San Antonio LLC ("San Antonio"), to grant liens on a commercial property in Mountain View in favor of, among others:

- 1) Her brokerage entity, Great Vista Real Estate Corporation, to secure payment of \$450,000;
- 2) Her attorney, George Eshoo, to secure payment of \$200,000; and
- 3) Washe, to secure payment of \$2 million.

The San Antonio Property was subject to foreclosure in March 2016. The Plan Administrator has not located any evidence of a promissory note or payment by Washe to San Antonio or Liberty for its purported lien.

In November 2015, Ms. Gao initiated bankruptcy proceedings on behalf of Crystal Waterfalls (Case No. 2:15-bk-27769-ER). By stipulation and order entered on November 30, 2015, the Bankruptcy Court held that the transfer of title of the hotel property from Crystal Waterfalls LLC to Washe was void and of no force and effect, and title was re-vested in Crystal Waterfalls. By this time, Ms. Ho had amended

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Washe's operating agreement to vest 100% membership in Mr. Kirk, so that Mr. Kirk would address the now-disputed transfers and liens.

Washe filed its Claim for \$2 million based on "monies advanced," supported by a purported promissory note dated November 25, 2014. Mr. Kirk, on behalf of Liberty, initially scheduled Washe as an unsecured creditor for this amount. The Chief Restructuring Officer later amended the schedules to reflect the amount was disputed.

D. Summary of the Plan Administrator's Objection to Claim 33, Washe's Opposition to the Claim Objection, and the Plan Administrator's Reply in Support of the Claim Objection

The Plan Administrator asserts that Claim 33 must be disallowed for the following reasons:

- 1) Washe did not advance any funds to Liberty under the purported promissory note or otherwise. The Plan Administrator is informed and believes that Washe was a shell entity that was used to transfer title and record liens, without money changing hands. Ms. Huang, the creditor who was meant to benefit from Washe's transfers, describes the transfers as a "refund arrangement." Liberty received money from Ms. Huang, but Liberty *did not* receive any money from Washe.
- 2) Similarly, the Plan Administrator believes that Ms. Ho, on behalf of San Antonio, granted liens on its commercial property to Washe and other entities controlled by Ms. Ho in an attempt to secure a reimbursement of funds to herself. However, apart from the purported note, which is not among Liberty's files, there is no evidence that Washe advanced any funds to Liberty, and any attorneys' fees spent on the "refund arrangement" were a complete waste of money, given that the transfer of the Crystal Waterfalls hotel to Washe was voided once Crystal commenced bankruptcy proceedings.
- 3) Washe's claim should be disallowed because it is a blatant attempt to obtain a recovery for the benefit of an insider. Washe was created for the purpose of transferring title from one set of Liberty investment entities to another, allegedly for the benefit of an investor, Ms. Huang. Ms. Huang has duly pursued her claims against Liberty. If the claim is allowed, it will only benefit Ms. Ho or Mr. Kirk, who came up with the idea of Washe was a refund arrangement.

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Washe asserts that Claim 33 is valid for the following reasons:

- 1) Washe was a benign entity created to benefit Ms. Huang and her family. Washe was designed to protect the \$27 million investment made by Ms. Huang and the other investors she had recruited.
- 2) The Plan Administrator's contention that Ms. Ho caused San Antonio, another Liberty entity, to grant liens in an attempt to secure a reimbursement of funds to herself, is nothing more than unsupported speculation.

The Plan Administrator makes the following arguments in Reply to Washe's Opposition to the Plan Administrator's Claim Objection:

- 1) The Plan Administrator has produced ample evidence to refute that Liberty received \$2 million from the purported note attached to Claim 33. In its Objection, Washe has acknowledged that it was a shell entity used to transfer title and record liens, all of which was voided upon Crystal Waterfalls' commencement of its bankruptcy petition.
- 2) Washe is unable to demonstrate that it advanced \$2 million to Liberty as the note recites. In her declaration in Opposition to the Claim Objection, Ms. Ho, Washe's manager, has stated that Washe was a means to "hold defined real estate assets." Ms. Ho's declaration provides that Liberty deeded four separate properties from investment entities to Washe without consideration.
- 3) Whether Washe was created with benign intent is irrelevant. Even if that is the case, it does not establish that Washe is indebted to Liberty in the amount of \$2 million.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Binder Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R.

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216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, the Plan Administrator has presented sufficient evidence establishing that Washe never loaned \$2 million to Liberty. Instead, Washe was created in an attempt to secure a refund to Ms. Huang and others who had invested money in Liberty. Ultimately, most of the transfers of assets to Washe were unwound once Crystal Waterfalls commenced bankruptcy proceedings. Even Ms. Ho's declaration, filed in Opposition to the Claim Objection, acknowledges that the purpose of Washe was to hold title to properties in an attempt to provide a refund to Ms. Huang and others who had invested in Liberty.

There is no credible evidence before the Court that Washe ever loaned \$2 million to Liberty. Instead, the only plausible evidence before the Court shows that Washe received title to various properties and was created in an attempt by Mr. Kirk to placate Ms. Huang and others who had invested funds in Liberty.

There is no merit to Washe's contention that because Washe was created with benign intent, its claim should be allowed. Regardless of the motivation for creating Washe, the fact remains that the entity was never capitalized and never provided any funds to Liberty.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 33 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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#11.00 HearingRE: [232] Motion For Final Decree and Order Closing Case. with proof of service

Docket 232

Tentative Ruling:

9/4/2018

The Motion is GRANTED IN PART and DENIED IN PART. The Court will enter a Final Decree closing this case. The Debtor's request for waiver of the UST fees is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion in Chapter 11 Case for Entry of a Final Decree and Order Closing Case [Doc. No. 232] (the "Motion")
- 2) Limited Opposition of the United States Trustee to Motion in Chapter 11 Case for the Entry of a Final Decree and Order Closing Case [Doc. No. 235]
- 3) Debtor's Reply Memorandum of Points and Authorities in Opposition to the "Limited" Objection by the United States Trustee, Demanding Excessive Trustee Fees, and Request for Waiver of All Additional Trustee's Fees

I. Facts and Summary of Pleadings

The only dispute in connection with the Debtor's *Motion for a Final Decree* (the "Motion") is the amount of fees that the United States Trustee (the "UST") is entitled to receive upon the closing of the case. The UST asserts that it is entitled to fees of \$19,170.14, based upon total estimated disbursements of \$1,917,013.71 (UST fees consist of 1% of the total amount disbursed).

The Debtor objects to payment of the UST Fees, and asserts that he should not be required to pay the fees demanded for the following reasons:

- 1) The UST's estimate that the Debtor will disburse \$1,917,013.71 is inflated, for the following reasons:
 - a) The UST estimates that the Debtor's monthly expenses are \$22,000 per month. This is \$10,000 per month too high. The UST has included non-recurring expenses in his estimate of the Debtor's monthly expenses.

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Actual monthly expenses for the period in question total \$24,000, not \$44,981.76. Fees should be reduced by \$200 to correct for this overestimate.

- b) The UST counts the \$30,813.17 that the Debtor paid on account of the IRS' administrative tax claim as a disbursement. This amount should not be counted as a disbursement, because it was an advance payment for potential future taxes, which the Debtor may not end up owing.
- 2) The operative law under which the UST can collect 1% of disbursements took effect January 1, 2018. The Debtor attempted to pay the holder of the First Deed of Trust against his former residence in December 2017. The holder of the First Deed of Trust declined the Debtor's settlement offer and instead waited until July 2018 to be paid. Had the holder of the First Deed of Trust behaved more reasonably, the Debtor would not have been required to wait until July 2018 to pay the holder of the First Deed of Trust \$1,648,975.29. That would substantially reduce the amounts owed to the UST.
- 3) In view of these circumstances, the Court should exercise its discretion to waive the UST fees. Pursuant to 28 U.S.C. §1930(f)(3), the Court has the authority to waive the fees.

II. Findings and Conclusions

The UST is charged with ensuring that Chapter 11 Debtors fulfill their obligations to act as fiduciaries to creditors. The UST program is funded largely through fees imposed based upon amounts disbursed in Chapter 11 cases.

Here, the Debtor asks the Court to substantially reduce his UST fee liability, based upon the Debtor's frustration about the way events unfolded during his Chapter 11 case. In the Court's experience, most participants in the Chapter 11 process experience frustration at various junctures in their cases. The fact of such frustration does not, by itself, support waiving the UST fee requirement. Were this the case, the UST would be starved of funds and would be unable to discharge its statutory responsibilities to supervise Debtors-in-Possession.

Based upon the Debtor's declaration testimony, the Court finds that the Debtor's living expenses during the period from July 1 to September 5 are approximately \$24,000, not \$44,981.76 as estimated by the UST. The Court will reduce the UST fees assessed by \$200 reflect this adjustment.

The Debtor maintains that the amounts he was required to pay to the IRS, on account of its administrative priority tax claim, should not qualify as a

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"disbursement." The Debtor is incorrect. As the Court has previously explained at length (such explanation will not be repeated here), the Debtor was required to pay the IRS \$30,813.17 on account of its §503(b)(1)(B)(i) administrative expense claim.

There is no basis for the Debtor's contention that such payment does not qualify as a "disbursement" for purposes of calculating UST fees.

The Court will enter a Final Decree closing this case, provided the Debtor pays the fees assessed by the UST (less \$200 to reflect the UST's overestimate of the Debtor's living expenses). To ensure that the UST fees are paid, the order on this motion must be approved as to form by the UST in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Upon completion of all plan payments, the Debtor shall move to reopen this case, for the purpose of obtaining a discharge.

The Debtor shall submit a conforming order, which shall be approved as to form by the UST, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Fuchs

Represented By

John R Fuchs

Gail S Gilfillan

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2:18-17000 Keith Black Racing Engines, Inc.

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#12.00 HearingRE: [23] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Debtor and Debtor-in-Possession's Motion for Order Authorizing the Sale fo the Estate's Interests in Specific Machinery and Equipment Free and Clear of All Claims, Liens, and Interests Pursuant to 11 U.S.C. § 363; With Proof of Service (Haberbush, Vanessa)

Docket 23

Tentative Ruling:

9/4/2018

For the reasons set forth below, the Sale Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Motion for Order Authorizing the Sale of the Estate's Interests in Specific Machinery and Equipment Free and Clear of All Claims, Liens, and Interests Pursuant to 11 U.S.C. § 363 (the "Sale Motion") [Doc. No. 23]
 - a) Declaration of Kenneth Black (the "Black Decl.")
- 2) Notice of the Sale Motion [Doc. No. 24]
- 3) Notice of Sale of Estate Property [Doc. No. 25]
- 4) Opposition and Objections to the Sale Motion (the "Opposition") [Doc. No. 29]
 - a) Declaration of Darren Beale (the "Beale Decl.")
 - b) Declaration of Jeff Jamison (the "Jamison Decl.")
- 5) Debtor's Reply to the Opposition (the "Reply") [Doc. No. 30]
 - a) Declaration of Kenneth Black (the "Black Reply Decl.")
- 6) Debtor's Evidentiary Objection to the Jamison Declaration (the "Jamison Evidentiary Objection") [Doc. No. 31]
- 7) Debtor's Evidentiary Objection to the Beale Declaration (the "Beale Evidentiary Objection") [Doc. No. 32]

I. Facts and Summary of Pleadings

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Keith Black Racing Engines, Inc. (the "Debtor" or "KBRE") filed a voluntary Chapter 11 petition on June 18, 2018 (the "Petition") [Doc. No. 1]. The Debtor is in the business of manufacturing engine blocks, racing parts, and other equipment used in drag racing and tractor pulling.

The Pre-Petition "Binding of Heads Agreement" and the Ensuing State Court Action

Prior to the Debtor's bankruptcy, KBRE had been experiencing financial difficulties. Black Decl. at ¶ 6. Sometime in 2016 KBRE began looking for investors to support its business operations. *Id.* On December 2, 2016, KBRE, Ken Black, the Black Family Trust (the "Trust"), and FMI entered into a "Binding Heads of Agreement" (the "BHA"), *see* "Declaration of Darren Beale" (the "Beale Decl.") [Doc. No. 29], Ex. 1 (the BHA is Ex. "A" attached to the state court complaint).

The BHA contemplated that all the agreements contained therein would be completed prior to December 30, 2016 or within 45-days of the date of execution of the BHA (*i.e.* 45-days after December 2, 2016 execution date), whichever was later. BHA at 2. Pursuant to the terms of the BHA, FMI and KBRE agreed to form a "NewCo"—eventually formed as Keith Black, Inc. ("KBI")—"for the purpose of manufacturing, marketing and distributing performance engine blocks for the automotive market" *Id.* at 1. The BHA also provided that KBI was to acquire the business undertakings and certain assets of KBRE. *Id.* at 1–2. It appears from the record that the "certain assets" referred to in the BHA were substantially all of the business assets of KBRE (the "KBRE Assets" or "assets"). *See* Black Decl. at ¶ 7; Beale Decl. at ¶ 7, Ex's. 3 & 4 (list of KBRE assets to be acquired pursuant to the BHA).

On January 25, 2018, the Debtor informed FMI that (allegedly) it had failed to perform under the terms of the BHA, and that unless such breaches were cured within 7-days the Debtor would terminate the BHA. Black Decl. at ¶ 9. On May 11, 2018, the Creditors Fast Machine, Inc. ("FMI") and Keith Black, Inc. ("KBI") (collectively, the "Creditors") filed a complaint in the Los Angeles Superior Court against, among other defendants, KBRE and the Trust, captioned *Keith Black, Inc. v. Kenneth Black*, Case No. VC067127 (the "State Action"). *Id.* at ¶ 11. The State Action asserted causes of action for, among other claims, breach of the BHA and specific

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performance. *See* Beale Decl., Ex. 1 (the complaint in the State Action).

The Sale Motion

On August 7, 2018, the Debtor filed the "Motion for Order Authorizing the Sale of the Estate's Interests in Specific Machinery and Equipment Free and Clear of All Claims, Liens, and Interests Pursuant to 11 U.S.C. § 363" (the "Sale Motion") [Doc. No. 23]. The Debtor seeks approval of the sale of specific items of its machinery and equipment (the "Assets"), a complete list of which is attached as Exhibit "1" to the Black Declaration [Doc. No. 23], free and clear of all claims, liens, and encumbrances. The key sale terms are as follows:

- 1) Proposed purchaser: Jios Sales, Inc.;
- 2) Property for Sale: specific items of machinery and equipment, *see* Black Decl., Ex. 1;
- 3) Purchase price: \$20,500.00;
- 4) Overbids: The initial overbid shall be \$3,000.00; subsequent overbids shall be in the amount of \$500.00. The overbid increment is subject to adjustment by the Court to facilitate bidding.

The Debtor requests that the assets be sold free and clear of liens under § 363(f). Specifically, Debtor seeks a sale free and clear of secured creditor, Ken Black, pursuant to § 363(f)(2), because Mr. Black consents to the sale of the Assets, provided that he retains a lien on the proceeds of the sale. The Debtor also seeks a sale free and clear of any asserted interest in the Assets by KBI and FMI pursuant to § 363(f)(4) based on Debtor's assertion that any such ownership interest is subject to a bona fide dispute arising from the BHA. Debtor proposes to deposit the proceeds from the sale into a separate bank account pending the resolution of the disputes regarding KBI's and FMI's claims of interests in the Assets.

Debtor states that the terms of the sale were negotiated in good faith, that it marketed the Assets, and believes the proposed sale price to be fair. The Debtor also states that it will no longer be using the Assets in its business operations, and selling the Assets is within the Debtor's reasonable business judgment.

The Opposition

On August 21, 2018, KBI and FMI filed the "Opposition and Objections to the [Sale Motion]" (the "Opposition") [Doc. No. 29]. The core argument in the Opposition is that the Sale Motion should be denied because the Debtor does not own

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the Assets, and the proposed sale is not supported under applicable non-bankruptcy law. The Opposition additionally argues that the Debtor has not articulated a sufficient business justification for the sale, and that the sale is a veiled attempt to avoid reorganization and proceed to liquidation.

With respect to the argument that the Debtor does not own the Assets, the Opposition contends that the Debtor sold substantially all of its assets to KBI and FMI in 2016 pursuant to the terms of the BHA. Beale Decl. at ¶¶ 7, 19–22. The 2016 sale of the Assets is the subject of the pending State Court Action. In support of this contention, the Opposition submits two copies of what Mr. Beale identifies as "Schedule A" of the BHA, which lists the tangible assets purportedly acquired by KBI and FMI from KBRE pursuant to the terms of the BHA. *See* Beale Decl., Ex's. 4 & 5. Each page of the copy of Schedule A attached as Exhibit "5" to the Beale Declaration contains the same vague and illegible initial, which Mr. Beale claims is Ken Black's initial "KB". *Id.* at ¶ 19. The Opposition argues that the list of the Assets which the Sale Motion seeks authorization to sell, *see* Black Decl., Ex. 1, is merely a copy of Schedule A of the BHA that has been edited by the Debtor to omit certain of the assets which the Debtor is not seeking to sell, Opposition at 4; Beale Decl. at ¶ 20.

The reason that the Debtor has possession of the Assets that were purportedly sold to KBI is because pursuant to the terms of the BHA, Ken Black took possession of the assets formerly owned by KBRE in his capacity as an employee of KBI. Beale Decl. at ¶ 20. The Opposition states that KBRE was paid for the Assets through the terms of the BHA, and that Ken Black was paid W-2 income as a full-time employee of KBI. *Id.* at ¶ 21. Furthermore, certain of the Assets which the Debtor seeks to sell were, according to Mr. Beale, sold to Jamison Equipment pre-petition with the participation and assistance of Ken Black in his capacity as an employee of KBI. *Id.* at 20–21. Jeff Jamison, the principal of Jamison Equipment, states that in March 2017 he agreed to purchase certain of the equipment Assets from KBI. Jamison Decl. at ¶ 3. On information and belief, and based on his dealings with Ken Black, among other employees of KBI, Mr. Jamison states that Ken Black was "working for" KBI in March 2017 when the purchase agreement for the equipment was entered into. *Id.* at 3.

In sum, whereas the Debtor frames the dispute as to ownership of the Assets in terms of KBI and FMI claiming an interest in assets which the Debtor owns, the Opposition contends that KBI and FMI acquired ownership of the Assets from the Debtor in 2016 pursuant to the terms of the BHA.

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With respect the Debtor's business justification for the sale, the Opposition contends that the Debtor does not articulate any sufficient justification for the sale, and that the Debtor has no identifiable business operations, production, employees, sales, or revenue. Finally, the Opposition argues that because the Debtor has no business operations, a reorganization is not reasonably in prospect. Rather, through the Sale Motion, the Debtor is attempting a piecemeal liquidation of assets that the Debtor does not own, some of which were already sold by KBI to Mr. Jamison. *See* Opposition at 5; Jamison Decl. ¶¶ 5–10.

The Reply

On August 29, 2018, the Debtor filed the Reply to the Opposition (the "Reply") [Doc. No. 30]. The Debtor also submits the "Declaration of Kenneth Black" in support of the Reply (the "Black Reply Decl.") [Doc. No. 30]. The bulk of the Reply argues that, for reasons previously stated in the Sale Motion, the proposed sale can be authorized under § 364(f). The Debtor submits additional evidence in support of its contention that KBI's and FMI's interests in the Assets are subject to a bona fide dispute. *See* Black Reply Decl. at ¶¶ 6–8, Ex's. 1–3. Additionally, the Reply seems to suggest that the Debtor's ownership of the Assets may also be subject to a bona fide dispute. Reply at 6 ("to the extent Debtor does not own the Assets, there is a bona fide dispute over the ownership of the Assets sufficient to allow their sale"). The Reply emphasizes that the terms of the BHA related to KBI's acquisition of the KBRE Assets was not self-effectuating on the completion date; rather, the BHA states that "[a]t completion, the Business Assets *will be sold* to [KBI] without encumbrance" *Id.* at 6, n.2.

The Reply additionally argues that the proposed sale benefits the Estate, that the Debtor has shown a sufficient business justification, and that the other arguments raised by the Opposition are meritless. *See* Reply at 7–9.

II. Findings of Fact and Conclusions of Law

The Evidentiary Objections

On August 29, 2018, the Debtor filed: (1) the "Evidentiary Objection to [the Jamison Declaration]" (the "Jamison Evidentiary Objection") [Doc. No. 31]; and (2) the "Evidentiary Objection to [the Beale Declaration]" (the "Beale Evidentiary Objection") [Doc. No. 32].

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For the reasons set forth below, the Debtor's Evidentiary Objections to the Jamison Declaration and the Beale Declaration are OVERRULED. To the extent the Debtor objects based on the respective declarations containing numerous statements that end with "to the best of my knowledge," "to the best of my knowledge, information, and belief," or any similar variation, the Court finds the objections lack merit. Additionally, the Court finds that Mr. Jamison, as the Principal of Jamison Equipment, and Mr. Beale, as an officer of KBI and FMI, have the requisite personal knowledge to testify to the operations their respective businesses, and the events and circumstances that arose in the ordinary course of business. *See, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position).

The Court further notes that to the extent that declaration testimony purports to characterize the contents of evidence set forth in the record, the Court does not rely upon such testimony. Instead the Court has independently reviewed the evidence in the record, and draws its own conclusions as to whether the proffered evidence corroborates the position advanced by its proponent.

The Sale Motion

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is

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greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

"A bankruptcy court may not allow the sale of property as 'property of the estate' without first determining whether the debtor in fact own[s] the property." *Rodeo Canon Development Corp.*, 362 F.3d 603 (9th Cir. 2004), *vacated*, 126 Fed. App'x 353 (9th Cir. 2005) (vacated on the understanding that the ownership dispute had been resolved) (citing *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 172 (B.A.P. 9th Cir. 2001) (holding that "the threshold question, is [the property] still property of the estate, must . . . be decided" before it can be sold free and clear under § 363(f)).

The evidence in the record is not sufficient for the Court to make the preliminary determination that the Assets are property of the estate. Section 541(a)(1) defines "property of the estate" to include "all legal or equitable interests of the debtor in property." Here, the Debtor's ownership of the Assets, and thus whether the Assets are property of the estate which can be sold, is not clear. The parties do not dispute that the BHA was executed on December 2, 2016. What happened after the execution of the BHA, however, is not clear. Indeed, one of the central issues in the pending State Action will likely be whether the BHA was a valid binding agreement under California law, in addition to other issues such as whether the BHA was breached, and whether KBI and FMI are entitled to the remedy of specific performance. Under these circumstances, particularly given the various ambiguities in the evidence, there appear to be genuine disputes regarding the estate's ownership interest in the Assets. Accordingly, it is not appropriate to proceed with a sale of the Assets until Debtor's ownership interest is resolved.

Section 363(f)(4) Does Not Apply Because the Debtor's Interest is Disputed

Notwithstanding the dispute as to ownership of the Assets, the Debtor contends that the sale may proceed if the Court makes a finding under § 363(f)(4) that FMI's or KBI's interest is in bona fide dispute. The Court is not persuaded by the Debtor's

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argument on this point because § 363(f)(4) does not apply in circumstances where *the Debtor's* interest in the property is disputed.

In *Rodeo Canon Development Corp.*, the Ninth Circuit distinguished between a bona fide dispute over the validity of the non-debtor party's interest in the property, and a dispute over the debtor's interest. See 362 F.3d at 609–610. "In the latter, the court may not authorize a sale under section 363 until the court resolves the dispute and determines that the debtor has an interest that can be sold. Until that occurs, section 363 does not even apply." Alan N. Resnick & Henry J. Sommer, 3 COLLIER ON BANKR. ¶ 363.06 (16th ed. 2018). Contrary to the Debtor's argument, here, the Debtor's ownership of the Assets is disputed, and based on the record the Court cannot make the preliminary finding that the Assets are property of the Estate. Importantly, resolution of this issue would require the Court to decide the dispute regarding the alleged termination and/or breach of the BHA, which dispute is already pending before the State Court.

In support of its argument regarding the applicability of § 363(f)(4) to authorize the proposed sale, the Debtor cites *In re Dewey Ranch Hockey, LLC*, 414 B.R. 577, 591 (Bankr. D. Ariz. 2009) ("*In re Dewey*"), where the bankruptcy court explained the purpose of § 363(f)(4). However, the facts at issue in *In re Dewey* are distinguishable from the Debtor's case, and the holding of the bankruptcy court in *In re Dewey* actually supports this Court's reasoning. Consistent with the Ninth Circuit's holding in *Rodeo Canon Development*, the "bona fide dispute" in *In re Dewey* was a dispute over the non-debtor parties' interest in the property. *In re Dewey*, 414 B.R. at 590 ("For purposes of this decision, the court will assume that the debtors and PSE have established that the interests of the NHL and Glendale are subject to bona fide dispute as that term is used in Section 363(f)(4)."). Furthermore, and in contrast with the present case, the dispute in *In re Dewey* was not a dispute over the parties' ownership interests in the property, let alone whether the debtor had an ownership interest in the property, but rather, the dispute related to the non-debtor parties' interest in the property as creditors, and whether such interests could be adequately protected if the sale were to proceed under § 363(f)(4). See *id.* at 588–93. For example, in *In re Dewey*, the NHL, one of the non-debtor parties that opposed the sale, claimed three rights/interests: "First, the right to admit only new members who meet its written requirements. Second, the right to control where its members play their home hockey games [And] [t]hird, the right to a relocation fee, if appropriate, when a member team relocates to a new site." *Id.* at 591. Ultimately, the bankruptcy court in *In re*

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Dewey determined that the non-debtor parties' interests could not be adequately protected, and that under § 363(e), the court was prohibited from authorizing the sale, notwithstanding the bona fide dispute.

III. Conclusion

In conclusion, based on the foregoing, the Sale Motion is DENIED.

Counsel for FMI and KBI is directed to submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Keith Black Racing Engines, Inc.

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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2:17-16780 Rafael Cazares-Torres

Chapter 7

#13.00 HearingRE: [51] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion to Sell Right, Title, and Interest in Real Property Free and Clear of Liens; Memorandum of Points and Authorities; Request for Judicial Notice; Declarations of Rosendo Gonzalez, Gregory Bingham, and Joong Kyung Ju in Support Thereof with Proof of Service (Shechtman, Zev)

Docket 51

Tentative Ruling:

9/4/2018

The Court will conduct the auction in accordance with the procedures set forth below. If no overbids are received sale will be confirmed to Joong Kyung Ju.

Key Sale Terms:

- 1) Proposed purchaser: Joong Kyung Ju
- 2) Property for Sale: 730 E. 83rd Street, Los Angeles, CA 90001
- 3) Purchase price: \$451,000.00
- 4) Overbids: The initial overbid shall be \$9,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall submit to the Trustee a written, executed overbid form, which is attached as Exhibit "3" to the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$15,000.00.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion to Sell Right, Title, and Interest in Real Property Free and Clear of Liens (the "Sale Motion") [Doc. No. 51]
 - a) Declaration of David M. Goodrich
- 2) Notice of Sale of Estate Property [Doc. No. 53]
- 3) Conditional Non-Opposition to the Sale Motion (the "Non-Opposition") [Doc. No. 56]

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Chapter 7

I. Facts and Summary of Pleadings

Rafael Cazarez-Torres (the "Debtor") filed a voluntary Chapter 11 petition on June 1, 2017 (the "Petition") [Doc. No. 1]. Rosendo Gonzalez accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case.

The Motion

On August 15, 2018, the Trustee filed the "Notice of Motion and Motion to Sell Right, Title, and Interest in Real Property Free and Clear of Liens (the "Sale Motion") [Doc. No. 51]. The Debtor holds an interest in the real property located at 730 E. 83rd Street, Los Angeles, CA 90001 (the "Property"). Joong Kyung Ju (the "Buyer") has offered to purchase the Property pursuant to the terms of the "Purchase and Sale Agreement" (the "PSA"), *see* "Declaration of Rosendo Gonzalez" ("Gonzalez Decl.") [Doc. No. 51, Exhibit "1"], whereby the Buyer has agreed to purchase the Property for the sum of \$451,000.00, *see* Gonzalez Decl. at ¶ 3. The Trustee believes that the proposed sale of the Property will generate approximately \$149,920.00 of net proceeds for the Estate. Sale Motion at 5. The Trustee has marketed the Property, and received multiple offers. The Buyer's offer was the best offer received to date, subject to overbidding.

The key sale terms are as follows:

- 1) Proposed purchaser: Joong Kyung Ju (the "Buyer");
- 2) Property for Sale: 730 E. 83rd Street, Los Angeles, CA 90001;
- 3) Purchase price: \$451,000.00;
- 4) Overbids: The initial overbid shall be \$9,000.00; subsequent overbids shall be in the amount of \$5,000.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbidders shall submit to the Trustee a written, executed overbid form, which is attached as Exhibit "3" to the Sale Motion. Overbidders shall provide the Trustee with a cashier's check in the amount of \$15,000.00.

The Non-Opposition

On August 22, 2018, Secured Creditor Nationstar Mortgage LLC d/b/a Mr. Cooper (the "Secured Creditor"), which is the holder of a note and senior deed of trust encumbering the Property in the original principal amount of \$289,521.00, filed the

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Conditional Non-Opposition to the Sale Motion (the "Non-Opposition") [Doc. No. 56]. The Non-Opposition states that the estimated payoff amount of the Secured Creditor's lien through September 15, 2018 is \$263,368.90. The Sale Motion states that the Secured Creditor's claim is to be paid only "undisputed amounts through escrow," and the Secured Creditor would like to resolve any "disputed amounts" prior to the close of escrow. Therefore, the Secured Creditor does not oppose the Sale Motion on the condition that the following provision is included in the sale order: "Upon sale of the Property, either Secured Creditor will be paid in full subject to a proper payoff quote, or that any sale short of full payoff will be subject to Secured Creditor's final written approval."

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Property is in the best interest of the Estate because the sale will generate significant cash proceeds for the Estate. Additionally, the Trustee believes that the sale price is reasonable considering that the Property was extensively marketed. Furthermore, the sale is subject to overbids, which allows any party wishing to purchase the Property at a higher price to do so. The purchase offer of \$451,000.00 was obtained by the Trustee through arm's length negotiations.

Lastly, the Trustee has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is

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greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3). The price at which the Property will be sold is greater than the aggregate value of all liens on the Property. Furthermore, the Sale Motion provides that the Secured Creditor's lien will be paid in full from the sale proceeds. As requested by the Secured Creditor in its Non-Opposition, the sale order shall include the following language: "Upon sale of the Property, either Secured Creditor will be paid in full subject to a proper payoff quote, or that any sale short of full payoff will be subject to Secured Creditor's final written approval." The sale will be approved with the protections of section 363.

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$9,000.00. Subsequent overbids will be increments of \$5,000.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

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The Trustee shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#14.00 Hearing
RE: [1058] Motion RE: Objection to Claim Number 39 by Claimant David Hunter. Objection to Claim No. 39; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support (with Proof of Service) (Gaschen, Beth)

fr: 8-15-18

Docket 1058

Tentative Ruling:

9/4/2018

Appearances REQUIRED. This hearing was continued for two weeks, based upon the Trustee's representation that she was negotiating a resolution of this Claim Objection with the claimant. However, no additional papers have been filed apprising the Court of the status of such negotiations. Both the Trustee and the Claimant shall appear at the hearing to advise the Court as to the status of negotiations, including whether they have reached a resolution settling this Claim Objection.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen

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Robert S Altagen
Michael J. Weiland

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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#15.00 Hearing

RE: [1052] Motion RE: Objection to Claim Number 38 by Claimant Objection to Claim No. 38; Memorandum of Points and Authorities; and Declaration of Jeffrey I. Golden in Support With Proof of Service (Gaschen, Beth)

fr: 8-15-18

Docket 1052

Tentative Ruling:

9/4/2018

Appearances REQUIRED. This hearing was continued for two weeks, based upon the Trustee's representation that she was negotiating a resolution of this Claim Objection with the claimant. However, no additional papers have been filed apprising the Court of the status of such negotiations. Both the Trustee and the Claimant shall appear at the hearing to advise the Court as to the status of negotiations, including whether they have reached a resolution settling this Claim Objection.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen

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2:18-16133 M & A Enterprises, LLC

Chapter 7

#16.00 HearingRE: [89] Motion -Trustee's Notice of Motion and Motion for Order Authorizing Trustee to: (1) Operate Real Property; (2) Use Cash Collateral Rents; and (3) Employ Property Manager and Enter into Property Management Agreement; Memorandum of Points and Authorities, Declaration of Rosendo Gonzalez and Statement of Disinterestedness of Marlon T. Arias, and Request for Judicial Notice in Support Thereof; proof of service (de Leest, Aaron)

Docket 89

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Trustee's Motion seeking authorization to operate two apartment buildings, and to use cash collateral generated by the buildings in connection with such operation.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion for Order Authorizing Trustee to: (1) Operate Real Property; (2) Use Cash Collateral Rents; and (3) Employ Property Manager and Enter into Property Management Agreement [Doc. No. 89] (the "Motion")
- 2) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 91]
 - a) Notice of Hearing on Trustee's Motion for Order Authorizing Trustee to: (1) Operate Real Property; (2) Use Cash Collateral Rents; and (3) Employ Property Manager and Enter into Property Management Agreement [Doc. No. 98] (the "Motion")
 - b) Declaration of Aaron E. de Leest Re Notice and Service [Doc. No. 99]

I. Facts and Summary of Pleadings

This is a hearing on shortened notice on the motion filed by the Chapter 7 Trustee (the "Trustee") seeking authorization to operate two adjacent apartment buildings

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owned by the Debtor, located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Property"). The Property consists of eighty apartment units. To the extent that rents generated by the Property are cash collateral, the Trustee seeks authorization to use such cash collateral in the operation of the Property. The Trustee seeks authorization to employ Jackson Property Management ("Jackson") as his property manager, effective as of August 30, 2018.

II. Findings and Conclusions

Because the Court has recently denied the Debtor's motion seeking to convert this case to Chapter 11, it is necessary that the Chapter 7 Trustee operate the Property. Section 721 provides that the Trustee may operate the business of the debtor for a limited period, if such operation is in the best interests of the estate. Here, such operation is in the best interests of the estate. Without the Trustee's continued operation, the Property will fall into further disrepair, depressing any future sale price.

To the extent that the rents generated by the Property constitute cash collateral, secured creditors are adequately protected by the Trustee's continued operation of the Property. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]"). Accordingly, the Trustee is authorized to use cash collateral (a) in connection with the Property's operation and (b) to pay secured lenders.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing

RE: [20] Debtors Emergency Motion (A) Approving The Debtors Filing A Consolidated List Of Fifty Largest General Unsecured Creditors For All Cases; (B) Approving The Debtors Filing A Consolidated Master Mailing Matrix For All Cases; And (C) Permitting The Debtors Claims And Noticing Agent To Maintain The Master Mailing Matrix

Docket 20

Tentative Ruling:

9/5/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to (1) authorize the Debtors to retain Kurtzman Carson Consultants as their claims and noticing agent; (2) authorize the Debtors to limit the scope of notice; (3) authorize the Debtors to maintain their existing cash management system; and (4) approve the filing of a consolidated list of the fifty largest unsecured creditors of all seventeen Debtors, in lieu of a list of the twenty largest unsecured creditors for each individual Debtor.

Pleadings Filed and Reviewed:

- 1) Debtors' Emergency Application for an Order (A) Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent and (B) Approving the Form and Manner of Notice of Case Commencement [Doc. No. 27]
- 2) Emergency Motion of Debtors for Entry of an Order Limiting Scope of Notice [Doc. No. 25]
- 3) Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 23] (the "Cash Management Motion")
 - a) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to Emergency Motion of

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- Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 68]
- b) Supplement to Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 70]
- 4) Debtors' Emergency Motion (A) Approving the Debtors Filing a Consolidated List of Fifty Largest General Unsecured Creditors for all Cases; (B) Approving the Debtors Filing a Consolidated Master Mailing Matrix for all Cases; and (C) Permitting the Debtors' Claims and Notice Agent to Maintain the Master Mailing Matrix [Doc. No. 20]

I. Facts and Summary of Pleadings

Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

A. Motion to Appoint Kurtzman Carson Consultants as Claims and Noticing Agent

Debtors request an order authorizing and approving the appointment of Kurtzman Carson Consultants LLC ("KCC") as Claims and Noticing Agent. KCC will provide the following services:

- 1) Prepare and serve required notices in this Chapter 11 case, including:
 - a) Notice of the commencement of the case and the initial meeting of creditors;
 - b) Notice of the claims bar date;
 - c) Notices of transfers of claims;
 - d) Notice of objections to claims;
 - e) Notices of any hearings on a disclosure statement and confirmation of a Chapter 11 Plan; and
 - f) Notice of the effective date of any Chapter 11 Plan.

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- 2) Maintain an official copy of the Debtors' schedules of assets and liabilities and statement of financial affairs.
- 3) Maintain (a) a list of potential creditors and other parties-in-interest and (b) a "core" mailing list consisting of all parties described in Bankruptcy Rule 2002.
- 4) Within five business days after the service of a particular Notice, file with the Clerk's Office a declaration of service that includes (i) an alphabetical list of persons on whom KCC served the Notice, along with their addresses, and (ii) the date and manner of service;
- 5) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- 6) Process all proofs of claim received, including those received by the Clerk's office, check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- 7) Maintain copies of all proofs of claim and proofs of interest filed in this case at a location other than where the originals are maintained;
- 8) Maintain an official claims register for each debtor (the "Claims Register") in this case by docketing all proofs of claim and proofs of interest in a claims database;
- 9) Implement necessary security measures to ensure the completeness and integrity of the claims register as approved by the Clerk of the Court;
- 10) Periodically audit the claims information to assure the Clerk's Office that the claims information is being appropriately and accurately recorded in the official claims register;
- 11) Furnish a notice to all potential creditors of the last date for the filing of proofs of claim and a form for the filing of a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- 12) Transmit to the Clerk's Office a copy of the claims register on a weekly basis or at such other times as the Clerk's Office may direct;
- 13) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of KCC, not less than weekly;
- 14) Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the

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Clerk's Office or any party in interest;

- 15) Allow the Clerk's Office to inspect KCC's premises at any time during regular business hours;
- 16) Record all transfers of claims pursuant to Federal Bankruptcy Rule 3001(e) and provide notice of such transfers as required by Federal Bankruptcy Rule 3001(e);
- 17) Assist in the dissemination of information to the public and respond to requests for administrative information regarding these chapter 11 cases, as directed by the Debtors or the Court, including through the use of a case website and call center;
- 18) If the case is converted to chapter 7, contact the Clerk's Office within three (3) days of the notice to KCC of entry of the order converting the case;
- 19) Thirty days prior to the close of these chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing KCC and terminating KCC's services of such agent upon completion of its duties and responsibilities and upon the closing of these cases;
- 20) At the close of these chapter 11 cases, box and transport all original documents, in proper format, as provided by the Clerk's office, to (i) Riverside Federal Records Center, 23123 Cajalco Road, Perris, CA 92570, or (ii) any other location requested by the Clerk's office;
- 21) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;
- 22) Promptly comply with such further conditions and requirements as the Clerk's Office or the Court may at any time prescribe; and
- 23) Provide such other claims processing, noticing, and related administrative services as may be requested from time to time by the Debtors.

The Debtors request that the undisputed fees and expenses incurred by KCC in the performance of these services be treated as an administrative expense of the Debtors' chapter 11 estates pursuant to 28 U.S.C. §156(c) and §503(b)(1)(A) and be paid in the ordinary course of business without further application to or order of the Court.

B. Cash Management Motion

The Debtors move for authority to maintain their existing cash management system, and make the following arguments and representations in support of the Cash

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Debtors seek authority to (1) continue using their cash management system, (2) implement changes to the system in the ordinary course of business, (3) continue to perform and honor intercompany transactions in the ordinary course of business, and (4) provide administrative expense priority for postpetition intercompany claims. The Debtors request that the Court authorize the financial institutions at which the Debtors maintain various bank accounts to (1) continue to maintain, service and administer the Debtors' bank accounts, and (2) debit the bank accounts in the ordinary course of business.

The Debtors use an integrated cash management system to collect, concentrate and disburse funds generated by operations. The cash management system is broadly similar to systems used by other large businesses. The cash management system meets the Debtors' operating needs as the operator of a large health system.

The cash management system currently comprises 63 accounts, with five commercial banks. The cash management system provides significant benefits to the Debtors, including the ability to control corporate and Hospital funds, ensure maximum available of funds where necessary, and reduce costs and administrative expenses.

1. U.S. Bank's Reservation of Rights

U.S. Bank, in its capacity as the 2015 Note Trustee and the 2017 Note Trustee, responds to the Cash Management Motion as follows:

The Notes Trustee does not, on an interim basis, object to the majority of the relief requested in the Cash Management Motion, including the Debtors' continued use of their existing cash management system and bank accounts and business forms. The Notes Trustee requests that any relief on the Cash Management Motion be granted only on an interim basis subject to a final hearing.

In the Motion, the Debtors seek authority to continue to perform under and honor intercompany transactions in the ordinary course of business, in their business judgment and sole discretion. The Notes Trustee is still evaluating the potential impact of this request in light of the related issues presented by the Debtors' use of cash collateral and postpetition debtor in possession loan proceeds. The Notes Trustee wants to ensure that its liens and security interests are adequately protected, and that the

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Debtors do not improperly use revenues from certain Hospitals or Debtors and to fund or subsidize losses incurred by other Hospitals or Debtors. The Notes Trustee is still analyzing whether granting administrative expense priority to all postpetition intercompany claims is appropriate.

2. Debtors' Supplement to Cash Management Motion

The Debtors filed a Supplement to the Cash Management Motion, in which the Debtors make the following arguments and representations:

In an abundance of caution, and in response to informal comments by the UST, the Debtors wish to address the applicability of §345(b) to the Cash Management Motion. Section 345 requires that the Debtors deposit funds in accounts that will “yield the maximum reasonable net return” on such funds. For deposits or investments not insured or guaranteed by the United States, §345(b) requires that the estate obtain a bond in favor of the United States to secure the repayment of such deposits. The bond requirement imposed by §345(b) can be waived “for cause.”

All except two of the Debtors' deposit accounts are ordinary depository accounts maintained for operational and not investment purposes. At times, the individual balance in the accounts may exceed the current limits of government insurance. Therefore, these accounts may be subject to §345(b)'s bonding requirement unless it is waived.

The Debtors request that the Court waive the requirements of §345(b) and permit the Debtors to maintain their deposits in the accounts in accordance with existing deposit practices. The Debtors' existing deposit practices are significantly less burdensome and more appropriately tailored to their business needs than the practices otherwise required under both the Bankruptcy Code and by the UST Guidelines. The Debtors submit that strict compliance with § 345(b) would be overly burdensome and restrict the Debtors' banking options to the detriment of their Estates and creditors.

C. Motion to Limit Scope of Notice

The Debtors move for authority to limit the scope of notice, and make the following arguments and representations in support of the Motion:

The Debtors mailing matrix has tens of thousands of creditors. The Debtors seek to limit the scope of service of all notices relating to any of the following matters:

- 1) any proposed use, sale, or lease of property of the estate pursuant to § 363 and

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Bankruptcy Rules 2002(a)(2), 4001(b), and 6004;

- 2) any proposed debtor in possession financing or use of cash collateral;
- 3) any proposed extension of the Debtors' exclusive time to file a plan of reorganization and solicit acceptance thereof (including, without limitation, the time to file a disclosure statement) pursuant to § 1121 and Bankruptcy Rule 3016;
- 4) any proposed approval of a compromise or settlement of a controversy pursuant to Bankruptcy Rules 2002(a)(3) and 9019 and/or § 363;
- 5) any proposed abandonment or disposition of property of the estate pursuant to § 554 and Bankruptcy Rules 6007(a) or (c);
- 6) any proposed assumption, assumption and assignment or rejection of contracts or leases pursuant to § 365 and Bankruptcy Rule 6006(a) or (c);
- 7) any proposal to prohibit or condition the use, sale or lease of property pursuant to § 363 or Bankruptcy Rule 4001(a);
- 8) any proposed objections to claims pursuant to § 502 or Bankruptcy Rules 3002, 3003 or 3007;
- 9) any verified statement filed by any entity or committee (other than those appointed pursuant to §§ 1102 or 1104) representing more than one creditor pursuant to Bankruptcy Rule 2019(a) and any motion filed in respect thereof pursuant to Bankruptcy Rule 2019(b);
- 10) any proposed application for employment of professionals pursuant to §§ 327, 1103 or 1104 or Bankruptcy Rule 2014;
- 11) any proposed application for compensation or reimbursement of expenses of professionals, pursuant to §§ 328, 329, 330, or 331 and Bankruptcy Rules 2002(a)(6), 2016, 2017, and 6005; except as provided by other orders of this Court;
- 12) any a hearing on any other contested matter in this Case that requires notice to all creditors or equity holders pursuant to the Bankruptcy Code, Bankruptcy Rule 9014, or the LBR; and
- 13) all other pleadings, papers, and requests for relief or other order of the Court, except as limited below.

However, all creditors will receive notice of the following:

- 1) the date fixed for filing proofs of claim;
- 2) the time fixed for filing objections to any disclosure statement and any hearing to consider approval of any disclosure statement;

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- 3) the time fixed for accepting, rejecting, or objecting to confirmation of a plan or any modification thereof and the hearing thereon;
- 4) the entry of an order confirming a plan; and
- 5) a hearing regarding the dismissal or conversion of this Case (the "Complete Notice Matters").

Pursuant to Bankruptcy Rule 2002, the Court has authority to limit notice. Given that there are tens of thousands of creditors, requiring notice of every matter upon all creditors would impose a large administrative and economic burden upon the Debtors.

D. Motion for Authorization to File Consolidated List of Fifty Largest General Unsecured Creditors

The Debtors seek authorization to file a consolidated list of the fifty largest general unsecured creditors, and making the following arguments and representations in support of the Motion:

Rather than filing a list of the twenty largest unsecured creditors in each of these seventeen related cases, the Debtors seek authorization to file a consolidated list of the fifty general unsecured creditors for all seventeen Debtors and a consolidated Master Mailing Matrix for all seventeen Debtors.

Debtors have over \$1 billion in liabilities and there are over 40,000 potential creditors and parties in interest in these seventeen Chapter 11 cases. Preparing an individual list of the twenty largest unsecured creditors in each of the seventeen cases would be an exceptionally burdensome task.

The Debtors' businesses are highly integrated. If the Debtors filed separate lists of the twenty largest unsecured creditors in each of the seventeen cases, there would be substantial overlap. The Debtors believe that a consolidated list of the fifty largest creditors would be more representative of the parties in interest.

II. Findings and Conclusions

A. Motion to Appoint Kurtzman Carson Consultants as Claims and Balloting Agent

The Motion to appoint KCC as claims and balloting agent is GRANTED. KCC is well-qualified to serve as the Debtors' claims and balloting agent, having provided such services in many of the largest Chapter 11 cases filed in the Bankruptcy Court for the Southern District of New York and the Bankruptcy Court for the District of Delaware. The services to be provided by KCC will help streamline the administration

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of the Debtors' estates and will assist the Debtors in monitoring claims and bringing these cases to a timely resolution.

Because KCC's services will benefit the estates and creditors, allowance of KCC's services as an administrative expense claim is appropriate. The Debtor is authorized to pay KCC's fees in the ordinary course of business without further application to order of the Court.

B. Cash Management Motion

The Court is prepared to grant the Cash Management Motion on an interim basis, subject to a Final Hearing to be held on **October 3, 2018, at 10:00 a.m.**

The Debtors are authorized to continue using their existing cash management system, to implement changes to the system in the ordinary course of business, to continue to honor intercompany transactions in the ordinary course of business, and to provide administrative expense priority for postpetition company claims.

Local Bankruptcy Rule 2015-2 requires that Debtors comply with the United States Trustee Guidelines. The UST Guidelines require that new bank accounts be opened at certain financial institutions designated as authorized depositories by the U.S. Trustee.

In this case, requiring the Debtors to close their existing bank accounts, and to open new ones, will disrupt the Debtors' business and cash flow, which could affect patient care. Transitioning to new bank accounts will also increase the workload upon the Debtors' accounting staff.

The Debtors' existing accounts are already at banks that are on the UST's list of authorized depositories. Under these circumstances, waiving the UST requirements regarding debtor-in-possession accounts is appropriate.

To the extent necessary, the Court waives the bonding requirement imposed by § 345(b), "for cause." The Debtors are authorized to maintain their deposits in the accounts in accordance with existing deposit practices. The Court is satisfied that the Debtors' funds have been deposited with reputable financial institutions and that the funds on deposit are not at risk of loss.

The Court agrees with U.S. Bank, in its capacity as the Notes Trustee, that the Debtors' request to honor intercompany transactions in the ordinary course of business should be subject to a Final Hearing. The Court notes that in a consolidated enterprise such as that operated by the Debtors, intercompany transactions often do not reflect the market price for the goods and/or services transferred. Of course, the Court makes no findings as to whether non-market price transfers are occurring in this

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case, as no relevant evidence is before the Court. However, it is possible that the transfer pricing used by the Debtors might not reflect economic reality, and thus could economically advantage one estate to the disadvantage of the others. Therefore, the Debtors' request to continue honoring intercompany transactions could have real economic impact on the creditors of certain of the Debtors.

A Final Hearing on the Cash Management Motion shall take place on **October 3, 2018, at 10:00 a.m.** Opposition to the Cash Management Motion is due by no later than **September 19, 2018**. The Debtor's Reply in support of the Cash Management Motion is due by **September 26, 2018**.

C. Motion to Limit the Scope of Notice

Bankruptcy Rule 2002 authorizes the Court to limit the scope of the notices that are required to be provided. Here, the Debtors have more than 40,000 creditors. Requiring notice of every matter upon every creditor would prove unduly burdensome and expensive. The Debtor is authorized to limit the scope of notice as set forth in the Motion.

D. Motion to File Consolidated List of Fifty Largest Unsecured Creditors

The Debtors' motion for authorization to file a consolidated list of the fifty largest general unsecured creditors of all seventeen Debtors in each case (in lieu of a separate list of the twenty largest unsecured creditors for each Debtor) is GRANTED. The Debtors operated their businesses as a single consolidated enterprise. The Debtors have stated that it would be extremely burdensome to file separate lists of the twenty largest unsecured creditors in each of these seventeen jointly-administered cases, and that such lists would contain substantial overlap. The Court finds that a list of the fifty largest unsecured creditors of all seventeen Debtors, to be filed in each case, will provide a more accurate representation of the creditor body.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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#18.00 Hearing
RE: [21] Debtors Emergency Motion For Entry Of An Order Authorizing The Filing Under Seal Of Confidential Patient Information

Docket 21

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to (1) authorize the Debtors to file confidential patient information under seal and (2) pay prepetition and postpetition amounts owed to insurance carriers.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Motion for Entry of an Order Authorizing the Filing Under Seal of Confidential Patient Information [Doc. No. 21]
- 2) Emergency Motion for Entry of an Order (I) Authorizing the Debtors to (A) Maintain Insurance Program, (B) Pay Insurance Premiums in the Ordinary Course and (C) Pay all Obligations Associated Therewith; and (II) Preventing Insurance Companies from Enforcing Ipso Facto Clauses or Giving Any Notice of Termination or Otherwise Modifying Any Insurance Policy Without Obtaining Relief from the Automatic Stay [Doc. No. 24]

I. Facts and Summary of Pleadings

Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

A. Motion to File Confidential Patient Information Under Seal

Debtors seek authorization to file confidential patient information under seal. The information to be filed under seal includes all patients who have a credit balance.

B. Motion to Maintain Insurance Program

Debtors seek authorization to (a) maintain insurance coverage levels, including

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authority to revise, extend, supplement, renew, or change insurance coverage as needed, (b) pay insurance premiums, self-insured retentions, broker fees and deductibles in the ordinary course of business, and (c) pay certain administrative obligations associated therewith. Debtors further seek an order preventing insurance companies from enforcing any *ipso facto* clauses or giving any notice of termination or otherwise modifying or cancelling any insurance policies without first obtaining relief from the automatic stay. Debtors make the following arguments and representations in support of the Motion:

Any disruption to payment of the Debtors' insurance obligations would prevent the Debtors from achieving their goals in this case because the Debtors may not be able to operate without maintaining their insurance coverage. Failure to pay insurance obligations will result in severe repercussions on the Debtors' ability to continue to provide patient care, and will immediately and irreparably harm patients.

The Debtors maintain insurance policies providing for coverage of, among other things:

- 1) Workers' compensation and employers liability;
- 2) Directors and officers liability;
- 3) General liability;
- 4) Professional liability;
- 5) Sexual misconduct and molestation liability;
- 6) Storage tank liability;
- 7) Commercial property liability;
- 8) Commercial automobile liability;
- 9) Helipad liability and non-owned aircraft liability.

Significant insurance is issued to the Debtors by its captive insurer Marillac Insurance Company, Ltd. ("Marillac"). (Marillac has not sought relief under the Bankruptcy Code.)

The Debtors are required to maintain workers' compensation insurance coverage to comply with their obligations under California law. As a practical matter, the Debtors cannot continue to provide patient care and operate a healthcare system without professional and general liability insurance, among other coverages.

II. Findings and Conclusions

A. The Motion to File Confidential Patient Information Under Seal is Granted

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Bankruptcy Code §107(c) provides that the Court may, for cause, “protect an individual” with respect to the disclosure of personal information. Information that the Debtors are required to keep confidential under relevant healthcare legislation easily qualifies as information of the type that is protected under Bankruptcy Code §107(c). The Debtors’ motion to file confidential patient information under seal is GRANTED.

B. The Motion to Maintain Insurance Coverage

The Court finds that, as a practical matter, the Debtors cannot continue the operation of their Hospitals without all the types of insurance set forth in the Motion. To the extent that payments to insurance carriers are for services rendered post-petition, such payments constitute an “ordinary course of business” expense for which Court approval is unnecessary.

To the extent that insurance payments represent pre-petition indebtedness, Court approval is required. If the Debtor did not pay insurers on account of pre-petition indebtedness, it would most likely be required to obtain new insurance coverage at greater cost. Such a result would inure to the detriment of all creditors.

The Ninth Circuit has recognized that “[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.” *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). Payment of prepetition insurance premiums falls within this rationale. Accordingly, the Court is prepared to authorize the Debtors to pay prepetition insurance premiums.

The Court is also prepared to bar insurance providers from invoking any *ipso facto* clauses set forth in any of the Debtors’ insurance policies. *Ipsso facto* clauses are not enforceable in bankruptcy, and any attempt by an insurance carrier to terminate insurance coverage absent court authorization would constitute a violation of the automatic stay.

Party Information

Debtor(s):

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#19.00 Hearing

RE: [22] E Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors Relating To The Foregoing

Docket 22

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Prepetition Wages Motion on a final basis.

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Debtors for Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing [Doc. No. 22] (the "Prepetition Wages Motion" or "Motion")
 - a) Declaration of Richard Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - d) Declaration of Service by Kurtzman Carson Consultants, LLC re Emergency First-Day Motions, Exhibit B [Doc. No. 50]

I. Facts and Summary of Pleadings

Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

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A. The Motion

The Debtors move for authorization to pay prepetition wages and employee benefits, and making the following arguments and representations in support of the Motion:

Debtors employ approximately 7,385 employees. Debtors seek authorization to pay prepetition wages in the aggregate amount of \$14,287,757, for services performed from August 19, 2018 to August 30, 2018. With respect to any payments to insiders, the Debtors will serve *Notices of Setting/Increasing Insider Compensation* and will not pay insiders except in accordance with the procedures set forth by the United States Trustee.

Debtor also seeks to make payments for contributions to employee benefit plans. None of the contemplated payments will exceed the priority amounts set forth in § 507(a)(4) or (a)(5).

II. Findings and Conclusions

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim. Additionally, § 507(a)(4) imposes a limit of \$12,850.00 for each individual employee for priority status. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify 'first day' orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

COLLIER ON BANKRUPTCY ¶ 507.06[2] (16th ed. 2017). Local Bankruptcy Rule 2081-1(a) provides that a motion to pay prepetition payroll must be supported by evidence that establishes the following: "(A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect of

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reorganization; (E) Whether the employees are insiders; (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and that (G) The payment will not render the estate administratively insolvent."

Similar to Section 507(a)(4), §507(a)(5) provides that contributions to an employee benefit plan, up to the amount of \$12,850 per employee, are entitled to administrative priority status.

Having reviewed the declaration of Richard G. Adcock, the Debtors' Chief Executive Officer, the Court finds that the Debtors have established the necessity of paying the prepetition wages, employee benefits, and employee benefit plan contributions as set forth in the Motion. The employees that are the subject of the Motion remain employed by the Debtors and are critical to the Debtors' continued operations. The Debtors will not pay any employee wages or benefits in excess of the priority amount set forth in §507(a)(4), and the Debtors will not make employee benefit plan contributions in excess of the amounts set forth in §507(a)(5). In view of the contemplated DIP Facility, the payments will not render the estate administratively insolvent. Finally, Debtors have made a sufficient showing that they have a reasonable prospect of selling assets or otherwise prosecuting this case to a conclusion consistent with the objectives of the Bankruptcy Code.

Based upon the foregoing, the Court is prepared to GRANT the Motion in its entirety.

Party Information

Debtor(s):

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#20.00 Hearing
RE: [23] Emergency motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for PostPetition Intercompany Claims; and (5) Obtain Related Relief

Docket 23

Tentative Ruling:

9/4/2018

See Cal. No. 17, above, incorporated in full by reference.

Party Information

Debtor(s):

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#21.00 Hearing

RE: [24] Emergency Motion For Entry Of An Order (I) Authorizing The Debtors To (A) Maintain Insurance Program, (B) Pay Insurance Premiums In The Ordinary Course And (C) Pay All Obligations Associated Therewith; And (II) Preventing Insurance Companies From Enforcing Ipso Facto Clauses Or Giving Any Notice Of Termination Or Otherwise Modifying Any Insurance Policy Without Obtaining Relief From The Automatic Stay

Docket 24

Tentative Ruling:

9/4/2018

See Cal. No. 18, above, incorporated in full by reference.

Party Information

Debtor(s):

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#22.00 Hearing
RE: [25] Emergency Motion Of Debtors For Entry Of An Order Limiting Scope Of
Notice

Docket 25

Tentative Ruling:

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See Cal. No. 17, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

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#23.00 Hearing

RE: [27] Debtors Emergency Application For An Order (A) Appointing Kurtzman Carson Consultants LLC As Claims And Noticing Agent And (B) Approving The Form And Manner Of Notice Of Case Commencement; Memorandum Of Points And Authorities; Declaration Of Evan Gerschbein; Mega Case Procedures Checklist (Form 5075); Proposed Notice Of Case Commencement

Docket 27

Tentative Ruling:

9/4/2018

See Cal. No. 17, above, incorporated in full by reference.

Party Information

Debtor(s):

Verity Health System of California,

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#24.00 Hearing
RE: [28] Debtors Emergency Motion For Order (A) Prohibiting Utilities From Altering, Refusing, Or Discontinuing Service And (B) Determining Adequate Assurance Of Payment For Future Utility Services

Docket 28

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to grant the Utility Motion on a final basis.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Order (A) Prohibiting Utilities from Altering, Refusing, or Discontinuing Service and (B) Determining Adequate Assurance of Payment for Future Utility Services [Doc. No. 28] (the "Utility Motion" or "Motion")
 - a) Declaration of Richard Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - d) Declaration of Service by Kurtzman Carson Consultants, LLC re Emergency First-Day Motions, Exhibit D [Doc. No. 50]

I. Facts and Summary of Pleadings

A. Background

Background information on the Debtors is set forth in the tentative ruling on the Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

B. Motion for Order (A) Prohibiting Utilities from Altering, Refusing, or

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*Discontinuing Service and (B) Determining Adequate Assurance of Payment
for Future Utility Services*

Debtors assert that they receive essential utility services from a number of utility providers identified in Exhibit A to the Motion (collectively, the "Utility Companies" and individually a "Utility Company") and seek emergency relief to avoid irreparable harm to the Debtors and their patients that might result if any one of the Utility Companies altered or discontinued service. Accordingly, by this motion, Debtors seek entry of an order: (i) prohibiting the Utility Companies from altering, refusing, or discontinuing service without further order of the Court; and (ii) determining adequate assurance of payment for future utility services, as already provided for in the Debtors' Budget submitted in connection with the Debtors' Cash Collateral Motion.

Debtors propose to give each Utility Company adequate assurance of future performance for their future services in the form of cash deposits (the "Utility Deposits" and each, a "Utility Deposit") in amounts that are equal to the average monthly invoice for one month of prepetition services provided to the Debtors by each Utility Company. See Utility Motion, Exhibit B. The Debtors propose to pay the Utility Deposits within days after the Court's entry of an order granting this Motion. Additionally, Debtors state that they will have adequate cash to meet all of their necessary postpetition operating expenses on a current basis, including payment to the Utility Companies.

Debtors also seek to establish a reasonable procedure by which a Utility Company may request further adequate assurance of future payment, in the event that such Utility Company believes that their Utility Deposit does not provide it with satisfactory adequate assurance (the "Procedures"). Debtors proposed Procedures are set forth on pages 13 – 15 of the Utility Motion.

Debtors submit that tendering the Utility Deposit and approval of the Procedures will provide adequate assurance of payment as required by 11 U.S.C. § 366(c).

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the declarations regarding service show compliance and attempted compliance with the Court's order setting this matter

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on shortened notice. Given the exigencies of first day motions, the Court finds that notice of the hearing was adequate.

Section 366(c)(2) provides that a utility companies may "alter, refuse, or discontinue utility service if, during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor . . . adequate assurance of payment for utility service that is satisfactory to the utility." However, § 366(c)(3) provides that upon request of a party in interest and after notice and a hearing, the court "may order modification of the amount of an assurance of payment" under § 366(c)(2).

In *In re Circuit City Stores, Inc.*, 2009 WL 484553 (Bankr. E.D. Va. Jan. 14, 2009), the court evaluated proposed procedures for determining adequate assurance of payment to utility providers. The *Circuit City* court concluded that the statute "does not prohibit a court from making a determination about the adequacy of an assurance of payment until only after a payment 'satisfactory to the utility' has been received from the debtor under § 366(c)(2). The first clause of § 366(c)(2) clearly renders the entire section subject to the court's authority outlined in § 366(c)(3). See 11 U.S.C. § 366(c)(2); see also 3 *Collier on Bankruptcy* ¶ 366.03[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev.2008) (stating § 366(c)(2) means that the debtor must 'pay what the utility demands, unless the court orders otherwise.')." *In re Circuit City Stores, supra*, at *5.

The *Circuit City* court rejected the interpretation of § 363(c)(2) that "concludes that a bankruptcy court may not determine the appropriate amount of adequate assurance until the debtor has first paid whatever amount the utility has demanded." *Id.* at *3. Such an interpretation, the court reasoned, "is simply unworkable" and "could lead to absurd results." *Id.* For instance, a utility company might "simply fail to respond to a debtor's offer of adequate assurance, or it may choose to respond on the thirtieth day. In either event, the result would be calamitous for a debtor in the throes of bankruptcy." *Id.*

"The requirement is for 'adequate assurance' of payment, which . . . need not necessarily be provided by deposit." *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002). "Whether utilities have adequate assurance of future

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payment is determined by the individual circumstances of each case." *Id.* "Accordingly, bankruptcy courts must be afforded reasonable discretion in determining what constitutes 'adequate assurance' of payment for continuing utility services." *Virginia Elec. & Power Co. v. Caldor, Inc.-New York*, 117 F.3d 646, 650 (2d Cir. 1997) (citations omitted).

Here, the Court finds that the Debtors' proposed Utility Deposit constitutes "adequate assurance of payment" pursuant to § 366(c)(2). The Debtors operate hospitals, medical centers and clinics. Any interruption in utility services could irreparably harm the Debtors and their patients and hamper the Debtors' ability to reorganize. Requiring the Debtors to first meet a utility company's demands for adequate assurance of payment before requesting a court order modifying that request would enable utility companies to subject the Debtors to unreasonable demands. Additionally, Debtors contends that they are current with all utility companies as of filing for bankruptcy and represent that they will remain current on all post-petition debts owed.

For these reasons, subject to oppositions at the hearing, the Court's tentative ruling is to GRANT the Utility Motion on the terms set forth herein. Debtors are directed to tender the Utility Deposits within 7 business days following entry of an order approving the motion. The Utility Companies will be deemed to be receiving adequate assurance of payment on these terms.

The Debtors must lodge a conforming proposed order within 7 days of the hearing.

Party Information

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#25.00 Hearing
RE: [29] Debtors Emergency Motion For Entry Of An Order Authorizing Debtors
To Honor Prepetition Obligations To Critical Vendors

Docket 29

Tentative Ruling:

9/4/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to authorize the Debtors to pay Critical Vendors \$5 million on an interim basis. A Final Hearing shall be held on **October 3, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 29] (the "Motion")
 - a) Declaration of Richard G. Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Declaration of Anita Chou, Chief Financial Officer, in Support of Motion for Interim Order Authorizing (A) Use of Cash Collateral; (B) Debtor in Possession Credit Agreement; (C) Grant of Superpriority Priming Liens to DIP Lender; and (D) Grant of Junior Liens on Post-Petition Accounts and Inventory as Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), and 364(C) and (D)
 - c) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - d) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
- 2) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 69]

I. Facts and Summary of Pleadings

Background information on the Debtors is set forth in the tentative ruling on the

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Debtors' emergency motion for authorization to obtain secured credit and to authorize the use of cash collateral, and is not repeated here.

A. The Motion

The Debtors move for entry of an interim order authorizing, but not directing, the Debtors to continue to pay and/or honor prepetition claims, in an interim amount of up to \$5 million. The Debtors make the following arguments and representations in support of the Motion:

The Debtors operate a nonprofit safety-net healthcare system that provides medical care for over 300,000 patients per year. To continue operations, the Debtors must be authorized to make prepetition payments to certain medical suppliers, medical care providers, and critical service providers (collectively, the "Critical Vendors").

The Debtors and their advisors have developed a protocol to identify only those vendors most critical to the Debtors' continued operations (the "Protocol"). Under the Protocol, a vendor is a Critical Vendor if that vendor meets the following criteria:

- 1) The vendor is essential to patient care, supports maintaining the Debtors' business in full compliance with all applicable legal requirements, and allows the Debtors to continue to provide essential and life-saving patient care and services;
- 2) The vendor is indispensable for providing vital goods and services (such as blood products or surgical implants), could not be replaced without prohibitive expense, or is critical to prevent the diversion of management and key personnel;
- 3) The vendor will most likely refuse to deliver vital goods or services without payment of its prepetition claim, and the automatic stay is inadequate to address the issue;
- 4) Cash on delivery is unlikely to provide the requisite incentive for the vendor to continue providing goods or services;
- 5) The Debtors lack a long-term contractual relationship with the vendor that would oblige the vendor to continue the prepetition relationship;
- 6) The Debtors are otherwise without adequate leverage to compel performance on commercially reasonable terms;
- 7) The Debtors will suffer immediate and irreparable harm if the vendor is not specially incentivized to continue providing essentially goods or services.

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The Debtors will use commercially reasonable efforts to require the vendor to sign a postpetition agreement with normalized terms and conditions that contractually binds the vendor to continue providing essential goods and services postpetition (the “Critical Vendor Agreement”).

Critical Vendors fall into the following categories:

- 1) **Uncompensated Care and On-Call Coverage Physicians.** The Debtors require the services of various physicians who provide care to patients who lack the ability to pay the Debtors for their medical treatment. Uncompensated Care Contract Physicians provide life-saving medical care and treatment for patients who cannot pay for such care. On-Call Coverage Physicians ensure that specialty physician services are available at all times for all patients, regardless of the patient’s ability to pay. Due to a strong economy and tight labor market, Uncompensated Care Contract Physicians and On-Call Coverage Physicians would likely leave to work at other hospitals if they did not receive payment on account of their prepetition claims.
- 2) **Medical Directors.** Medical Directors ensure that the Debtors’ Hospitals provide patient care efficiently and in compliance with state and federal laws, rules, and regulations. Absent payment on account of their prepetition claims, Medical Directors would likely leave to work at other hospitals.
- 3) **Medical Leadership.** In order to maintain the accreditations that are necessary to enable the Hospitals to retain their certifications under the Medicare and Medi-Cal programs, the Debtors require the services of various physicians who serve as medical staff officers or who occupy various other leadership positions. Absent payment on account of their prepetition claims, these physicians would likely leave to work at other hospitals.
- 4) **Physician Educators.** The Debtors require the services of various physicians who provide teaching services in the Debtors’ graduate medical education (“GME”) program. The GME program trains physicians who provided needed staffing for the Debtors’ hospitals. Physician Educators are in high demand because they are highly skilled—they must not only be experts in their fields, but they must also meet stringent qualifications under the government’s GME requirements. Without the Physician Educators, the Debtors would lose their GME program. The GME Program

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is a require program for the Level II Trauma Center at St. Vincent Medical Center. Physician Educators would likely leave to work at other hospitals absent payment on their prepetition claims.

- 5) **Medical Services Providers.** The Debtors require the services of various Medical Services Provides, including providers of surgical anesthesia coverage, organ harvesting and organ matching services, medical equipment sanitization, diagnostic interventional cardiology services, imaging services, advanced wound care, laboratory services, dialysis services, and medical screening services, among others.
- 6) **Medical Supplies and Equipment Providers.** The Debtors require the use of various medical supplies and medical equipment, including without limitation blood and plasma, heart valves, defibrillators, surgical medical products, pharmaceuticals, radiational equipment, cochlear implants, and sterilization equipment.
- 7) **Clinical Staffing.** The Debtors require various medical staffing agencies to provide numerous personnel essential to operating hospitals, including without limitation nurses, nurse practitioners, physicians assistances, imaging technicians, surgical technicians, and admission department staff. Because Debtors must comply with mandatory California nurse-to-patient ratios, the Debtors are required to increase nurse staffing depending upon daily patient census.
- 8) **Non-Medical Services Providers.** The Debtors require services of various non-medical service provides, including without limitation providers offering payroll tax services, financial audit services, billing services, cost reporting services, and revenue cycle management services.
- 9) **IT Service Providers.** The Debtors require the use of various information technology services, including without limitation services supporting diagnostic technology, device interoperability, risk management software, revenue cycle management billing software, customer relationship management software, and networking services.
- 10) **Benefits Providers.** The Debtors have incentivized their employees to continue working through the continuation of company-subsidized benefits, such as workers compensation, medical, dental, and vision benefits, and life insurance benefits. If the Debtors are not permitted by pay any prepetition premium amounts due to these Benefits Providers, the employees' insurance coverage will be jeopardized and the employees will

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likely seek employment elsewhere.

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All Critical Vendors will be required to sign a Critical Vendor Agreement. If, after signing the Critical Vendor Agreement, the Critical Vendor thereafter refuses to supply goods and services to the Debtors throughout the course of the bankruptcy proceeding, the Debtors may (a) deem payments to the defaulting Critical Vendor to be a voidable post-petition transfer pursuant to §549(a) and (b) may demand the immediate return of any and all payment made to the defaulting Critical Vendor.

B. Reservation of Rights by the Notes Trustee

U.S. Bank, in its capacity as the 2015 Note Trustee and the 2017 Note Trustee, responds to the Critical Vendor Motion as follows:

The Notes Trustee acknowledges that the Debtors' business is complex and that payment of certain vendors may be necessary to enhance the value of the bankruptcy estates. However, payment of critical vendors is a form of extraordinary relief that is not specifically authorized by any section of the Bankruptcy Code. If permitted, it will allow the Debtors to use collateral pledged to the repayment of certain prepetition secured creditors, like the Notes Trustee, to make payments to unsecured or other creditors whose claims may otherwise be paid last. Further, the Debtors, at their discretion, can decide which Critical Vendor claims should be paid and in what amounts. Accordingly, it is important to allow all creditors sufficient time to understand how the Debtors' requests may impact creditors' relative priorities and security positions.

Based upon the foregoing, the Notes Trustee the Notes Trustee has a significant interest in making sure that interim payments to Critical Vendors are only made where necessary to avoid immediate and irreparable harm to the Debtors. Moreover, the Notes Trustee has an interest in understanding the need for, and the proposed uses of, the additional up to \$15 million in potential Critical Vendor payments that may be authorized on a non-interim basis. At this time, the Notes Trustee does not expect to have a full understanding of these issue by the first day hearing on the Motion.

II. Findings and Conclusions

The Court notes that in dicta, the Supreme Court has recently noted that Bankruptcy Courts have approved "'critical vendor' orders that allow payment of an essential suppliers' prepetition invoices." *Czyzewski v. Jevic Holding Corp.*, 137 S.

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Ct. 973, 985, 197 L. Ed. 2d 398 (2017). The Supreme Court’s statement in *Jevic* obviously was not a holding upon the validity of a critical vendor order; nonetheless, the Supreme Court’s acknowledgment that Bankruptcy Courts have reasoned that critical vendor orders are necessary to “enable a successful reorganization and make even the disfavored creditors better off” is significant. *Id.* at 985.

More on point, in the context of a cross-collateralization clause, the Ninth Circuit has recognized that “[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.” *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). The Ninth Circuit’s recognition of the necessity of paying prepetition debts to “providers of unique and irreplaceable supplies” is particularly salient; that relief is most analogous to the relief sought by the instant Motion.

The Debtors have established that there is a strong likelihood that they may suffer irreparable harm if they are not able to pay Critical Vendors. The Debtors have adopted rigorous procedures to limit the amounts to be paid to Critical Vendors on account of prepetition debt.

Such prepetition payments obviously are frowned upon because they subvert the Bankruptcy Code’s priority scheme. Yet the priority scheme will be of little use to anyone if value is destroyed because the Debtors cannot continue operations. There is a credible threat that the Debtors will not be able to obtain needed services and supplies absent authorization to pay Critical Vendors.

The Motion is GRANTED on an interim basis. A Final Hearing shall be held on **October 3, 2018, at 10:00 a.m.** Opposition to the Debtor’s ability to pay an additional \$15 million to Critical Vendors is due by no later than **September 19, 2018**. The Debtor’s reply in support of continued authorization is due by **September 26, 2018**.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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#26.00 HearingRE: [31] Emergency motion Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108; Memorandum Of Points And Authorities In Support Thereof; Declaration Of Anita Chou In Support Thereof (Maizel, Samuel)

Docket 31

Tentative Ruling:

9/5/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to authorize the Debtors to borrow \$30 million on an interim basis. A Final Hearing shall be held on **October 3, 2018, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 31] (the "Financing Motion" or "Motion")
 - a) Declaration of Richard G. Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Declaration of Anita Chou, Chief Financial Officer, in Support of Motion for Interim Order Authorizing (A) Use of Cash Collateral; (B) Debtor in Possession Credit Agreement; (C) Grant of Superpriority Priming Liens to DIP Lender; and (D) Grant of Junior Liens on Post-Petition Accounts and Inventory as Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), and 364(C) and (D)
 - c) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - d) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
- 2) Attorney General's Initial Limited Objection to Debtor's Emergency First Day

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Motions [Doc. No. 60]

- 3) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and as Series 2017 Note Trustee, to Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 67]

I. Facts and Summary of Pleadings

A. Background

On August 31, 2018, Verity Health Systems of California (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor nonprofit public benefit corporations that operate acute care hospitals: O’Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside (collectively, the “Hospitals”). Adcock Decl. [Doc. No. 8] at ¶11. VHS, the Hospitals, and their affiliated entities (collectively, the “Verity Health System”) operate a nonprofit health care system in the State of California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and various medical specialties. *Id.* at ¶12. In 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000 outpatients. *Id.*

Debtor Verity Medical Foundation (“VMF”), incorporated in 2011, is a medical foundation that contracts with physicians and other healthcare professionals to provide patient care throughout California. *Id.* at ¶14. VMF offers medical, surgical, and related healthcare services at community-based, multi-specialty clinics located in areas served by the Debtor Hospitals. *Id.*

Verity Holdings LLC (“Holdings”), a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance Verity’s interests in six medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the Hospitals. *Id.* at ¶15. Holdings’ real estate portfolio includes over 30 properties. *Id.*

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Debtors Saint Louise Regional Hospital Foundation, St. Francis Medical Center Foundation, St. Vincent Medical Center Foundation, Seton Medical Center Foundation, and O'Connor Medical Center Foundation handle fundraising and grant-making programs for each of their respective Debtor Hospitals. *Id.* at ¶16.

As of August 30, 2018, the Debtors' facilities had approximately 850 patients, and are currently at approximately 50% occupancy. *Id.* at ¶17. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. *Id.* at ¶18. Approximately 74% of these employees are represented by collective bargaining units. *Id.*

VHS operates Debtor Verity Business Services ("VBS"), a nonprofit public benefit corporation. *Id.* at ¶30. VBS provides support services to the Verity Health System, including accounting, finance, patient financial services, supply chain management, and purchasing services. *Id.*

O'Connor Hospital operates a 358 bed, general acute care hospital that serves residents from the greater San Jose area, and contains an emergency department with 23 emergency treatment stations. *Id.* at ¶32. St. Vincent Medical Center operates a 366 bed, regional acute care facility located in Los Angeles, CA. *Id.* at ¶34. St. Vincent Medical Center is the sole corporate member of the St. Vincent Dialysis Center, located on the Hospital's campus. *Id.* at ¶36. St. Vincent Dialysis Center provides dialysis services for kidney disease patients. *Id.*

St. Francis Medical Center operates a 384 bed, general acute care hospital located in Lynwood, California. *Id.* at ¶37. Seton Medical Center operates a 357 bed hospital located in Daly City, California. *Id.* at ¶39. Seton Coastside is located in the City of Half Moon Bay, California, and contains 116 skilled nursing beds and five general, acute-care beds. *Id.* at ¶40. Saint Louise Hospital is located in Gilroy, California and operates a 93 bed, general acute care hospital. *Id.* at ¶42.

DePaul Ventures, LLC is a wholly-owned and operated holding company of the Debtors that was formed in August 2010 for the purpose of investing in a freestanding surgery center and other healthcare entities. *Id.* at ¶45. In April 2013, DePaul Ventures, LLC formed DePaul Ventures—San Jose Dialysis, LLC ("Dialysis"), a general and limited partner of Priday Dialysis, LLC ("Priday"). Priday—which is not a Debtor—is a healthcare center specializing in end-stage renal disease treatment. *Id.* at ¶46.

Non-Debtor Marillac Insurance Company, Ltd. ("Marillac") is a wholly-owned subsidiary of VHS, and was incorporated in the Cayman Islands on December 9, 2003. *Id.* at ¶49. Significant insurance is issued to the Debtors by its captive insurer Marillac. *Id.* at ¶68. Policies issued by Marillac cover professional and general

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B. The Financing Motion

The Debtors make the following arguments and representations in support of the Financing Motion:

Debtors seek authorization to enter into a senior secured, superpriority debtor in possession financing facility with Ally Bank, a subsidiary of Ally Financial, Inc. (the "DIP Lender"), in (a) an interim amount not to exceed \$30 million, and (b) after a final hearing, in an amount up to total lending of not more than \$185 million (such financing, the "DIP Facility").

VHS, VBS, and VHS' five acute care hospital subsidiaries (O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside) are jointly obligated parties on approximately \$461.4 million in outstanding secured debt consisting of (a) \$259.4 million in outstanding principal amount of tax exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities Development Authority (the "2005 Bonds") and (b) \$202 million in outstanding principal amount of tax exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California Public Financing Authority (the "Working Capital Notes").

For the 2005 Bonds, Wells Fargo Bank, N.A. ("Wells Fargo") is the Bond Trustee and UMB Bank, N.A. ("UMB") is the successor Master Trustee. The 2005 Bonds were issued to provide funds for capital improvements and to refinancing certain tax exempt bonds that had been issued in 2001. For the Working Capital Notes, U.S. Bank, N.A. ("U.S. Bank") is the Note Trustee and Collateral Agent. (The Working Capital Notes, together with the 2005 Bonds, are collectively referred to as the "MTI Obligations" ("MTI" is an abbreviation for "Master Trustee Indenture").)

Holdings, a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance VHS' interests in six medical office buildings whose tenants are primarily physicians and medical groups affiliated with certain of the Hospitals operated by the Debtors. Holdings' real estate portfolio consists of over 30 properties, including, but not limited to, apartment buildings, parking lots, and condominiums. Holdings is the borrower on approximately \$66 million on two series of non-recourse financing secured by separate deeds of trust and revenue and accounts pledges, including lease rents on medical buildings (the "MOB Financing"). The secured lenders for the MOB

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Financing are affiliates of NantWorks, LLC, which is an affiliate of the Debtors' prepetition manager, Integrity Healthcare, LLC ("Integrity") (Integrity has not sought bankruptcy protection).

Debtor Seton Medical Center is liable for repayment of \$20 million of limited obligation tax exempt bonds issued in September 2017 by the California Statewide Communities Development Authority (the "Clean Fund Bonds"). The Clean Fund Bonds were issued to assist with clean energy-related capital improvements to Seton Medical Center. No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National Association ("WTNA") is the Trustee holding the construction funds raised in connection with the Clean Fund Bonds.

Debtor Seton Medical Center is also liable for repayment of \$20 million in California 30-year tax exempt bonds, issued in September 2017 for the purpose of seismic improvements at Seton Medical Center (the "NR2 Petros Bonds"). No other Debtor is liable for repayment of the NR2 Petros Bonds. WTNA is the Trustee holding the construction funds raised in connection with the NR2 Petros Bonds.

NantCapital, LLC has provided \$40 million in unsecured debt financing for VHS, as reflected in two \$20 million unsecured notes dated March 7, 2018 and March 29, 2018 (the "Unsecured Notes").

All of the Debtors' income is subject to prepetition perfected pledges. The gross revenue of the Hospitals is pledged in favor of the 2005 Bonds. The prepetition accounts receivable and government receivables of the Hospitals are pledged in favor of the Working Capital Notes. As of August 31, 2018 (the "Petition Date"), the Debtors had less than \$40 million of cash on hand that is not subject to control accounts in favor of either the 2005 Bonds, the Working Capital Notes, or the MOB Financing (excluding cash held by WTNA on account of the Clean Fund Bonds and/or the NR2 Petros Bonds). The Debtors expect to spend approximately \$113 million during the first four weeks of the case; operating cash losses for this period are expected to exceed \$11 million. These figures do not include critical vendor payments, adequate protection payments, pension contributions, or capital expenditures.

As of the Petition Date, the Debtors anticipate having in excess of \$219 million in net accounts receivable, and expect to generate approximately \$80 million in new post-petition receivables during the first four weeks of the case. U.S. Bank, as Note Trustee for the Working Capital Notes, asserts that all postpetition receipts are proceeds of prepetition accounts receivable and prepetition government receivables and as such constitute priority collateral for the Working Capital Notes.

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The terms of the DIP Facility are the result of a wide-ranging market exploration by the Debtors and their professionals. Beginning the week of July 23, 2018, Cain Brothers, a division of KeyBanc Capital Markets (“Cain”), acting as investment advisers to the Debtors, began searching for DIP financing. Cain consulted with 16 potential DIP Lenders. Cain’s efforts yielded four offers for debtor-in-possession financing. The Debtors believe the financing offered by Ally Bank (the “DIP Lender”) to be the most favorable.

To secure the DIP Facility, the Debtors propose to grant the DIP Lender first priority priming liens on, and security interests in, substantially all of the Debtors’ assets, subject to a Carve-Out not to exceed (a) \$2 million for fees accrued by professionals retained by the Debtors and (b) \$75,000 for fees accrued by professionals retained by the Official Committee of Unsecured Creditors (the “Committee”).

Secured Creditors will receive the following adequate protection:

- 1) Secured Creditors in connection with the 2005 Bonds, Working Capital Notes, and MOB Financing shall receive post-petition, non-default interest. WTNA, which holds the cash raised in connection with the Clean Fund Bonds and NR2 Petros Bonds, will not receive interest payments.
- 2) To the extent of any diminution in value of their interests, Secured Creditors shall receive replacement liens.
- 3) To preserve the prepetition value of the Debtors’ real property and improvements, the Debtors will use the DIP Facility Proceeds and cash collateral to continue to maintain such property in good repair.
- 4) To the extent of any diminution in the value of their interests, Secured Creditors shall have an allowed superpriority administrative expense claim.

B. The Attorney General’s Limited Objection

The California Attorney General (the “Attorney General”) filed a Limited Objection to the Financing Motion. The Attorney General makes the following arguments and representations in support of the Limited Objection:

The Debtors are nonprofit public benefit corporations that hold charitable gifts and assets that are restricted for a specific purpose. Those restricted gifts and assets are not to be used for any other purposes than the restricted purpose and should not be available to creditors unless authorized in the restriction.

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Restricted donations to nonprofit corporations have been held not to be property of the bankruptcy estate and therefore not available for distribution to general creditors. *See In re Save Our Springs (S.O.S.) All., Inc.*, 388 B.R. 202, 249 (Bankr. W.D. Tex. 2008), *aff'd sub nom. In re Save Our Springs All., Inc., No. A-08-CA-727 LY, 2009 WL 8637183 (W.D. Tex. Sept. 29, 2009), aff'd sub nom. In re Save Our Springs (S.O.S.) All., Inc.*, 632 F.3d 168 (5th Cir. 2011); *Hunter v. St. Vincent Medical Center (In re Parkview Hosp.)*, 211 B.R. 619, 621 (Bankr. N.D. Ohio 1997).

Restricted charitable funds held by the Debtors are held in a charitable trust, must be used for the restricted purposes, are not subject to liens or other encumbrances, are not available to cover operating expenses or other activities of the nonprofit corporation, and are not available either for distribution to the general creditors or to be used as cash collateral.

Debtors' Financing Motion seeks entry of interim and final orders which include provisions that inappropriately provide for liens on the charitable trust assets that may not be subject to such liens or other encumbrances.

Any order authorizing the use of cash collateral or approving debtor-in-possession financing should contain the following language:

Nothing in this order shall create or validate liens on or allow the use of any assets that are not assets of, or subject to being encumbered by, the debtors under applicable law. These assets may include, but are not limited to, restricted charitable funds.

Nothing in this order shall in any way diminish the obligation of any entity, including the debtors, to comply with applicable state law and conditions including, but not limited to, charitable trust laws and the conditions set forth in the California Attorney General's Decision dated December 3, 2015. Further, nothing in this order or the budget shall prevent the debtor from complying with any such obligations or conditions.

C. U.S. Bank's Combined Reservation of Rights

U.S. Bank responds to the Financing Motion as follows:

Subject to acceptable adequate protection, U.S. Bank, in its capacity as the 2015 Note Trustee and the 2017 Note Trustee, supports an order approving the DIP Facility and the Debtors' use of cash collateral. The Notes Trustee acknowledges that the Debtors face a serious liquidity crisis and urgently require some level of debtor-in-

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possession financing and use of cash collateral on an interim basis.

The Notes Trustee wants to make sure that the amount of money borrowed by the Debtors on an interim basis is truly necessary. For example, the proposed authorization for \$20 million to pay Critical Vendors seems extraordinary, and the Debtors have not yet demonstrated that such a large allocation is truly critical or appropriate.

In addition, given that the Debtors' facilities are being marketed for sale, the Debtors should be required to demonstrate why allocation of approximately \$8.3 million toward capital expenditures in the first 13-week period of the case (including allocation of \$5.72 million in the first 30 days) is necessary. Such expenditures would benefit the eventual purchasers of the facilities but would not benefit the Debtors' estates or their senior secured creditors.

The interim and final orders on the Financing Motion need to include protections that respect the separateness of each bankruptcy estate, including separate budgets for borrowings and repayments of the DIP Facility. Certain of the Hospitals, such as the St. Francis Medical Center on which the Notes Trustee has priority liens, are cash flow positive. The Debtors should be required to account for and report on their use of the DIP Facility on an entity-by-entity basis.

The Notes Trustee has discussed its position on other issues with the Debtors, and believes that the Debtors are amenable to including language in the Financing Order resolving the concerns of the Notes Trustee. Specifically, the following issues have been addressed:

- 1) In the Financing Motion, the Debtors propose to limit the adequate protection payment of the Notes Trustee's fees and expenses to out-of-pocket expenses incurred with respect to *one* law firm and *one* financial advisor. Because the 2015 Notes and 2017 Notes were issued under separate indentures and have separate collateral rights, they have separate trustees. The Notes Trustee has discussed with the Debtors its position that there is no justification for limiting U.S. Bank to one counsel with respect to both trusteeships. The Notes Trustees believe that the Debtors are amenable to including language in the order resolving this issue.
- 2) The 2017 Note Trustee holds the only lien in the Moss Property under the Moss Deed of Trust. The proposed interim order on the Motion does preserve the relative priority of the Notes Trustee and the Master Trustee as provided in the Intercreditor Agreement, but does not preserve the relative prepetition priority of the 2017 Note Trustee in the Moss Property. The Notes Trustee has

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suggested language for the interim order on the Motion to clarify that the prepetition priority status of the Moss Deed of Trust will not be primed by Replacement Liens. Based on its discussions with the Debtors, the Notes Trustee believes that the Debtors are amenable to including this language in a revised form of interim order to be filed with the Court.

II. Findings and Conclusions

A. The Attorney General's Limited Objection is Overruled Only for Purposes of this Hearing

The Attorney General asserts that certain of the Debtors' assets are may not be distributed to creditors and are unavailable for general operating expenses because those assets are restricted charitable funds held in charitable trust. In support of this contention, the Attorney General points to various requirements imposed by the Attorney General upon the Debtors' operations in connection with a *System Restructuring and Supporting Agreement* dated December 3, 2015 (the "Agreement").

In the Agreement, the Attorney General consents to a change of control in the operation of the Debtors, provided the Debtors comply with various conditions, which include, among others, the following:

- 1) A fifteen-year prohibition on selling, transferring, or otherwise alienating the Hospitals operated by the Debtors.
- 2) A ten-year requirement that emergency departments at various Debtor Hospitals be operated in accordance with minimum requirements.
- 3) Requirements pertaining to the type of health care that the Debtor Hospitals must provide.
- 4) Requirements that the Debtor Hospitals furnish specified amounts of charitable care.

Notably, there is nothing in the Agreement that references or discusses any funds held by the Debtors that are the subject of a charitable trust.

In his Limited Objection, the Attorney General cites various decisions which held that funds that are part of an irrevocable, restricted charitable trust are not property of the bankruptcy estate. *See, e.g., In re Parkview Hosp.*, 211 B.R. 619, 634 (Bankr. N.D. Ohio 1997), *In re Roman Catholic Archbishop of Portland in Oregon*, 345 B.R. 686, 704 (Bankr. D. Or. 2006), and *In re Bishop Coll.*, 151 B.R. 394, 398 (Bankr. N.D. Tex. 1993). *Parkview Hospital*, *Roman Catholic Arhbishop of Portland*, and *Bishop Coll.* stand for the unremarkable proposition that funds that are the property of an

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irrevocable charitable trust are not property of the bankruptcy estate.

In contrast to *Parkview Hospital, Roman Catholic Archbishop of Portland, or Bishop Coll.*, the Attorney General has not introduced specific evidence indicating that the Debtors hold custody over assets that are subject to an irrevocable charitable trust, such that those assets would not be property of the estate. On the record before it, the Court cannot conclusively rule out that the Debtors might have custody over assets that are part of an irrevocable charitable trust of the type at issue in *Parkview* and related cases, such that those assets would not constitute estate property. But the Attorney General has proffered no evidence that any of the Debtors' assets are the subject of such a trust.

Though it is not entirely clear, the Attorney General's argument appears to be that because the Debtors are public benefit corporations, *all* or almost all of the Debtors' assets are impressed with a charitable trust as a matter of law, and that accordingly such assets are either not property of the estate or may not be used by the Debtors in the postpetition operation of their estates. For purposes of this hearing only, the Court declines to adopt the Attorney General's position. It may be that the Debtors have custody over assets that are the subject of an irrevocable charitable trust and that are not property of the estate. However, there is currently no evidence before the Court establishing the presence of such assets. Therefore, at this juncture, the Court will not require that the interim order issued in connection with the Financing Motion contain the language suggested by the Attorney General. The Court's findings on the charitable trust issue are for purposes of this hearing only, and the Attorney General may raise such arguments in connection with future hearings.

B. DIP Financing

Section 364 provides in relevant part:

- (c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—
 - (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
 - (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
 - (3) secured by a junior lien on property of the estate that is subject to a lien.
- (d)(1) The court, after notice and a hearing, may authorize the obtaining of

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credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

(A) the trustee is unable to obtain such credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Having reviewed the declaration submitted by Anita Chou, the Chief Financial Officer of VHS (the “Chou Decl.”), the Court finds that the Debtors were unable to obtain financing on more favorable terms than those proposed by the DIP Lender. The Court further finds that the Debtors require the use of \$30 million, on an interim basis, in order to avoid irreparable harm to the continued operation of the Hospitals.

The Court finds that the Secured Creditors whose liens are primed by the DIP Facility are adequately protected. The book value of the Debtors’ collateral is approximately \$840 million, which provides more than a 20% equity cushion for Secured Creditors. *See In re James River Associates*, 148 B.R. 790, 796 (E.D. Va. 1992) (“The amount of equity cushion sufficient to adequately protect the creditor is determined on a case-by-case basis. *Kost*, 102 B.R. at 831. However, the reported cases do provide some guidance: Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection.... Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection.... Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection....”).

In addition to adequate protection through the equity cushion, the replacement liens and superpriority claim provide the secured creditors additional adequate protection. The financing provided by the DIP Lender will enable the Debtors to continue to operate and generate additional receivables. Those receivables will be subject to the replacement liens. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that “[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor’s] interest in the [cash collateral]”). There is no evidence before the Court that the Debtors’ assets are declining in value. However, the abrupt cessation of operations would almost certainly result in a decline

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CONT... Verity Health System of California, Inc.

Chapter 11

in value.

The Court agrees with U.S. Bank, in its capacity as Trustee for the 2015 Notes and the 2017 Notes, that the Debtors' financial reporting should be broken down on an entity-by-entity basis. Although these cases are being jointly administered, the estates have not been substantively consolidated, and each Debtor has its own assets and liabilities independent of the other Debtors.

C. Cash Collateral

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

For the reasons set forth above, the Court finds that the Secured Creditors are adequately protected.

D. Final Hearing

A Final Hearing on the Financing Motion shall take place on **October 3, 2018, at 10:00 a.m.** Opposition to final approval of the DIP Facility is due by no later than **September 19, 2018**. The Debtors' Reply in support of the Financing Motion is due by **September 26, 2018**.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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11:00 AM

2:17-25543 Norlaine, Inc,

Chapter 7

#100.00 HearingRE: [88] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Chapter 7 Trustee's Motion for Order: (1) Approving the Sale of Personal Property of the Estate (Trademarks) Pursuant to 11 U.S.C. §363(b)(1) and (f), Subject to Overbids, Combined With Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief; Memorandum of Points and Authorities and Declaration of David M. Goodrich in Support Thereof (with Proof of Service) (Iskander, Brandon)

Docket 88

Tentative Ruling:

9/4/2018

The Court will conduct the auction in accordance with the procedures set forth below.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion for Order (1) Approving the Sale of Personal Property of the Estate (Trademarks) Pursuant to Bankruptcy Code § 363(b)(1) and (f), Subject to Overbids, Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized; and (2) Granting Related Relief (the "Sale Motion") [Doc. No. 88]
- 2) No Opposition has been filed as of the date of this tentative ruling.

I. Facts and Summary of Pleadings

Norlaine, Inc. (the "Debtor") filed a voluntary Chapter 7 petition on December 22, 2017 (the "Petition") [Doc. No. 1]. David M. Goodrich accepted appointment as the Chapter 7 trustee (the "Trustee") for the Debtor's bankruptcy case.

On August 14, 2018, the Trustee filed the "Chapter 7 Trustee's Motion for Order (1) Approving the Sale of Personal Property of the Estate (Trademarks) Pursuant to Bankruptcy Code § 363(b)(1) and (f), Subject to Overbids, Combined with Notice of Bidding Procedures and Request for Approval of the Bidding Procedures Utilized;

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CONT... Norlaine, Inc,

Chapter 7

and (2) Granting Related Relief" (the "Sale Motion") [Doc. No. 88]. The Trustee has determined that the sale of certain of the Debtor's personal property (trademark) assets through an auction will provide the most benefit for the Estate and its creditors. The personal property assets to be included in the auction are: (1) the word mark registered as "Patina-V", serial number 87481155; (2) the word mark registered as "Patina-V", serial number 77619170; and (3) the word mark registered as "Patina Arts", serial number 77619232 (collectively, the "Trademarks" or "Trademark Assets").

On July 10, 2018, the Trustee and Caisse Regionale De Credit Agricole ("Credit Agricole"), which holds a security interest in the Trademarks, entered into the "Amended Stipulation to Sell Trademarks and Related Goodwill of the Estate Free and Clear of Liens" (the "Stipulation") [Doc. No. 75], which was approved by order of the Court entered on August 1, 2018 [Doc. No. 82]. The Stipulation provides that the Trustee shall have the right to sell the Trademark Assets free and clear of Credit Agricole's lien for not less than \$80,000.00, and provides a distribution scheme for the payment of the gross proceeds received from the sale.

The key sale terms are as follows:

- 1) Proposed purchaser: CNL Mannequins (the "Buyer");
- 2) Property for Sale: The Trademark Assets, including: (a) the word mark registered as "Patina-V", serial number 87481155; (b) the word mark registered as "Patina-V", serial number 77619170; and (c) the word mark registered as "Patina Arts", serial number 77619232;
- 3) Purchase price: \$80,000.00;
- 4) Bidding Procedures: The initial overbid shall be \$5,000.00; subsequent overbids shall be in the amount of \$500.00. The overbid increment is subject to adjustment by the Court to facilitate bidding. Overbids must be in writing and received by the Trustee no later than three business days prior to the hearing on the Sale Motion. Overbids must be accompanied by a deposit in the amount of at least \$5,000.00 payable to the Trustee.

Based on the sale terms, the sale will generate proceeds of at least \$20,000.00 which will benefit the Estate.

II. Findings of Fact and Conclusions of Law

Section 363(b) of the Bankruptcy Code permits the trustee to sell estate property

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CONT... Norlaine, Inc,

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outside the ordinary course of business, subject to court approval. The trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20. Here, the Trustee articulates a sufficient business justification for the sale. The Trustee believes the proposed sale of the Trademark Assets is in the best interest of the Estate, and furthermore, that the projected sale price represents the fair market value of the Assets.

The Trustee has met the conditions for the sale of the Property free and clear of all liens. Section 363(f) permits a sale of property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is met:

- (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Here, the Court finds that the Sale Motion satisfies the requirements of §§ 363(f)(3) and 363(f)(4). Pursuant to the Stipulation, the Trustee has obtained the consent of Credit Agricole to sell the Trademark Assets free and clear of the liens of Credit Agricole, provided that the sale price is not less than \$80,000.00.

Lastly, pending the final outcome of the sale, the 14-day stay under FRBP 6004(h) is WAIVED.

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Chapter 7

Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$5,000.00. Subsequent overbids will be increments of \$500.00, with the increments subject to adjustment by the Court depending upon the bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

If a bidder other than the Buyers prevails at the auction, the Court will take testimony to determine whether that bidder is entitled to the protections of §363(m).

III. Conclusion

In conclusion, based on the foregoing, the Court GRANTS the Trustee's Sale Motion in its entirety. The Court will conduct the auction in accordance with the procedures set forth above.

The Trustee shall submit an appropriate order within seven days of the hearing.

If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Norlaine, Inc,

Represented By
James R Selth

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Chapter 7

Trustee(s):

David M Goodrich (TR)

Represented By
Leonard M Shulman
Brandon J Iskander
Lynda T Bui

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Monday, September 10, 2018

Hearing Room 1568

10:00 AM

2:18-15880 Enrique Ruiz and Isabel Ruiz

Chapter 7

#1.00 HearingRE: [25] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 635, 635 1/2, 637 West 58th Street, Los Angeles, CA 90037 with Proof of Service. (Zahradka, Robert)

Docket 25

Tentative Ruling:

9/7/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$497,100 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$597,761.11. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

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10:00 AM

CONT... Enrique Ruiz and Isabel Ruiz

Chapter 7

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Enrique Ruiz

Represented By
Randolph R Ramirez

Joint Debtor(s):

Isabel Ruiz

Represented By
Randolph R Ramirez

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18681 Rebekah Barr

Chapter 7

#2.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 Audi A4, VIN WAUAF78E67A279127 . (Wang, Jennifer)

Docket 11

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Rebekah Barr

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to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rebekah Barr

Represented By
Nicholas M Wajda

Trustee(s):

David M Goodrich (TR)

Pro Se

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Monday, September 10, 2018

Hearing Room 1568

10:00 AM

2:18-17548 Hyun Suk Ro

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 77 Koehler Crossing Buena Park, CA 90621 . (O'Connor, Barry)

Docket 12

Tentative Ruling:

9/7/2018

The Motion is DENIED without prejudice. Pursuant to the Court's "Self-Calendaring Instructions" for residential unlawful detainer motions for relief from stay on shortened notice, no later than 7-days prior to the hearing, the motion and supporting documents are required to be served by posting or personal service on the Debtor. Here, the proof of service attached to the Motion indicates that the Debtor was served via overnight delivery on August 28, 2018, which method of service does not comply with the Court's Self-Calendaring Instructions. The Movant may refile the Motion with service upon the Debtor in a manner consistent with the Court's Self-Calendaring Instructions.

Party Information

Debtor(s):

Hyun Suk Ro

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#1.00 Status Hearing
RE: [3] Notice of Removal of Lawsuit Pending in State Court and Notice of Status Conference re Removal of Action 1 Notice of Removal, 2 Notice). (Plevin, Mark)

Docket 3
***** VACATED *** REASON: CONTINUED 11-13-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's,	Pro Se
Hartford Accident And Indemnity	Pro Se
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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**United States Bankruptcy Court
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Los Angeles
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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#2.00 Status Hearing RE: [66] Crossclaim by Ronald Peterson against Anne Lan Peterson, Brad D. Krasnoff, Chapter 7 Trustee (Ham, Yoon)

Docket 66

Tentative Ruling:

9/10/2018

If Ronald Peterson wishes to continue prosecuting the Cross-Complaint, he must appear. The Court will deem Mr. Peterson's non-appearance as consent to dismissal of the Cross-Complaint, without prejudice, for failure to prosecute. If Mr. Peterson intends to appear, he shall, through counsel, notify Anne Lan Peterson of such intent, so that she may also have the opportunity to be present. The Trustee is not required to appear because the Cross-Complaint has been dismissed as to the Trustee.

The Court will focus this Status Conference on the claims that remain outstanding in the Cross-Complaint. The Court notes that a Status Conference with respect to the Complaint is not necessary. The Court has entered final judgment with respect to certain of the claims asserted in the Complaint, and the Trustee has filed a motion for dismissal of the remaining claims.

The Cross-Complaint alleges that Anne Lan Peterson committed negligence and breached her fiduciary duties Ronald Peterson by failing to disclose certain real property (the "Property") on her bankruptcy schedules.

Anne Lan Peterson has not meaningfully participated in connection with this Status Conference. Ronald Peterson cooperated in the preparation of a Status Report submitted by the Trustee, but in such Status Report states only that he is considering his options.

Anne Lan Peterson and Ronald Peterson shall appear to advise the Court if they intend to proceed with this litigation. As noted above, if Mr. Peterson does not appear, the Court will dismiss the Cross-Complaint, without prejudice, for failure to prosecute.

Party Information

Debtor(s):

Anne Lan Peterson

Represented By

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10:00 AM

CONT... Anne Lan Peterson

Chapter 7

Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

2:16-23176 Kevin Thomas Roy

Chapter 7

Adv#: 2:17-01008 Schrauwers et al v. Roy

#3.00 Status Hearing
RE: [1] Adversary case 2:17-ap-01008. Complaint by Jennifer Schrauwers ,
Laura Twors , Cintia Kumalo against Kevin Thomas Roy . willful and malicious
injury))

fr: 4-11-17; 7-11-17; 6-6-18

Docket 1

Tentative Ruling:

9/10/2018

In this dischargeability action, Plaintiffs allege that Defendant committed willful and malicious injury by secretly videotaping Plaintiffs changing and using the restroom. The Court has stayed this action pending resolution of the underlying state court action in which Plaintiffs seek to establish the indebtedness which is alleged to be non-dischargeable (the "State Court Action").

Based upon its review of the most recent Status Report and the *Declaration of Eric V. Traut Showing Actions Undertaken to Prosecute the State Court Action*, the Court notes that the State Court Action has recently been transferred to a different division. It further appears that proceedings in the State Court Action are at an early stage.

A continued Status Conference shall be held on **January 15, 2019, at 10:00 a.m.** The parties must submit a Joint Status Report by no later than fourteen days prior to the hearing. In addition to the Joint Status Report, Plaintiff shall submit a detailed declaration, accompanied by supporting exhibits as appropriate, setting forth the actions Plaintiff has undertaken to prosecute the State Court Action to completion. That declaration is due by no later than fourteen days prior to the continued Status Conference.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at

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CONT... Kevin Thomas Roy

Chapter 7

213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Kevin Thomas Roy

Represented By
Robert Reganyan

Defendant(s):

Kevin Thomas Roy

Pro Se

Plaintiff(s):

Jennifer Schrauwers

Represented By
Eric V Traut

Laura Twors

Represented By
Eric V Traut

Cintia Kumalo

Represented By
Eric V Traut

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) (Kim, Christian)

Docket 1

***** VACATED *** REASON: CONTINUED 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

Defendant(s):

Leon Reihanian

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

2:18-18620 Walker Family Trust

Chapter 7

Adv#: 2:18-01242 Walker Family Trust et al v. Thrower et al

#5.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01242. Notice of Removal by Kenneth Adler , Walker Family Trust. Nature of Suit: (01 (Determination of removed claim or cause)) (Milano, Sonny)

Docket 1

***** VACATED *** REASON: BANKRUPTCY CASE DISMISSED 9-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walker Family Trust	Pro Se
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Defendant(s):

Nicole Renee Thrower	Pro Se
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Gregory William Walker	Pro Se
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Plaintiff(s):

Walker Family Trust	Pro Se
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Kenneth Adler, Trustee	Pro Se
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Trustee(s):

Edward M Wolkowitz (TR)	Pro Se
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Tuesday, September 11, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#6.00 Pre-Trial Conference

RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18

Docket 1

Tentative Ruling:

9/10/2018

The Court has previously found that resolution of the Chapter 11 case of Crystal Waterfalls, LLC ("Crystal") may resolve this action. *See* Order Continuing Pretrial Conference Pending Confirmation of Crystal Waterfalls, LLC's Chapter 11 Plan [Doc. No. 26]. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") in Crystal's bankruptcy case. The Approval Order provides that the structured dismissal of Crystal's Chapter 11 case shall occur through a two-step process. First, Crystal shall be required to make payments to various creditors. Once satisfactory evidence of those payments has been received, the case will be dismissed.

On July 20, 2018, the Court set this Status Conference, and directed the parties to file a Joint Status Report explaining the progress of resolution of the Crystal case. Having reviewed the Joint Status Report submitted by the parties, the Court finds that not all actions contemplated by the Approval Order have been completed. Specifically, the following conditions have not yet been satisfied:

- 1) Crystal has not yet filed its 2017 tax return or paid claims arising in connection with its 2017 tax return.
- 2) Crystal has not provided to the Liberty Plan Administrator a receipt evidencing the funding of the Reserve Fund.

**United States Bankruptcy Court
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10:00 AM

CONT...

Crystal Waterfalls LLC

Chapter 11

- 3) Crystal has not yet provided proof to the Liberty Plan Administrator that all outstanding United States Trustee fees have been paid.
- 4) Crystal has not yet obtained orders disallowing certain disputed claims.

The Court notes that Crystal has paid Liberty an initial distribution of \$625,705.25, as required by the Approval Order.

Pursuant to the request of the parties, the Court shall hold a continued Status Conference on **December 11, 2018, at 10:00 a.m.** Because this ninety-day continuance provides more than sufficient time for Crystal to complete the remaining actions contemplated by the Approval Order, the Court expects that all such remaining actions will have been completed by the date of the continued Status Conference. A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg

Defendant(s):

Crystal Waterfalls, LLC

Pro Se

Golden Bay Investments, LLC

Pro Se

Lucy Gao

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By

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CONT... Crystal Waterfalls LLC

Jeffrey S Kwong

Chapter 11

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

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Hearing Room 1568

10:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

Adv#: 2:18-01091 Beach Dans, Inc. v. United Community Bank et al

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01091. Complaint by Beach Dans, Inc. against United Community Bank. (Charge To Estate). (Attachments: # 1 Adversary Cover Sheet # 2 Summons) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)) (Goe, Robert)

fr. 7-17-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

9/10/2018

Tentative Ruling:

The Court has approved the parties' stipulation to dismiss this adversary proceeding. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Miller

Defendant(s):

United Community Bank

Pro Se

DOES 1-10 inclusive

Pro Se

Plaintiff(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Stephen Reider

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Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#8.00 Status Conference

RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18; 2-21-18; 5-15-18; 8-14-18

Docket 234

Tentative Ruling:

9/10/2018

On February 17, 2018, the Court issued a Report and Recommendation, recommending that the District Court enter final judgment, in favor of the Chapter 7 Trustee (the "Trustee"), as to the second, third, and sixth claims for relief for avoidance and recovery of fraudulent transfers made with actual intent. Doc. No. 341. On that same date, the Court issued a Memorandum of Decision, stating that the Court intended to grant the Trustee's motion for summary adjudication disallowing the proofs of claim filed by the Bright Conscience Trust (the "BC Trust"). However, the Memorandum of Decision stated that the findings set forth therein would not become the order of the Court until the District Court acted upon the Report and Recommendation.

On June 25, 2018, the District Court rejected the Report and Recommendation, and denied the Trustee's motion for summary adjudication as to the second, third, and sixth claims for relief. On July 20, 2018, the Trustee moved for reconsideration of the District Court's rejection of the Report and Recommendation. On August 13, 2018,

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CONT... EPD Investment Co., LLC

Chapter 7

the District Court denied the Trustee's motion for reconsideration.

The Trustee asserts that the Court has jurisdiction over the Trustee's claims for disallowance and equitable subordination of the proofs of claim filed by the BC Trust. The Trustee's position is that the Court should enter final judgment with respect to these claims. According to Defendants John C. Kirkland and the BC Trust (collectively, the "Defendants"), Mr. Kirkland has preserved his rights to a jury trial in the District Court because Mr. Kirkland has not consented to the Bankruptcy Court's entry of final judgment. Defendants assert that the issues arising in connection with the Trustee's claims against the BC Trust overlap with the issues arising in connection with the Trustee's claims against Mr. Kirkland. According to Defendants, bifurcating the fraudulent transfer claims against Mr. Kirkland and the equitable subordination and disallowance claims against the BC Trust would prejudice Mr. Kirkland, because of the collateral estoppel effect against Mr. Kirkland of findings made with respect to the common issues affecting both Mr. Kirkland and the BC Trust.

As further set forth in the *Preliminary Findings and Conclusions*, below, in the Court's view, the most efficient means of resolving these proceedings would be for the District Court to conduct a jury trial on the claims against Mr. Kirkland. Subsequent to the District Court's entry of final judgment against Mr. Kirkland, the Bankruptcy Court would then try the Trustee's claims against the BC Trust. Pursuant to 28 U.S.C. §157(d) and Bankruptcy Rule 5011(a), only the District Court can withdraw the jurisdictional reference. *See Sigma Micro Corp. v. Healthcentral.com (In re Healthcentral.com)*, 504 F.3d 775, 785 (9th Cir. 2007). Therefore, by separate order, the Court will require the Trustee and the Defendants to show cause why the Court should not stay adjudication of the claims against the BC Trust until the District Court has entered final judgment on the claims against Mr. Kirkland. The hearing on the *Order to Show Cause* shall take place on **October 2, 2018, at 10:00 a.m.** The Trustee and the Defendants shall submit papers responding to the Court's *Preliminary Findings and Conclusions* by no later than **September 25, 2018**. No reply briefing will be accepted.

Mr. Kirkland shall file with the District Court a motion to withdraw the reference by no later than **September 25, 2018**.

Preliminary Findings and Conclusions

John C. Kirkland has demanded a jury trial in this fraudulent conveyance action, has not filed a proof of claim against the estate, and does not consent to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Mr.

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CONT... EPD Investment Co., LLC

Chapter 7

Kirkland is entitled to a jury trial before the District Court. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."); Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only if the parties consent); and *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012) (holding that the Bankruptcy Court lacks constitutional authority to enter final judgment in a fraudulent conveyance action absent consent of the parties).

The BC Trust has filed proofs of claim against the estate. As a result, the Bankruptcy Court has jurisdiction to enter final judgment with respect to the Trustee's claims against the BC Trust. *See Langenkamp*, 498 U.S. at 45.

The claims against Mr. Kirkland and the BC Trust present common issues of fact. For example, the Trustee asserts that the BC Trust's claims against the estate should be disallowed and/or equitably subordinated based upon Mr. Kirkland's alleged inequitable conduct. The Trustee's causes of action for disallowance and/or equitable subordination are pleaded against both the BC Trust and Mr. Kirkland.

As a result of the overlap between the claims asserted against Mr. Kirkland and the claims asserted against the BC Trust, the most efficient means for this action to proceed would be for the District Court to first adjudicate the claims against Mr. Kirkland. Once the District Court has entered findings with respect to Mr. Kirkland, the Bankruptcy Court can then try the claims against the BC Trust. If the Bankruptcy Court tried claims against the BC Trust prior to the District Court's trial of claims against Mr. Kirkland, findings by the Bankruptcy Court with respect to common issues of fact could prejudice Mr. Kirkland. For example, Mr. Kirkland could be collaterally estopped from contesting certain issues of fact that might prove material to the adjudication of the claims against him; were that to occur, Mr. Kirkland would effectively be deprived of his right to a jury trial. *See Ross v. Bernhard*, 396 U.S. 531 (holding that "where equitable and legal claims are joined in the same action," the right to jury trial on the legal claims "must not be infringed either by trying the legal issues as incidental to the equitable ones by a court trial of a common issue existing between the claims").

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at

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11:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#100.00 Pre-Trial Conference re RE: [16] Amended Complaint (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service by Robert G Uriarte on behalf of Rudy E. Fuentes against all plaintiffs. (RE: related document(s)1 Adversary case 2:17-ap-01475. Complaint by Rudy E. Fuentes against David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes. (Fee Not Required). for (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment)),(72 (Injunctive relief - other)) filed by Plaintiff Rudy E. Fuentes. (Uriarte, Robert)

Docket 0

***** VACATED *** REASON: DISMISSED 2-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Represented By
Robert A Hessling

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

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CONT... Rudy Eberto Fuentes

Chapter 7

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11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#101.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 6-12-18

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#102.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 6-12-18

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 6-12-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 10-16-18 AT 10:00 A.M**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17

Docket 1

***** VACATED *** REASON: PRETRIAL 11/13/18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Tel Expo, a Sole Proprietorship

Pro Se

Henry A. Hakopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

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CONT... Friendly Adult Day Healthcare Center, Inc.

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11:00 AM

2:16-15536 Hahn Jake Kim

Chapter 7

Adv#: 2:16-01339 Nobel Textile, Inc., a California corporation v. Kim

#105.00 Pre-trial Conference RE: [1] Adversary case 2:16-ap-01339. Complaint by Nobel Textile, Inc., a California corporation against Hahn Jake Kim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-27-16,12-6-16,1-24-17,4-25-17,5-2-17,5-9-17, 8-15-17
10-24-17

Docket 1

***** VACATED *** REASON: CONTINUED10-16-18 AT 11:00 A.M.**

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self calendaring.)

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Hahn Jake Kim

Chapter 7

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will not require the Plaintiff to submit an order referring this matter to the Mediation Panel, but the Court expects that the parties will complete a second day of mediation before Mr. Nassif as the parties have stated they intend to do in the most recent Status Report.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hahn Jake Kim

Represented By
Sanaz S Bereliani

Defendant(s):

Hahn Jake Kim

Pro Se

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CONT... Hahn Jake Kim

Chapter 7

Plaintiff(s):

Nobel Textile, Inc., a California

Represented By
Nico N Tabibi

Trustee(s):

David A Gill (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#106.00 Pretrial

RE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott)

fr. 2-21-18

Docket 1

***** VACATED *** REASON: CONTINUED 10-16-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joven C Cabasag

Represented By
David S Hagen

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

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CONT... Joven C Cabasag

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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11:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#107.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

FR. 7-17-18

Docket 1

*** VACATED *** REASON: CONTINUED 11-13-18 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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Timothy M Rosen

Sonia Singh

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Hearing Room 1568

11:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: CONTINUED 11-13-18 AT 11:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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11:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

Adv#: 2:17-01568 Rund et al v. Barclays Bank Delaware, a Delaware Corporation

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01568. Complaint by Jason M. Rund against Barclays Bank Delaware, a Delaware Corporation. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: DISMISSED 2-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Barclays Bank Delaware, a

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Jason Rund, Chapter 7 Trustee

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#110.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: CONTINUED 11/13/18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#111.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtech Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

FR. 7-17-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 10-2-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT... Green Jane Inc

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#112.00 Pre-Trial Conference RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

Docket 1

Tentative Ruling:

9/10/2018

The Court has reviewed the the proposed *Unilateral Pretrial Order* submitted by Plaintiff as well as Plaintiff's declaration regarding his attempts to work with Defendant to fashion a Joint Pretrial Stipulation. Based upon its review of the declaration of Plaintiff's counsel, Robert A. Brock, and the e-mails attached thereto, it appears that Defendant has not made a good-faith effort to cooperate with the Plaintiff in preparing the Joint Pretrial Stipulation. The Court notes that while Plaintiff has made every effort to treat Defendant with professional courtesy and respect, Defendant, who is proceeding *pro se*, has injected unnecessary rancor into the proceedings. *See, e.g.*, E-mail from Defendant to Plaintiff, dated August 21, 2018 ("... honestly I don't give a rate [sic] ass what you say the rules are").

The Court understands that litigation is unpleasant, confusing and difficult especially for parties who are proceeding in *pro se*. However, the Court advises Defendant that by failing to cooperate with the Plaintiff in preparing a proposed Joint Pretrial Stipulation, he is only prejudicing himself. The Joint Pretrial Stipulation is the document that allows the Court to focus on the key issues in the litigation. By failing to meaningfully cooperate in the preparation of this document, the Defendant is depriving himself of the opportunity to present his arguments to the Court. As with all litigation, Defendant will not agree with Plaintiff as to certain of the facts. But if Defendant can agree with the Plaintiff on certain immaterial background facts, the Court will be able to focus its attention on the most important issues that are actually in dispute. The Court advises Defendant that by stipulating to those facts that are not in dispute, Defendant only benefits his own case, because it allows the Court to focus

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Central District of California
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Tuesday, September 11, 2018

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11:00 AM

CONT... **Paul William Martin**

Chapter 7

its attention on the real disputes between the parties.

The Court will continue the Pretrial Conference to **November 13, 2018, at 11:00 a.m.**, to give the Defendant one final opportunity to meaningfully participate with Plaintiff in the preparation of a Joint Pretrial Stipulation. The Court notes that many *pro se* litigants mistakenly believe that it is to their tactical advantage to be as non-cooperative as possible. That approach almost always leaves the non-cooperative party far worse off.

The parties shall make a good-faith effort to lodge a Joint Pretrial Stipulation with the Court by no later than fourteen days prior to the continued Pretrial Conference. If, after diligent effort, the parties find it impossible to agree upon the form of a proposed Joint Pretrial Stipulation, both parties shall lodge separated proposed *Unilateral Pretrial Orders* with the Court by no later than seven days prior to the Pretrial Conference. *See* Local Bankruptcy Rule 7016-1(d)(2). The Court will thereafter enter an appropriate order. The parties are advised that the Court views the Pretrial Conference as an indispensable component of the resolution of this litigation and strictly enforces compliance with the Local Bankruptcy Rules. A material default by the Plaintiff in complying with obligations regarding the preparation of the Joint Pretrial Stipulation will most likely result in dismissal of the action for failure to prosecute. *See Moneymaker v. CoBEN (In re Eisen)*, 31 F.3d 1447, 1451 (9th Cir. 1994) (dismissing action for failure to prosecute). A material default by the Defendant in fulfilling Defendant's corresponding obligations will most likely result in striking of the answer, entry of a default, and entry of judgment in favor of the Plaintiff. *See Hester v. Vision Airlines, Inc.*, 687 F.3d 1162, 1169 (9th Cir. 2012) (setting forth the factors the Court must consider before striking a pleading and declaring default).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Paul William Martin

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee v.

#113.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

***** VACATED *** REASON: CONTINUED 1/15/2019 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorenzo Arteaga	Pro Se
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Defendant(s):

Angelica Maria Arteaga	Pro Se
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Lorenzo Arteaga	Pro Se
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Joint Debtor(s):

Angelica Maria Arteaga	Pro Se
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Plaintiff(s):

FIDELITY NATIONAL TITLE	Represented By Karen A Ragland
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-22344 Jihee Byun

Chapter 7

Adv#: 2:18-01010 Travelers Express Company, Inc nka Moneygram Payme v. Byun

#114.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01010. Complaint by Travelers Express Company, Inc. against Jihee Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-13-18 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jihee Byun

Represented By
Kelly K Chang

Defendant(s):

Jihee Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-22345 Youngjae Byun

Chapter 7

Adv#: 2:18-01011 Travelers Express Company, Inc nka Moneygram Payme v. Youngjae Byun

#115.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01011. Complaint by Travelers Express Company, Inc. against Youngjae Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-13-18 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Youngjae Byun

Represented By
Kelly K Chang

Defendant(s):

Youngjae Byun aka Young Jae Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#116.00 Pretrial
RE: [1] Adversary case 2:17-ap-01533. Complaint by Robin Williams against Darren James Searle. false pretenses, false representation, actual fraud))
(Anaya, Alana)

fr. 2-21-18

Docket 1

Tentative Ruling:

9/10/2018

This hearing is VACATED and no appearances are required. In connection with hearings on a Motion to Compel conducted on August 23, 2018, the Court has set a continued Pretrial Conference for **November 13, 2018, at 11:00 a.m.**

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT... Darren James Searle

Chapter 7

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:18-15120 John Hong

Chapter 7

#117.00 HearingRE: [26] Motion to Dismiss Case for Abuse and Notice of Motion (BNC) Under 11 U.S.C. 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint Under 11 U.S.C. 727 Objecting to Debtor's Discharge; Memorandum of Points and Authorities and Declaration of Wendy Carole Sadovnick in Support Thereof (Attachments: # 1 Exhibit 2 to 4 # 2 Exhibit 4 cont. to 6 # 3 Exhibit 6 cont.) (Mar, Alvin)

Docket 26

Tentative Ruling:

9/10/2018

For the reasons set forth below, the Court finds that the granting of relief in this case would be an abuse of Chapter 7. The case will be dismissed unless the Debtor agrees to convert his case to Chapter 13.

Pleadings Filed and Reviewed:

- 1) United States Trustee's Notice of Motion and Motion to Dismiss Chapter 7 Case Pursuant to 11 U.S.C. § 707(b)(1), (b)(2) and (3)(B) and Contingent Motion to Extend Bar Date for Filing Complaint Under 11 U.S.C. § 727 Objecting to Debtor's Discharge [Doc. No. 26] ("Motion to Dismiss")
 - a. Declaration of Wendy Carole Sadovnick (the "Sadovnick Decl.")
 - b. Request for Judicial Notice in Support of United States Trustee's Motion to Dismiss Chapter 7 Case Pursuant to 11 U.S.C. §§ 707(b)(1), (b)(2) and (b)(3)(B) [Doc. No. 27] ("RJN")

I. Facts and Summary of the Pleadings:

Motion

John Hong ("Debtor") commenced this voluntary Chapter 7 case on May 3, 2018.

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Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT...

John Hong

Chapter 7

The United States Trustee (the "UST") now moves for an order dismissing this case on the grounds that (i) Debtor fails the § 707(b)(2) means test (the "Means Test"), and (ii) the totality of the circumstances of the Debtor's financial situation demonstrates abuse under § 707(b)(3)(B).

According to the UST, the Debtor has understated his average gross monthly wages in his Means Test. Based on the UST's review of the Debtor's payroll records for the relevant period, the UST asserts that the Debtor understated his actual monthly employment income by approximately \$1,476.10 [\$14,620.66 (UST's asserted amount) - \$13,144.56 (claimed amount) = \$1,476.10]. *Motion to Dismiss*, 13:3-10 & Ex. 4; *see also* Doc. No. 20, Schedule I & Chapter 7 Means Test Calculation.

The UST also contends that the Debtor misstated his allowable monthly expense deductions in his Means Test. The UST completed its own Means Test calculations based on the information in documents Debtor supplied to it and national standards and contends that the appropriate monthly expense deduction is \$12,829.83, rather than the \$14,054.04 amount Debtor claimed. *Motion to Dismiss*, 13:17-18:6; *see also* Doc. No. 20, Schedule J & Chapter 7 Means Test Calculation.

After making these adjustments, the UST asserts that a proper Means Test calculation show that the Debtor has \$107,449.80 in disposable income available to repay unsecured creditors 100% over a sixty-month period.

Opposition

As of the preparation of this tentative ruling, the Debtor has not filed an opposition to the Motion to Dismiss.

II. Findings of Fact and Conclusions of Law:

This Court has explained the function and purpose of the Means Test as follows:

Among the significant changes effected by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") was the introduction of the § 707(b)(2) Means Test. Designed to ferret out abusive bankruptcy petitions, the Means Test creates a "presumption of abuse" if the debtor's Current Monthly Income (CMI)—as determined by a detailed statutory formula—is above a certain amount. Debtors unable to rebut the presumption

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT...

John Hong

Chapter 7

of abuse may have their cases dismissed or be required to fund a Chapter 13 plan. However, even debtors who survive the Means Test may see their cases dismissed pursuant to § 707(b)(3)(B), which permits the Court to dismiss a case if “the totality of the circumstances ... of the debtor's financial situation demonstrates abuse.”

In re Jensen, 407 B.R. 378, 380–81 (Bankr. C.D. Cal. 2009).

“Current monthly income” (“CMI”) for purposes of the Means Test calculation is defined as the “average monthly income from all sources that the debtor receives ... during the 6-month period ending on the last day of the calendar month immediately preceding the date of the commencement of the case” §101(10A).

There is a Presumption of Abuse Under § 707(b)(2)(A)(i)(II)

Based on the UST’s unrefuted assertions, this Court finds as follows. The Debtor is an individual whose debts are primarily consumer debts. *See* Doc. No. 20. The Debtor’s CMI is \$14,620.66 and total allowable monthly expenses are \$12,829.83. That leaves the Debtor with monthly disposable income of \$1,790.83, or disposable income over a 60-month period of \$107,449.80. The Debtor’s disposable income far exceeds the \$12,475 threshold set forth in § 707(b)(2)(A)(i)(II). Based on the foregoing, this Court finds that there is a presumption of abuse under § 707(b)(2).

The Debtor Has Failed to Rebut the Presumption of Abuse

Section 707(b)(2)(B)(i) provides that the presumption of abuse may be rebutted by "demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances ... justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative." To establish special circumstances, the Debtor must itemize each additional expense and provide "a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable." §707(b)(2)(B)(ii).

The Debtor has not opposed the Motion to Dismiss or otherwise challenged the UST’s assertions. Because the Court finds that the presumption of abuse arises under § 707(b) and has not been rebutted, the Court does not consider the UST’s arguments in the alternative that the case should be dismissed pursuant to § 707(b)(3)(B).

**United States Bankruptcy Court
Central District of California
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Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT... John Hong

Chapter 7

The Case Will Be Dismissed Unless the Debtor Consents to Conversion to Chapter 13

Where the § 707(b) presumption of abuse arises and has not been rebutted, the Court must dismiss the case, unless the Debtor consents to conversion to Chapter 13. 11 U.S.C. § 707(b)(1). The UST seeks only dismissal, not conversion. However, § 707(b)(1) expressly provides the Debtor the option to convert to Chapter 13 if the Court finds that relief under Chapter 7 would be abusive. Therefore, based upon the Debtor's election, the case will either be dismissed or will be converted to Chapter 13.

III. Conclusion

Over a sixty-month period, the Debtor has \$107,449.80 in income available to repay unsecured creditors 100% of their claims. The § 707(b) presumption of abuse arises and has not been rebutted. The case will be dismissed, unless the Debtor consents to conversion to Chapter 13.

The Debtor should appear to advise the Court whether he consents to conversion to Chapter 13 (a telephonic appearance is acceptable). If the Debtor fails to appear, the case will be dismissed. The UST is not required to appear. If Debtor intends to contest the tentative ruling, he must advise the UST of his intention to do so prior to the hearing.

After the hearing, the Court will prepare the order.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Hong

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

CONT... John Hong

Eric S Chun

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 11, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#118.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)),(91 (Declaratory judgment)) (Richards, Jeremy)

FR. 6-12-18

Docket 1

***** VACATED *** REASON: DISMISSED 2-28-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a	Pro Se
Lantern Brands, Inc., a California	Pro Se
TT Investment Los Angeles Fund I,	Pro Se

Plaintiff(s):

Official Unsecured Creditors	Represented By Jeremy V Richards
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18; 5-29-18; 7-30-18

Docket 0

*** VACATED *** REASON: CONTINUED 10-9-18 AT 9:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
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Wednesday, September 12, 2018

Hearing Room 1568

9:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-17056 Brad Hilton Robbins

Chapter 7

Adv#: 2:17-01470 Swan Fence Incorporated v. Robbins

#100.00

Show Cause Hearing re [24] why summary judgment should not be entered in the Defendants favor, based upon Plaintiffs failure to show that it is entitled to the relief demanded in the Complaint
RE: [1] Adversary case 2:17-ap-01470. Complaint by Swan Fence Incorporated against Brad Hilton Robbins. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Wainer, Maurice)

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brad Hilton Robbins

Represented By
Sergio J Siderman

Defendant(s):

Brad Hilton Robbins

Pro Se

Plaintiff(s):

Swan Fence Incorporated

Represented By
Maurice Wainer

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-20290 Tire Trax Inc.

Chapter 7

#101.00 APPLICANT: OTHER - Franchise Tax Board Bankruptcy Section MS

Hearing re [42] [43] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

See Cal. No. 104, incorporated by reference.

Party Information

Debtor(s):

Tire Trax Inc.

Represented By
Jeffrey N Wishman

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Richard S Davis

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-20290 Tire Trax Inc.

Chapter 7

#102.00 APPLICANT: Accountant - LEA ACCOUNTANCY LLP

Hearing re [42] [43] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$5,976.50

Expenses: \$321.83

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tire Trax Inc.

Represented By
Jeffrey N Wishman

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Richard S Davis

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Tire Trax Inc.

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-20290 Tire Trax Inc.

Chapter 7

#103.00 APPLICANT: Attorney - Fickel & Davis

Hearing re [42] [43] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$91,666.67

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tire Trax Inc.

Represented By
Jeffrey N Wishman

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Richard S Davis

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-20290 Tire Trax Inc.

Chapter 7

#104.00 APPLICANT: Trustee - Edward M Wolkowitz

Hearing re [42] [43] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$17,000

Total Expenses: \$13.27

Franchise Tax Board: \$800.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tire Trax Inc.

Represented By
Jeffrey N Wishman

Trustee(s):

Edward M Wolkowitz (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT...

Tire Trax Inc.

Richard S Davis

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-22539 Nafiz Kadir and Nighat Sultana

Chapter 7

#105.00 APPLICANT: Attorney for Trustee - Levene Neale Bender Yoo & Brill

Hearing re [63] [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: \$10,564.50

Expenses: \$739.67

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Nafiz Kadir

Represented By
Stephen S Smyth
William J Smyth

Joint Debtor(s):

Nighat Sultana

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Nafiz Kadir and Nighat Sultana

Chapter 7

Stephen S Smyth
William J Smyth

Trustee(s):

Timothy Yoo (TR)

Represented By
Juliet Y Oh
Levene, Neale, Bender, Yoo & Brill LLP
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-22539 Nafiz Kadir and Nighat Sultana

Chapter 7

#106.00 APPLICANT: Other Professional Fees - Regis Boyle, Jr.

Hearing re [63] [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

See Cal. No. 108, incorporated by reference.

Party Information

Debtor(s):

Nafiz Kadir

Represented By
Stephen S Smyth
William J Smyth

Joint Debtor(s):

Nighat Sultana

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Timothy Yoo (TR)

Represented By
Juliet Y Oh
Levene, Neale, Bender, Yoo & Brill LLP
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-22539 Nafiz Kadir and Nighat Sultana

Chapter 7

#107.00 APPLICANT: Other Professional Fees - Jeffrey L Sumpter

Hearing re [63] [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

See Cal. No. 108, incorporated by reference.

Party Information

Debtor(s):

Nafiz Kadir

Represented By
Stephen S Smyth
William J Smyth

Joint Debtor(s):

Nighat Sultana

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Timothy Yoo (TR)

Represented By
Juliet Y Oh
Levene, Neale, Bender, Yoo & Brill LLP
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-22539 Nafiz Kadir and Nighat Sultana

Chapter 7

#108.00 APPLICANT: Trustee - Timothy J Yoo

Hearing re [63] [64] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/11/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,613.10

Total Expenses: \$141.30

Jeffrey Sumpter: \$1,000

Regis Boyle Fees: \$337.50

Regis Boyle Expenses: \$210.23

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Nafiz Kadir

Represented By
Stephen S Smyth
William J Smyth

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Nafiz Kadir and Nighat Sultana

Chapter 7

Joint Debtor(s):

Nighat Sultana

Represented By
Stephen S Smyth
William J Smyth

Trustee(s):

Timothy Yoo (TR)

Represented By
Juliet Y Oh
Levene, Neale, Bender, Yoo & Brill LLP
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:18-17990 OBI Probiotic Soda LLC

Chapter 7

#109.00 Status Hearing RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. Medicine Flower (attorney James E Till), Zuckerman-Honickman Inc (attorney James E Till) . (Collins, Kim S.) Additional attachment(s) added on 7/12/2018 (Collins, Kim S.).

Docket 1

Tentative Ruling:

9/11/2018

For the reasons set forth below, the Court will enter an order for relief against the Alleged Debtor.

Pleadings Filed and Reviewed:

- 1) Involuntary Petition Against a Non-Individual [Doc. No. 1]
- 2) Summons and Notice of Status Conference in an Involuntary Bankruptcy Case [Doc. No. 3]
 - a) Proof of Service [Doc. No. 5]

I. Facts and Summary of Pleadings

On July 12, 2018 (the "Petition Date"), Demooing & Marketing, Medicine Flower, and Zuckerman-Honickman (collectively, the "Petitioning Creditors") commenced this Chapter 7 involuntary petition (the "Involuntary Petition") against OBI Probiotic Soda LLC (the "Alleged Debtor"). Petitioning Creditors are represented by James E. Till of Bosley Till LLP. The Involuntary Petition alleges that the Alleged Debtor is indebted to the Petitioning Creditors in the total amount of \$46,681.62, as follows:

- 1) Demooing & Marketing—owed \$7,059.90 on account of a trade payable
- 2) Medicine Flower—owed \$7,990.46 on account of a trade payable
- 3) Zuckerman-Honickman—owed \$31,631.26 on account of a trade payable

On July 20, 2018, Petitioning Creditors filed a Proof of Service, establishing that the *Summons and Notice of Status Conference* was timely served upon the Alleged Debtor on July 19, 2018. Doc. No. 3. The Alleged Debtor has not timely controverted the allegations set forth in the Involuntary Petition.

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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... OBI Probiotic Soda LLC

Chapter 7

II. Findings and Conclusions

Section 303(b), which governs the commencement of an involuntary petition, provides in relevant part:

An involuntary case against a person is commenced by the filing with the bankruptcy court of a petition under chapter 7 or 11 of this title by three or more entities, each of which is either a holder of a claim against such person that is not contingent as to liability or the subject of a bona fide dispute as to liability or amount, ... if such noncontingent, undisputed claims aggregate at least \$15,775 more than the value of any lien on property of the debtor securing such claims held by the holders of such claims.

Section 303(h) provides that if "the petition is not timely controverted, the court shall order relief against the debtor in an involuntary case under the chapter under which the petition was filed."

Because the Involuntary Petition was properly served and has not been timely controverted, the Court will enter an order for relief against the Alleged Debtor. Within fourteen days of the entry of the order for relief, the Alleged Debtor shall file the schedules, documents, and statements set forth in Bankruptcy Rule 1007.

The Petitioning Creditors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

OBI Probiotic Soda LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:10-12927 FirstFed Financial Corp.

Chapter 11

#110.00 Hearing: [284] and [375] Post-confirmation Status Conference re chapter 11 plan

fr. 4-26-12; 5-23-12; 6-6-12; 7-3-12; 7-3-12; 10-2-12; 3-20-13; 10-9-13; 4-16-14;
4-7-15; 12-16-15; 1-20-16; 1-17-17; 9-12-17; 3-14-18; 5-9-18

Docket 284

Tentative Ruling:

9/11/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to January 15, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

FirstFed Financial Corp.

Represented By
Jon L Dalberg
Rodger M Landau
Joel S. Miliband
Cathrine M Castaldi
Rodger M Landau

Movant(s):

Holdco Advisors, L.P.

Represented By
Jeff D Kahane
Jeff D Kahane

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:12-31372 First Regional Bancorp

Chapter 11

#111.00 Hearing RE [257] Post-Confirmation Status Conference

FR. 5-23-14; 4-10-14; 10-22-14; 4-22-15; 6-16-15; 1-6-16; 7-13-16; 12-7-16;
6-6-17; 9-12-17; 3-14-18; 6-12-18

Docket 0

Tentative Ruling:

9/11/2018

Appearances are required.

Pleadings Filed and Reviewed

- Tenth Post-Confirmation Status Report ("Status Report") [Doc. No. 508]

This is a post-confirmation status conference. On March 9, 2018, Vikaran Ghei and Michael Zaitzeff (the "Liquidating Trustees") filed their "Ninth Post-Confirmation Status Report" (the "9th Status Report") [Doc. No. 499]. In that status report, the Liquidating Trustees informed this Court that on November 20, 2017, the Ninth Circuit denied their appeal involving their claim to a \$22,000,000 refund of federal income taxes from the Federal Deposit Insurance Corporation, in its capacity as receiver for the Debtor's bank subsidiary [*Id.* 3:10]. Based on that denial, the Liquidating Trustees stated that they would "shortly wind up the Bankruptcy Case" [*Id.* 3:11].

On August 30, 2018, the Liquidating Trustees filed their "Tenth Post-Confirmation Status Report" (the "10th Status Report") [Doc. No. 508]. Based on this Court's review, the 10th Status Report appears to be virtually identical to the 9th Status Report. The 10th Status Report provides no further detail on the Liquidating Trustee's efforts to wind up this bankruptcy case since the filing of the 9th Status Report nearly six months ago.

Based on the foregoing, counsel for the Liquidating Trustees is directed to appear to

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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... First Regional Bancorp

Chapter 11

provide this Court with an update on any efforts being undertaken to wind up this
bankruptcy

Party Information

Debtor(s):

First Regional Bancorp

Represented By
Jon L Dalberg
Ivan L Kallick
Todd Meyers
Roye Zur

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#112.00 Status Hearing re post confirmation status conference

fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17; 3-13-18' 6-12-18

Docket 0

Tentative Ruling:

9/11/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor's Post Confirmation Report on Status of Reorganization [Doc. No. 438], the Court CONTINUES the status conference to December 12, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#113.00 HearingRE: [1267] Application for Compensation (SILLS CUMMIS & GROSS) for OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Creditor Comm. Atty, Period: 6/5/2016 to 5/31/2018, Fee: \$1,148,827.50, Expenses: \$32,455.22. (Bisconti, Anthony)

Docket 1267

Tentative Ruling:

9/12/2018 (updated to reflect additional payment that the Committee received from the Debtor in August 2018):

Tentative Ruling:

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On August 5, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Sills Cummis & Gross P.C. ("Sills") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Sills has submitted 22 Monthly Applications [Doc. Nos. 417, 476, 544, 588, 644, 671, 700, 753, 838, 837, 911, 946, 980, 1032, 1067, 1080, 1118, 1145, 1170, 1197, and 1249], none of which have been opposed. Sills received payment in connection with the first seven Monthly Applications it submitted. In August 2018, Sills received an additional payment from the Debtor in the amount of \$414,665.76. *See* Doc. No. 1307.

No objections have been filed to *Sills Cummis & Gross P.C.'s First Interim Application for Allowance and Payment of Compensation and Reimbursement of*

**United States Bankruptcy Court
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Expenses [Doc. No. 1267] (the "Application"). Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below which may be paid subject to available cash on hand in the Estate:

Fees: \$1,148,827.50

Expenses: \$32,455.42

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#114.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For
Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17; 3-13-18; 3-14-18; 6-20-18

Docket 14

Tentative Ruling:

9/11/2018

For the reasons stated below, the Debtor is authorized to use cash collateral through and including December 31, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank and the Third IRS Stipulation. A hearing on whether the Debtor may use cash collateral after December 31, 2018 will take place on December 12, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by November 21, 2018. Objections, if any, to the Debtor's request for continued use of cash collateral must be filed and served by November 28, 2018. Any reply may be filed and served by December 5, 2018.

Pleadings Filed and Reviewed:

- 1) Supplemental to Motion for Authority to Use Cash Collateral (the "Motion") [Doc. No. 134]
 - a) Notice of Motion and Motion for Authority to Use Cash Collateral [Doc. No. 14]
- 2) Order Approving Fifth Request for Interim Use of Cash Collateral and Adequate Protection [Doc. No. 127]
- 3) Third Stipulation Regarding Interim Use of Cash Collateral and Adequate Protection [between the Debtor and Citizens Business Bank] (the "Bank Stipulation") [Doc. No. 85]
- 4) Third Stipulation Between Debtor and Internal Revenue Service Regarding Interim Use of Cash Collateral and Adequate Protection (the "IRS Stipulation") [Doc. No. 98]
- 5) No opposition has been filed as of the preparation of this tentative ruling.

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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Base Architecture Planning & Engr Inc.

Chapter 11

I. Facts and Summary of Pleadings

Base Architecture Planning & Engr Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on July 14, 2017. The Debtor is an urban design, architecture, planning, and civil engineering firm located in Los Angeles. The Debtor specializes in designing and constructing airport facilities, transit projects, municipal and civic facilities, schools, and commercial offices. The Debtor has 22 active contracts with different property owners and government agencies, which it expects to assume. The immediate cause of the petition was the entry of a judgment against the Debtor in the amount of \$70,000 on May 25, 2017.

On July 31, 2017, the Debtor filed its "Motion for Authority to Use Cash Collateral" [Doc. No. 14] (the "Cash Collateral Motion"). Debtor subsequently filed stipulations with the Internal Revenue Service ("IRS") and Citizens Business Bank ("CBB" or "the Bank") regarding Debtor's proposed use of cash collateral [Doc. Nos. 26, 30]. On September 1, 2017, this Court entered orders approving those stipulations and authorizing interim use of cash collateral through October 31, 2017, subject to the terms and conditions set forth in the stipulations [Doc. Nos. 47, 48].

On September 27, 2017, Debtor filed its "Supplement to Motion for Authority to Use Cash Collateral," seeking authority to extend its use of cash collateral through plan confirmation [Doc. No. 59]. Shortly thereafter, Debtor stipulated with CBB and the IRS, pursuant to which the parties agreed Debtor could use their cash collateral on an interim basis, through December 31, 2017 [Doc. Nos. 61, 62], which this Court approved [Doc. Nos. 64, 71, 72].

On November 28, 2017, Debtor filed a further request for interim use of cash collateral [Doc. No. 81]. The Debtor entered into further stipulations with the Bank and IRS regarding its continued use of cash collateral [Doc. Nos. 85, 98], which this Court approved [Doc. Nos. 88, 100]. The Debtor subsequently sought and obtained a number of additional extensions for interim use of cash collateral [See Doc. Nos. 104, 107, 119, 122, 127].

The Debtor now seeks to extend its authorization to use cash collateral pursuant to the terms and conditions of the IRS and Bank stipulations, through and including December 31, 2018 [Doc. No. 134].

Pursuant to the Court's "Order Approving Fifth Request for Interim Use of Cash Collateral and Adequate Protection" entered on June 22, 2018 [Doc. No. 127], the

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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

CONT... Base Architecture Planning & Engr Inc.

Chapter 11

deadline for filing an objection was August 29, 2018. As of the preparation of this tentative ruling, no objection has been filed.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court finds that CBB and the IRS are adequately protected by the terms and conditions set forth in the negotiated CBB and IRS Stipulations. The Court, therefore, authorizes the continued use of cash collateral provided that the Debtor continues to comply with the terms of those stipulations, including making the adequate protection payments required therein.

III. Conclusion

For the reasons stated above, the Debtor is authorized to use cash collateral through and including December 31, 2018, in accordance with the terms of the Third Stipulation with Citizen's Business Bank and the Third IRS Stipulation. A hearing on whether the Debtor may use cash collateral after December 31, 2018 will take place on December 12, 2018 at 10:00 a.m. Papers in support of the continued use of cash collateral must be filed and served by November 21, 2018. Objections, if any, to the Debtor's request for continued use of cash collateral must be filed and served by November 28, 2018. Any reply may be filed and served by December 5, 2018.

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10:00 AM

CONT... Base Architecture Planning & Engr Inc.

Chapter 11

The Debtor shall lodge an appropriate order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#115.00 HearingRE: [1277] Application for Compensation First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Weiland Golden Goodrich LLP, Local Co-Counsel to the Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc.; and Declaration of Jeffrey I. Golden in Support Thereof (with Proof of Service) for Weiland Golden Goodrich LLP, Creditor Comm. Aty, Period: 7/5/2016 to 8/17/2018, Fee: \$73,685.00, Expenses: \$2,890.43.

Docket 1277

Tentative Ruling:

9/11/2018

Tentative Ruling:

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On August 5, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Weiland, Golden, Goodrich LLP ("Weiland") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Weiland has submitted two Monthly Applications, none of which have been opposed.

No objections have been filed to the *First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Weiland Golden Goodrich LLP, Local Co-Counsel to the Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center* [Doc. No. 1277] (the "Application"). Having

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Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid subject to cash available in the Estate:

Fees: \$73,685.00

Expenses: \$2,890.43

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#116.00 HearingRE: [1279] Application for Compensation for Bienert, Miller & Katzman, PLC for OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Creditor Comm. Atty, Period: 8/22/2016 to 5/31/2018, Fee: \$168,514.50, Expenses: \$5,951.74. (Bisconti, Anthony)

Docket 1279

Tentative Ruling:

9/11/2018

Tentative Ruling:

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On September 20, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Bienert, Miller & Katzman, PLC ("BMK") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, BMK has submitted 22 Monthly Applications [Doc. Nos. 418, 477, 545, 589, 645, 672, 699, 750, 837, 872, 910, 945, 957, 979, 1031, 1068, 1081, 112, 1144, 1169, 1196, and 1248], none of which have been opposed.

No objections have been filed to the *Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Bienert, Miller & Katzman, PLC, as Counsel to the Official Committee of Unsecured Creditors* [Doc. No. 1279] (the "Application"). Having reviewed the Application, the Court approves, on an interim basis, the fees and expenses set forth below, which may be paid subject to cash

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

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10:00 AM

CONT... **Gardens Regional Hospital and Medical Center, Inc.**
available in the Estate.:

Chapter 11

Fees: \$168,514.50

Expenses: \$5,951.74

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#117.00 Hearing
RE: [1281] Application for Compensation Dentons US LLP's First Interim Application For Allowance And Payment Of Compensation And Reimbursement Of Expenses; Declaration Of Samuel R. Maizel In Support Thereof for Gardens Regional Hospital and Medical Center, Inc., Debtor's Attorney, Period: 6/6/2016 to 5/31/2018, Fee: \$3,179,815.60, Expenses: \$109,170.60. (Maizel, Samuel)

Docket 1281

***** VACATED *** REASON: CONTINUED 10-3-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01277 Verity Health System of California, Inc. v. Old Republic Insurance Company

**#118.00 Hearing re [3] Ex Parte Emergency Motion For Temporary Restraining Order
Without Notice And Preliminary Injunction Enjoining Defendant
From Making Certain Draws On A Letter Of Credit**

Docket 0

Tentative Ruling:

9/11/2018

Hearing required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

Defendant(s):

Old Republic Insurance Company

Pro Se

City National Bank

Pro Se

Plaintiff(s):

Verity Health System of California,

Represented By
Tania M Moyron

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#200.00 HearingRE: [716] Application for Compensation - Third And Final Application Of Levene, Neale, Bender, Yoo & Brill L.L.P. For Approval Of Fees And Reimbursement Of Expenses; Declaration Of David B. Golubchik In Support Thereof for Levene, Neale, Bender, Yoo & Brill L.L.P., Debtor's Attorney, Period: 10/31/2017 to 7/2/2018, Fee: \$108,083.50, Expenses: \$7,830.85.

Docket 716

Tentative Ruling:

9/11/2018

Tentative Ruling:

No objections have been filed to the *Third and Final Application of Levene, Neale, Bender, Yoo & Brill LLP for Approval of Fees and Reimbursement of Expenses* [Doc. No. 716] (the "Application"). Having reviewed the Application, and finding that notice thereof is consistent with FRBP 2002(i) the Court approves, on a final basis, the fees and expenses set forth below. All fees previously awarded on an interim basis are now approved as final. To the extent previously awarded fees have not been paid, payment of such fees is authorized.

Fees: \$108,083.50 (amount includes fees incurred in preparation of this Application)

Expenses: \$7,830.85

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#201.00 HearingRE: [717] Application for Compensation - Third And Final Application Of SierraConstellation Partners, LLC For Approval Of Fees And Reimbursement Of Expenses; Declaration Of Lawrence R. Perkins In Support Thereof for SierraConstellation Partners, LLC, Financial Advisor, Period: 11/1/2017 to 8/15/2018, Fee: \$59,522.75, Expenses: \$1,625.73.

Docket 717

Tentative Ruling:

9/11/2018

Tentative Ruling:

No objections have been filed to the *Third and Final Application of SierraConstellation Partners, LLC for Approval of Fees and Reimbursement of Expenses* [Doc. No. 717] (the "Application"). Having reviewed the Application, finding that notice is consistent with FRBP 2002(i) the Court approves, on a final basis, the fees and expenses set forth below. All fees previously awarded on an interim basis are now approved as final. To the extent previously awarded fees have not been paid, payment of such fees is authorized.

Fees: \$59,522.75

Expenses: \$1,625.73

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#202.00 HearingRE: [720] Application for Compensation Second and Final Application of Tisdale & Nicholson, LLP for Approval of Fees and Reimbursement of Expenses; Declaration of Jeffrey A. Tisdale in Support Thereof for TISDALE & NICHOLSON LLP, a California Limited Liability Partnership, Debtor's Attorney, Period: 11/1/2017 to 7/2/2018, Fees: \$157,405.00, Expenses: \$1,287.29.

Docket 720

Tentative Ruling:

9/11/2018

Tentative Ruling:

No objections have been filed to the *Second and Final Application of Tisdale & Nicholson, LLP for Approval of Fees and Reimbursement of Expenses* [Doc. No. 720] (the "Application"). Having reviewed the Application, and finding that such notice is consistent with FRBP 2002(i), the Court approves, on a final basis, the fees and expenses set forth below. All fees previously awarded on an interim basis are now approved as final. To the extent previously awarded fees have not been paid, payment of such fees is authorized.

Fees: \$157,405.00

Expenses: \$1,287.29

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#203.00 HearingRE: [725] Application for Compensation Second and Final Application for Compensation and Reimbursement of Fees and Expenses of Development Specialists, Inc., Financial Advisor to the Official Committee of Creditors Holding Unsecured Claims of Liberty Asset Management Corporation for Development Specialists, Inc., Financial Advisor, Period: 5/1/2017 to 7/1/2018, Fee: \$17,270.50, Expenses: \$2.40.

Docket 725

Tentative Ruling:

9/11/2018

Tentative Ruling:

No objections have been filed to the *Second and Final Application for Compensation and Reimbursement of Fees and Expenses of Development Specialists, Inc., Financial Advisor to the Official Committee of Creditors Holding Unsecured Claims of Liberty Asset Management Corporation* [Doc. No. 725] (the "Fee Application"). Having reviewed the Application, and finding that notice is consistent with FRBP 2002(i), the Court approves, on a final basis, the fees and expenses set forth below. All fees previously awarded on an interim basis are now approved as final. To the extent previously awarded fees have not been paid, payment of such fees is authorized.

Fees: \$17,270.50

Expenses: \$2.40

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#204.00 HearingRE: [726] Application for Compensation Third and Final Application of Pachulski Stang Ziehl & Jones LLP for Approval of Compensation and Reimbursement of Expenses; Declaration of Jeremy V. Richards in Support Thereof for Pachulski Stang Ziehl & Jones LLP, Creditor Comm. Atty, Period: 11/1/2017 to 7/1/2018, Fee: \$878,723.50, Expenses: \$65,758.78.

Docket 726

Tentative Ruling:

9/11/2018

Tentative Ruling:

For the reasons set forth below, PSZJ's Fee Application is GRANTED in PART and DENIED in PART. Specifically, the Court is prepared to award the fees and expenses requested by PSZJ, except that the Court disallows any fees incurred by PSZJ in unnecessary litigation to set aside the entry of default in the adversary proceeding *Official Unsecured Creditors Committee for Liberty Asset Management Corp. v. Blue Sky Communications, Inc. et al.*, Adv. No. 2:17-ap-01477-ER.

Pleadings Filed and Reviewed:

- 1) Third and Final Application of Pachulski Stang Ziehl & Jones LLP for Approval of Compensation and Reimbursement of Expenses [Doc. No. 726] (the "Fee Application")
 - a) Notice of Hearing on Final Applications of Professionals for Compensation and Reimbursement of Expenses [Doc. No. 727]
 - b) Declaration of C. Alex Naegele in Support of the Third and Final Application of Pachulski Stang Ziehl & Jones LLP for Approval of Compensation and Reimbursement of Expenses [Doc. No. 732]
 - c) Declaration of Lawrence R. Perkins in Support of Final Applications for Approval of Fees and Reimbursement of Expenses [Doc. No. 748]
- 2) Objection of Benjamin Kirk to the Third and Final Application of Pachulski Stang Ziehl & Jones LLP for Approval of Compensation and Reimbursement of Expenses [Doc. No. 746] (the "Objection")

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CONT... **Liberty Asset Management Corporation**

Chapter 11

- 3) Reply to Objection of Benjamin Kirk to the Third and Final Application of Pachulski Stang Ziehl & Jones LLP for Approval of Compensation and Reimbursement of Expenses [Doc. No. 751] (the "Reply")

I. Facts and Summary of Pleadings

In connection with this *Third and Final Application ... for Approval of Compensation and Reimbursement of Expenses* [Doc. No. 726] (the "Fee Application"), Pachulski Stang Ziehl & Jones LLP ("PSZJ") applies for allowance of fees in the amount of \$3,055,998.50 and expenses in the amount of \$180,134.45. The Court has previously allowed, on an interim basis, fees in the amount of \$2,177,275.00 and expenses in the amount of \$114,375.67. In addition to seeking allowance, on a final basis, of the amounts previously awarded on an interim basis, PSZJ seeks allowance, on a final basis, of fees in the amount of \$879,826 and expenses in the amount of \$65,758.78 for work performed during the period covered by the instant Fee Application. The \$879,826 in fees sought in connection with the instant Fee Application includes \$35,102.50 in fees for (a) preparing and litigating the Fee Application and for (b) reviewing the fee applications submitted by other professionals. The Court finds that notice was consistent with FRBP 2002(i).

Benjamin Kirk objects to the Fee Application. No other objections to the Fee Application have been filed.

A. Benjamin Kirk's Objection to the Fee Application

Benjamin Kirk makes the following arguments and representations in support of his objection to the Fee Application:

PSZJ has not demonstrated that the fees it has requested are reasonable, as required by §330(a). Although Mr. Kirk takes issue with the work performed by PSZJ in this case, that argument is not made today. Similarly, although Mr. Kirk believes PSZJ's hourly rates push the upper limits of hourly rates in Southern California, he does not challenge PSZJ's rates.

Mr. Kirk's objection lies with the disproportionate use of partner and senior level attorneys to bill on this case. PSZJ did not bill a single hour of associate time to this case. Of the 4,009.4 hours billed through June 2018, only 110.5 hours (or 2.75%) were billed by attorneys with less than twenty years of experience.

It was not reasonable for PSZJ to staff this case almost exclusively with partner or partner-level attorneys. This is not the first time a court has been asked to examine the

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CONT... **Liberty Asset Management Corporation**

Chapter 11

reasonableness of PSZJ's top-heavy staffing decisions. In *In re Fleming Companies, Inc.*, 304 B.R. 85, 93 (Bankr. D. Del. 2003), the court required PSZJ to submit evidence responding to the United States Trustee's allegation that it had "staffed the case with a disproportionate number of senior personnel." *Fleming Companies*, 304 B.R. at 93.

PSZJ's use of senior attorneys resulted in a higher than necessary blended fee rate. Here, PSZJ's blended fee rate was \$753 per hour. Had PSZJ used more junior personnel, and billed at a blended rate of \$600, the savings to the estate and creditors would have been more than \$600,000.

Finally, PSZJ's request for compensation in the amount of approximately \$35,000 for work performed in connection with this Fee Application is not reasonable.

B. PSZJ's Reply to Benjamin Kirk's Objection

PSZJ makes the following arguments and representations in its Reply to Mr. Kirk's Objection to the Fee Application:

There is no precedent supporting Mr. Kirk's position that staffing a case with experienced attorneys is cause for the denial of fees. In *In re Powerine Oil Co.*, 71 B.R. 767 (BAP 9th Cir. 1986), the Ninth Circuit BAP rejected similar arguments:

David Gould, a senior partner, was accountable for 166.2 hours, or 83 percent of the total time.... Because the Bank Group does not object to the number of hours, its argument boils down to the assertion that Gould unwarrantedly performed most of the work. Many areas of legal analysis and negotiations described in the application for compensation are such as would reasonably require effort of a senior-level partner. An appellate court is in no position to second-guess the factors that may have caused a senior lawyer rather than a junior lawyer to perform the work required on a case.

Powerine Oil, 71 B.R. at 769–72.

In this case, the use of experienced attorneys was necessary given the complicated issues. Due to the breaches of fiduciary duty committed by Mr. Kirk and Ms. Gao, this case involved a hundred million dollars of claims by defrauded investors, litigation on multiple fronts to recover assets that were wrongfully in the hands of third parties, and counsel's involvement in numerous other related bankruptcy cases. It was necessary to staff the case with experienced attorneys who also, over time, built an institutional knowledge of the complicated facts and issues. In fact, to avoid billing for the inefficiencies and training of junior associates, PSZJ does not generally hire new

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graduates from law schools.

There is no merit to Mr. Kirk's contention that the fees incurred by PSZJ in the litigation and preparation of this Fee Application are not reasonable. PSZJ has spent 74.1 hours preparing and litigating this Fee Application and reviewing other professionals' fee applications. The fees of \$35,102.50 which PSZJ seeks for this work are reasonable.

II. Findings and Conclusions

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

In determining the amount of allowable fees under §330(a), courts within the Ninth Circuit rely upon the lodestar approach. Under the lodestar approach, the "initial estimate of a reasonable attorney's fee is properly calculated by multiplying the

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Chapter 11

number of hours reasonably expended on the litigation times a reasonable hourly rate. Adjustments to that fee then may be made as necessary in the particular case." *Blum v. Stenson*, 465 U.S. 886, 888, 104 S. Ct. 1541, 1544, 79 L. Ed. 2d 891 (1984).

Mr. Kirk's objections to the Fee Application are overruled. The Court does not agree with Mr. Kirk's contention that PSZJ's use of only senior attorneys in this case was unreasonable or was done for the purpose of inflating PSZJ's fees. This has not been a routine Chapter 11 case. A review of only a few of the decisions issued by the Court gives a sense of the complicated issues. *See, e.g.*, Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29 [Doc. No. 141, Adv. No. 2:16-ap-01337-ER]; Final Ruling Denying Motion to Convert Case from Chapter 11 to Chapter 7 [Doc. No. 580, Case No. 2:16-bk-13575-ER]; Memorandum of Decision Imposing Terminating Sanctions Against Lucy Gao [Doc. No. 54, Adv. No. 2:16-ap-01144-ER]; and Memorandum of Decision (1) Denying Benjamin Kirk's Motion for Reconsideration of Sale Order, (2) Denying Benjamin Kirk's Application for a Stay of the Sale Order, and (3) Denying Benjamin Kirk's Request for a Continuance of the October 18, 2017 Auctions [Doc. No. 480, Case No. 2:16-bk-13575-ER]. In view of the complicated issues, it was entirely proper and appropriate for PSZJ to staff the case with senior attorneys.

Mr. Kirk's objection to the amount of fees incurred by PSZJ in the preparation and litigation of this Fee Application, and the review of the fee applications submitted by other professionals, is overruled. Reasonable fees incurred in the preparation and litigation of fee applications are compensable. *In re Nucorp Energy*, 764 F.2d 655 (9th Cir. 1985); 11 U.S.C. §330(a)(6). The Court finds that fees of \$35,102.50 for spending 74.1 hours in connection with this Fee Application are reasonable.

Exercising its independent obligation to review PSZJ's fees, the Court finds that the fees sought by PSZJ for opposing a motion to set aside entry of default in the adversary proceeding *Official Unsecured Creditors Committee for Liberty Asset Management Corp. v. Blue Sky Communications, Inc. et al.*, Adv. No. 2:17-ap-01477-ER, are not reasonable and must be disallowed. In overruling PSZJ's opposition to the motion to set aside the entry of default, the Court found:

[T]he Committee [represented by PSZJ] filed unduly lengthy papers in connection with what should have been a routine issue—whether a default that was entered only several months ago should be set aside. The resources the Committee devoted to this issue exceeded its importance.

Final Ruling Granting Motion to Set Aside Entry of Default at 4 [Doc. No. 55, Adv. No. 2:17-ap-01477-ER].

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CONT... Liberty Asset Management Corporation

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PSZJ is not entitled to any fees in connection with time spent in litigation (a) seeking to prevent certain defendants in the *Blue Sky* litigation from setting aside the entry of default and (b) seeking the entry of default judgment with respect to those same defendants. PSZJ devoted extensive resources to aggressively opposing a routine motion to set aside the entry of default, even though attorneys of PSZJ's caliber and experience should have been aware that PSZJ's likelihood of prevailing upon this issue was minimal.

Because the hearings in the *Blue Sky* litigation took place on the same day as several other hearings in the case, and because PSZJ's billing records contain several entries with headings such as "[p]repare for 1/18/18 hearings," the Court cannot determine the exact amount of time PSZJ billed in connection with litigation pertaining to the default issue. By no later than **September 19, 2018**, PSZJ shall submit a declaration, citing to specific line entries in its billing records, showing exactly how much PSZJ billed the estate in litigation on this issue. PSZJ shall not be entitled to compensation for time spent preparing such declaration. Any opposition to the declaration must be submitted by no later than **September 26, 2018**. As of September 26, 2018, this matter shall stand submitted and the Court will determine the exact amount of the fee deduction warranted as a result of PSZJ's unnecessary litigation on the default issue.

Aside from fees incurred litigating the default issue, PSZJ's remaining fees and expenses were reasonable and necessary. Subject to the deductions for the unnecessary *Blue Sky* litigation, the Court is prepared confirm as final the fees and expenses previously awarded on an interim basis. The Court is further prepared to award, on a final basis, fees incurred during the time covered by this Fee Application in the amount of \$879,826 and expenses in the amount of \$65,758.78 (again subject to a deduction for fees incurred in the unnecessary *Blue Sky* litigation).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

Hearing Room 1568

11:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

#205.00 HearingRE: [72] Motion to Approve Compromise Under Rule 9019 Notice of Motion and Motion of Debtor for Order Approving Compromise and Settlement of Claims Between Debtor, on the one hand, and Yolanda Flores Corporation, on the other hand; Declarations of Simin Hashemizadeh and Peter T. Steinberg, Esq. in Support Thereof; with Exhibit A and Proof of Service

Docket 72

Tentative Ruling:

9/11/2018

For the reasons set forth below, both the Rule 9019 Motion and the Motion to Dismiss are GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Debtor for Order Approving Compromise and Settlement of Claims Between the Debtor, on the One Hand, and Yolanda Flores Corporation, on the Other Hand [Doc. No. 72] (the "Rule 9019 Motion")
- 2) Notice of Motion and Motion for Order Dismissing Debtor's Chapter 11 Proceeding Pursuant to 11 U.S.C. §1112(b)(1) [Doc. No. 73] (the "Motion to Dismiss")

I. Facts and Summary of Pleadings

Beverly South Hills Pacific Surgery Center (the "Debtor") commenced a voluntary Chapter 11 petition on March 15, 2018. The Debtor sought bankruptcy protection as a result of a dispute with Yolanda Flores Corporation ("YF"). Aside from YF, the Debtor has few creditors.

On April 19, 2018, the Debtor removed an action captioned *Yolanda Flores Corp. v. Beverly Hills South Pacific Surgery Center* (the "Action") from the Los Angeles Superior Court (the "State Court") to the Bankruptcy Court. On July 26, 2018, after a contested hearing, the Court remanded the Action to the State Court.

Debtor has now reached a settlement with YF. Under the settlement, the Debtor will pay \$300,000 to YF. In connection with the settlement, the Debtor seeks dismissal of its bankruptcy case, pursuant to §1112(b). No papers opposing either the

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 12, 2018

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11:00 AM

CONT... **Beverly Hills South Pacific Surgery Center, Inc.**

Chapter 11

motion to approve the settlement (the "Rule 9019 Motion") or the motion for dismissal (the "Motion to Dismiss") have been filed.

II. Findings and Conclusions

A. The Settlement is Approved and the Rule 9019 Motion is Granted

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). Applying the *A&C Properties* factors, the Court finds that the *Settlement Agreement with Mutual Releases* (the "Settlement Agreement") is adequate, fair, and reasonable, and is in the best interests of the estate and creditors.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The dispute involves contested issues of fact and would expensive to litigate.

Probability of Success on the Merits

This factor weighs in favor of approving the Settlement Agreement. The Debtor's state-court counsel has strongly advised the Debtor to settle the matter, and the Debtor believes that if the matter proceeded to trial, there is a strong possibility it could lose and become subject to a judgment of no less than \$605,000.

Paramount Interests of Creditors

This factor weighs strongly in favor of approving the Settlement Agreement. The Debtor's primary creditor is YF, who has entered into the Settlement Agreement. No other creditors have objected to approval of the Settlement Agreement.

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CONT... Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

Difficult with Collection

This factor does not apply.

B. The Case is Dismissed

Section 1112(b) provides that the Court, upon request of a party in interest, "shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." The factors set forth in § 1112(b)(4) "are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *Pioneer Liquidating Corp. v. United States Trustee (In re Consol. Pioneer Mortg. Entities)*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

Here, the Court finds that the Debtor has shown cause for dismissal, and that dismissal is in the best interests of creditors. The Settlement Agreement resolves the dispute with the Debtor's largest creditor, YF. Other than YF, the Debtor has few significant creditors. No creditors have objected to dismissal of the case.

C. Conclusion

Based upon the foregoing, the Rule 9019 Motion is GRANTED, and the case is DISMISSED. The Debtor shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By

**United States Bankruptcy Court
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CONT...

Beverly Hills South Pacific Surgery Center, Inc.
Peter T Steinberg

Chapter 11

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Judge Ernest Robles, Presiding
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11:00 AM

2:18-12857 Beverly Hills South Pacific Surgery Center, Inc.

Chapter 11

#206.00 HearingRE: [73] Motion to Dismiss Debtor Motion for Order Dismissing Debtor's Chapter 11 Proceeding Pursuant to 11 U.S.C. Section 1112(b)(1); Memo of P&A's; Declarations of Simin Hashemizadeh and Peter T. Steinberg, Esq., in Support Thereof; with Proof of Service

Docket 73

Tentative Ruling:

9/11/2018

See Cal. No. 205, above, incorporated in full by reference.

Party Information

Debtor(s):

Beverly Hills South Pacific Surgery

Represented By
Peter T Steinberg

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, September 13, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#1.00



Docket No: 1

***** VACATED *** REASON: PER ORDER ENTERED 9-12-18**

Tentative Ruling:



Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7 Trustee

Represented By
Jeffrey S Kwong

**United States Bankruptcy Court
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11:00 AM

CONT... Blue Global, LLC

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:15-26177 David Lee Tomblin

Chapter 11

#1.00 Post-Confirmation Status Conference

fr. 6-6-17; 12-5-17; 4-4-18

Docket 0

***** VACATED *** REASON: FINAL DECREE ENTERED 8-14-18**

Tentative Ruling:

4/3/2018

No appearances are required. This is a post-confirmation status conference. Upon review of the Status Report, the Court CONTINUES the status conference to **September 18, 2018 at 10:00 a.m.** A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

David Lee Tomblin

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#2.00 Status Hearing
RE: [131] post confirmation status conference

fr. 5-2-17; 8-30-17; 12-27-17; 1-3-18; 4-4-18

Docket 131

Tentative Ruling:

9/17/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor's Post Confirmation Report on Status of Reorganization [Doc. No. 185], the Court CONTINUES the status conference to December 12, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01277 10TH STREET SANTA MONICA PROJECT, LLC et al v. MAXWELL

#3.00 Hearing
STATUS CONFERENCE RE: [70] Motion for Leave to File Counterclaim to Debtor's Second Amended Complaint in Adversary Proceeding and Combine Claim Therein; Memorandum of Points and Authorities

FR. 5-17-17; 8-15-17; 12-13-17; 3-6-18; 6-5-18

Docket 70

***** VACATED *** REASON: PER ORDER ENTERED 9-12-18**

Tentative Ruling:

6/4/2018

Appearances required.

On September 14, 2017, the Court approved a settlement agreement (the "Settlement Agreement") resolving this action. *See* Doc. Nos. 419, 428, and 433, Case No. 2:16-bk-13575-ER. The material terms of the Settlement Agreement are as follows:

- 1) Defendants shall pay Liberty Asset Management Corporation ("Liberty") \$1 million (the "Settlement Payment"). Settlement Agreement at ¶1 [Doc. No. 419 at Ex. A, Case No. 2:16-bk-13575]. Upon full payment of the Settlement Amount, Liberty "will promptly file a notice or stipulation of dismissal of the action." *Id.* at ¶6.
- 2) Defendants shall execute and deliver to Liberty a Stipulated Judgment against Defendants and in favor of Liberty in the amount of \$1.5 million. Liberty shall not record the Stipulated Judgment unless Defendants fail to make the Settlement Payment. Settlement Agreement at ¶2.
- 3) Defendants shall use their best efforts to sell property located at 17634 Bellflower Boulevard, CA (the "Bellflower Property") to a third party within twelve months (the "Sale Period"). Settlement Agreement at ¶3. Defendants shall receive the first \$150,000 of the sales proceeds (net of certain costs), with Liberty to receive the balance. If the Bellflower Property is not sold within the Sale Period, Liberty shall have the option, subject to Bankruptcy Court approval, to purchase the Bellflower Property from Defendants for \$150,000. *Id.* at ¶5.

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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Defendants have made the Settlement Payment. At a Status Conference conducted on March 6, 2018, Defendants stated that issues remain regarding the sale of the Bellflower Property:

Defendant wants to sell the [Bellflower Property] but has not yet received approval by [Liberty] (although Defendant has the right to sell the property, without such written approval). If the matter cannot be resolved between the parties it will require Defendant to file a Motion with the Court seeking approval of the sale of the dilapidated [Bellflower Property] to an adjoining landowner for its fair market value as provided to [Liberty], in writing, by Defendant. Therefore, the case should not be dismissed and a further status conference [should be] set out for 75 days.

Joint Status Report [Doc. No. 89] at ¶G.

At the March 6 Status Conference, Liberty asserted that because the Settlement Amount had been paid, it has "circulated a stipulation for dismissal ... and will file [the] stipulation once it is signed by Defendant." *Id.* at ¶G.

The Court made the following findings at the March 6 Status Conference:

In the Court's view, dismissal of the action at this juncture would be premature, given that the issues regarding the Bellflower Property have not been resolved and given that Defendants have not consented to execution of a stipulation for dismissal. However, on the present record, there is no compelling reason why consummation of the Settlement Agreement's provisions regarding sale of the Bellflower Property should require Court intervention. Those provisions are straightforward and the Court expects the parties to negotiate and resolve any issues regarding the sale in good faith.

Final Ruling at 5–6.

In the Status Report filed in connection with this Status Conference, the parties make conflicting representations regarding the Bellflower Property. Plaintiff states that the sales and marketing efforts of the Bellflower Property are continuing; Defendants state that the Bellflower Property has been sold. The parties must appear to clarify this inconsistency.

If the Bellflower Property has in fact been sold, the Court would be inclined to approve a stipulated dismissal of this action, with the Court retaining jurisdiction to enforce the terms of the Settlement Agreement.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey

Defendant(s):

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

CHUNBO ZHANG a/k/a GEORGE

Represented By
Julie A Esposito

CHENHAN WU a/k/a CHENG

Represented By
Julie A Esposito

Movant(s):

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

MAXWELL REAL ESTATE

Represented By
Julie A Esposito

Plaintiff(s):

10TH STREET SANTA MONICA

Represented By
Jeffrey S Kwong
David B Golubchik

LIBERTY ASSET MANAGEMENT

Represented By
Jeffrey S Kwong
David B Golubchik
John-Patrick M Fritz
Lindsey L Smith
Eve H Karasik
Irving M Gross

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#3.10 Hearing

RE: [703] Motion to Reconsider of Claim (related documents 623 Objection to Claim, 657 ORDER disallowing claim(s) (BNC-PDF)) (Henshaw, David)

Docket 703

Tentative Ruling:

9/17/2018

For the reasons set forth below, the Motion to Reconsider is GRANTED, and Claim 2 is allowed as a general unsecured claim in the amount of \$1,210,191.78.

Pleadings Filed and Reviewed:

- 1) Order Setting Hearing on YCJS' "Motion for Reconsideration of Claim" [Doc. No. 721]
- 2) Motion for Reconsideration of Claim [Doc. No. 703]
- 3) The Official Committee of Unsecured Creditors' Objection to Claim Number 2 Filed by YCJS 2012 LLC (the "Claim Objection") [Doc. No. 623]
 - a) Notice of Objection to Claim [Doc. No. 624]
- 4) The Plan Administrator has not filed an opposition to the Motion for Reconsideration

I. Facts and Summary of Pleadings

On June 8, 2018, the Court entered an order disallowing Proof of Claim 2-1 ("Claim 2"), an unsecured claim in the amount of \$1,210,191.78 for breach of contract asserted by YCJS 2012 LLC ("YCJS"). Doc. No. 657. The objection to Claim 2 (the "Claim Objection") was brought by the Official Committee of Unsecured Creditors (the "Liberty Committee") for the Debtor, Liberty Asset Management Corporation ("Liberty"). YCJS did not oppose the Claim Objection.

On June 18, 2018, the Court entered an order confirming the *First Amended Chapter 11 Plan of Liquidation* [Ex. A, Doc. No. 609] (the "Plan") propounded by the Liberty Committee. Doc. No. 665 (the "Confirmation Order"). The Plan provides for the appointment of a Plan Administrator who is responsible for overseeing the liquidation of Liberty's remaining assets. The Plan further provides that the Plan

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CONT... **Liberty Asset Management Corporation**

Chapter 11

Administrator is the successor-in-interest to Liberty, and is the sole representative of Liberty's estate. The Plan Administrator is represented by Pachulski Stang Ziehl & Jones LLP ("PSZJ"), the same law firm that represented the Liberty Committee.

On August 16, 2018, the Court entered an order setting this hearing on YCJS' motion seeking reconsideration of the order disallowing Claim 2 (the "Motion to Reconsider"). In the Motion to Reconsider, YCJS asserts that it had inadvertently failed to oppose the Claim Objection, based on its mistaken belief that YCJS' claim would be resolved through the adversary proceeding captioned *AHA 2012 LLC et al. v. Benjamin Kirk et al.* (Adv. No. 2:16-ap-01278-ER) (the "AHA Adversary"). The Plan Administrator, which pursuant to the Confirmation Order has succeeded to the rights of the Liberty Committee with respect to the Claim Objection, did not oppose vacatur of the order disallowing Claim 2 and the setting of a hearing on the Motion to Reconsider, provided that the Plan Administrator was afforded an additional opportunity to object to Claim 2. The Plan Administrator has not filed any papers in opposition to the Motion to Reconsider.

A. Claim 2 Asserted by YCJS

YCJS asserts an unsecured claim in the amount of \$1,210,191.78, based upon breach of contract. The contract allegedly breached is a *Disclosure Acknowledgment and Commitment to Purchase and Sell Distressed Real Estate Assets Agreement* (the "Purchase and Sale Agreement") entered into between Liberty and YCJS on October 10, 2012. The Purchase and Sale Agreement provided that Liberty would purchase, on YCJS' behalf, property located at 119 Furlong Lane, Bradbury, CA 91008 (the "Bradbury Property") in exchange for a \$900,000 payment. On account of the \$900,000 payment, YCJS would acquire a 10% interest in the Bradbury Property.

B. The Claim Objection and the Order Disallowing Claim 2

On June 8, 2018, the Court entered an order granting the Liberty Committee's unopposed objection to Claim 2, and disallowed Claim 2 in its entirety. In support of the Claim Objection, Liberty had argued that the indebtedness asserted by YCJS through Claim 2 had been satisfied in connection with a Settlement Agreement approved in the Chapter 11 case of Big Max LLC ("Big Max"), Case No. 18-bk-30031-DM (Bankr. N.D. Cal.). [Note 1] The Liberty Committee alleged that if Claim 2 were allowed, YCJS would obtain a double recovery to the detriment of Liberty's other general unsecured creditors.

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CONT... Liberty Asset Management Corporation

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C. YCJS' Motion to Reconsider

In support of its Motion to Reconsider, YCJS asserts that it made multiple investments with Liberty. According to YCJS, the consideration it received in connection with the Settlement Agreement approved in the Big Max case (the "Big Max Settlement") resulted from a different investment it had made with Liberty—the investment upon which YCJS seeks a recovery through Claim 2. YCJS states that the consideration it received from the Big Max Settlement reimbursed YCJS for Liberty's default on its promise to purchase, on YCJS' behalf, property located at 3981 Alemany Blvd., San Francisco, CA 94132 (the "3981 Alemany Property"). By contrast, YCJS maintains that Claim 2 seeks recovery for Liberty's default on its promise, to purchase on YCJS' behalf, an interest in the Bradbury Property.

YCJS' assertions are supported by a declaration of Yuchi Wang, a member of YCJS. The Plan Administrator has not filed any papers in opposition to the Motion to Reconsider.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Binder Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

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CONT... Liberty Asset Management Corporation

Chapter 11

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The Plan Administrator has not submitted any evidence to contravene the testimony proffered by YCJS that Claim 2 seeks reimbursement on account of YCJS' investment in the Bradbury Property. YCJS' testimony establishes that Claim 2 is not duplicative of the consideration YCJS received in connection with the Big Max Settlement. The uncontroverted evidence before the Court establishes that the consideration YCJS received in the Big Max Settlement was on account of its investment in the 3981 Alemany Property. By contrast, through Claim 2, YCJS seeks to recover the amounts it invested in the Bradbury Property. Contrary to the position of the Plan Administrator, the record shows YCJS is not seeking a double recovery through Claim 2.

Based upon the foregoing, the Motion to Reconsider is GRANTED. Claim 2 is allowed as a general unsecured claim in the amount of \$1,210,191.78.

YCJS shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Big Max is an entity solely owned by Tsai-Luan Ho, aka Shelby Ho.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

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CONT... Liberty Asset Management Corporation

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Eve H Karasik
Sandford L. Frey
Raphael Cung

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Hearing Room 1568

10:00 AM

2:16-24890 32 Cold, LLC

Chapter 11

#4.00 Post confirmation status conference. [171]

Docket 0

Tentative Ruling:

9/17/2018

For the reasons set forth below, a continued Post-Confirmation Status Conference shall take place on **January 15, 2019, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Reorganized Debtor's Chapter 11 Post-Confirmation Status Report [Doc. No. 179]

I. Facts and Summary of Pleadings

On May 29, 2018, the Court entered an *Order Confirming Debtor's Second Amended Chapter 11 Plan of Reorganization* [Doc. No. 169] (the "Confirmation Order"). This is a Post-Confirmation Status Conference. Debtor states that it is current on all payments required under the Plan. Pursuant to the Plan, payments will be completed by approximately May 1, 2023. Debtor states that its counsel intends to shortly file a final fee application and a motion for a final decree.

II. Findings and Conclusions

A continued Post-Confirmation Status Conference shall be held **January 15, 2019, at 10:00 a.m.** A Post-Confirmation Status Report must be submitted by no later than fourteen days prior to the hearing. Debtor shall file and serve a final fee application and a motion for a final decree such that those motions are heard prior to the date of the continued Status Conference. If favorable orders on the motions for a final fee application and final decree are entered, the continued Status Conference will go off calendar.

The Debtor shall submit an order setting the continued Status Conference within seven days of the hearing.

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CONT... 32 Cold, LLC

Chapter 11

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

32 Cold, LLC

Represented By
Sheila Esmaili
Sanaz S Bereliani

**United States Bankruptcy Court
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Tuesday, September 18, 2018

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10:00 AM

2:17-16360 Michael McNulty

Chapter 11

#5.00 Status hearing
RE: [97] Motion for approval of chapter 11 disclosure statement

fr: 5-22-18; 6-7-18

Docket 97

Tentative Ruling:

9/17/2018

Hearing required.

Pleadings Filed and Reviewed

1. Order Granting: Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief [Doc. No. 118]
2. Notice of Motion and Motion to Amend Order Granting: Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief [Doc. No. 129]
3. Order Granting Notice of Motion and Motion to Amend Order Granting: Motion for Order Approving Sale of Real Property Free and Clear of Designated Liens, Providing for Overbids, and for Ancillary Relief [Doc. No. 132]

The Debtor commenced this chapter 11 bankruptcy case on May 23, 2017. At a hearing on June 8, 2018, this Court orally granted Debtor's Motion for Order Approving Sale of Real Property Free and Clear of Designated Liens, Providing for Overbids, and for Ancillary Relief [Doc. No. 102] (the "Sale Motion"), ordered Debtor's disclosure statement withdrawn [Doc. Nos. 97, 115] and set this chapter 11 status conference. As set forth in the Sale Motion, Debtor anticipated the sale of his property would generate funds sufficient to pay all claims in full. This Court entered an order granting the Sale Motion on June 15, 2018 [Doc. No. 118].

On July 24, 2018, the Debtor filed a Motion to Amend Order Granting:

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CONT...

Michael McNulty

Chapter 11

Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief [Doc. No. 129] ("Amended Sale Motion"), which this Court granted by an order entered on August 13, 2018 [Doc. No. 132] ("Amended Sale Order"). As stated in the Amended Sale Motion, the Debtor expected escrow to close on or about August 9, 2018 and then anticipated paying all creditors 100% of their claims and moving to close this case.

Based on the foregoing, the debtor is directed to appear to provide an update on the status of escrow, whether all claims have been paid in full, and when the debtor anticipates moving for dismissal of this case.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#6.00 HearingRE: [301] Motion for approval of chapter 11 disclosure statement With Proof of Service

Docket 301

Tentative Ruling:

9/17/2018

For the reasons set forth below, the Court finds that the *Joint Proposed Chapter 11 Disclosure Statement Describing Plan of Reorganization* contains "adequate information" within the meaning of § 1125.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order: (1) Approving the Adequacy of Debtor's Joint Chapter 11 Disclosure Statement Describing Chapter 11 Plan of Reorganization [Doc. No. 301]
 - a. Joint Proposed Chapter 11 Plan of Reorganization [Doc. No. 282]
 - b. Joint Proposed Chapter 11 Disclosure Statement Describing Plan of Reorganization [Doc. No. 283]
2. People's Objection to the Adequacy of Debtor's Proposed Joint Chapter 11 Disclosure Statement [Doc. No. 323]
3. Debtor's Reply to the People's Objection [Doc. No. 329]
4. Debtor's Request for Judicial Notice in Support of the Debtor Reply [Doc. No. 330]
5. Official Committee of Unsecured Creditor's Reply to the People's Objection [Doc. No. 332]
6. Debtor's Joinder in the Committee Reply [Doc. No. 333]

I. Facts and Summary of Pleadings

Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor" and "Debtor in Possession") and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Proponents") seek approval of their *Joint Proposed*

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CONT... Pac Anchor Transportation Consisting of the Merger Chapter 11

Chapter 11 Disclosure Statement Describing Plan of Reorganization [Doc. Nos. 283, 301] (the "Disclosure Statement"). The following provisions are the material provisions of the *Joint Proposed Chapter 11 Plan of Reorganization* [Doc. No. 282] (the "Plan"):

1. The Plan is a reorganizing plan. The Proponents seek to accomplish payment under the Plan with both pre- and post-confirmation income from the Debtor's business operations.
2. The Effective Date will be 10 days after entry of the order confirming the plan or final approval of the class action settlement in the Superior Court of the State of California.
3. On the Effective Date, the Committee will cease to exist and will be replaced by a Plan Committee that will monitor Debtor's compliance with the Plan and serve as disbursing agent.
4. The Plan consists of 15 classes of claims. Only Class 11 and Class 14 are impaired and entitled to vote.
5. Class 11 consists of general unsecured claims. The Plan proposes to pay Class 11 \$4,500,00 over approximately 5 years. This represents an approximate 31.113% distribution on such claims (or 21.116% distribution if the People's claim is disallowed).
6. Class 14 consists of civil and tax penalty claims. The Plan proposes to pay Class 14 a one-time \$10,000 payment on January 1, 2024. This represents an approximate 0.02% distribution on such claims.
7. The Debtor shall establish a post-confirmation liquidating trust that will become effective on the Effective Date. Timothy Yoo, or his designee, shall serve as trustee. In the event of an uncured default under the Plan, at the election of the Plan Committee, the assets of the Debtor will be transferred to and vest in the Liquidation Trust. Among other things, preferential and fraudulent transfer claims will be tolled and the trustee will be vested with standing to pursue such claims.

Summary of the Objection Filed by the People of the State of California and the Debtor's and Committee's Replies

California's Attorney General, acting on behalf of the People of the State of California (the "Attorney General" or "People"), filed an objection [Doc. No. 323] (the

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"Objection") contending that the Disclosure Statement does not contain adequate information. The objections are summarized as follows.

First, the People assert that the Disclosure Statement does not provide adequate information about potential avoidable fraudulent or preferential transfers. Based on its asserted review of Debtor's financial statements, the People contend that the Debtor and Green Anchor were highly profitable companies and that from 2013 through July 6, 2017, the companies' ledgers indicate that they paid over \$ 9 million in distributions to Alfredo and Elizabeth Barajas. The People assert that Debtor also omitted over \$2.5 million in transfers paid within the one-year period immediately preceding the petition date. Therefore, the People assert that the Disclosure Statement should be amended to include more information about the nature and recipients of these transfers.

In response, the Debtor states that it included information in the Disclosure Statement to put creditors on notice that there may be potential fraudulent transfer and preference claims, including that the potential claims will vest into a post-confirmation liquidating trust. Further, Debtor has already provided the Committee's counsel and People's counsel with financial information and documents relevant to any potential fraudulent transfer and preference claims. Therefore, Debtor submits that the disclosure statement contains adequate information on this issue.

Second, the People assert that the Disclosure Statement does not provide adequate information about the terms of two settlement agreements made in connection with Debtor's attempt to settle a putative class action suit. The People contend that the settlement agreements attempt to release third party insiders from potential liability in violation of 11 U.S.C. § 524(e). The People assert that creditors should be informed of the consequences of approval of these settlements as part of any consideration of the Plan.

In response, the Debtor states that it disclosed these settlements in the Disclosure Statement and contends that this objection has no bearing on whether the disclosure statement contains adequate information. Debtor contends that, to the extent the People oppose their treatment under the Plan as a result of any settlement, such opposition would be a confirmation issue, and not an issue regarding adequacy of disclosure.

Third, the People assert that the Disclosure Statement does not provide

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adequate information about the Attorney General's \$500,000 priority wage claim for unpaid wages, which would potentially affect the feasibility of the proposed plan.

In response, Debtor asserts that this objection is misleading because it fails to acknowledge that Debtor has objected to the asserted claim. Further, to the extent the wage claim is allowed, Debtor contends again that this would be a confirmation issue and not an issue with disclosure.

Fourth, the People assert that the Disclosure Statement does not provide adequate information about the Attorney General's administrative claim for unpaid wages, which also would potentially affect the feasibility of the proposed plan. The People assert that Debtor's continued use of independent contractor drivers during the pendency of this bankruptcy case gives rise to a post-petition administrative wage claim that the People intend to file.

In response, the Debtor asserts that the People have not even filed any claim yet, so there is no issue with the adequacy of the Debtor's disclosures on this issue. The Debtor also states that if such administrative expense claim is filed and allowed, its existence would be a feasibility issue to be determined in connection with plan confirmation.

Fifth, the People assert that the Disclosure Statement does not provide adequate information about the pre-petition merger with Green Anchor, such as the financial consequences of the merger and the potential that the merger may be fraudulent or otherwise avoidable.

In response, the Debtor states that it has disclosed detailed descriptions of its past business activities and provided the Committee with all of the information that is reasonably practical in connection with preparation of the Disclosure Statement and Plan.

Sixth, the People assert that the Disclosure Statement does not provide adequate information about the calculations used in the liquidation analysis, including whether they are based on the present value of future payments under the Plan.

In response, the Debtor contends that it provided a detailed breakdown of each of the Debtor's assets and a complete liquidation analysis. Debtor submits that no further information is required.

Debtor also generally contends that the People's Objection is not well founded

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and is merely an attempt to delay confirmation of the Plan. Additionally, Debtor states that it will face up to \$300,000 in tax consequences if its Plan is not confirmed and distributions made prior to the end of 2018. In connection with its reply, Debtor filed a request for this court to take judicial notice of its bankruptcy docket and its objection to the People's Proof of Claim 13 [Doc. No. 330] (the "RFJN").

The Committee contends that it and the Debtor have gone out of their way to try to include the Attorney General and negotiate a resolution of the outstanding disputes, but that the Attorney General has not been all that cooperative and has engaged in dilatory conduct. The Committee also submits that the Attorney General was provided with substantial amounts of financial information concerning all relevant aspects of Debtor's financial operations and transfers to insiders. Therefore, the Committee joins in Debtor's Reply and requests the Court overrule the Objection.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a). Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and

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their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

The Court finds that the Disclosure Statement contains adequate information, in view of the size and complexity of the case, and the benefit of additional information to creditors and other parties in interest when weighed against the costs of providing such information. Among other things, the Disclosure Statement contains:

- 1) A detailed description of the estate’s principal assets, including estimates of the liquidation value of those assets.
- 2) A description of the significant events that led to the filing of this case and that have occurred during the Chapter 11 proceedings.
- 3) A description of all classes and class treatment.
- 4) A description of the creation of a Liquidating Trust and procedures that shall apply in the event of a default under the Plan.
- 5) Disclosure of the Class Action and Attorney General Litigation and the impact of those suits on the Debtor’s efforts to reorganize.

The People’s objections to the adequacy of the information contained in the

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Disclosure Statement are overruled. Having reviewed the Disclosure Statement and Plan, the Court finds that the Disclosure Statement contains sufficient information to enable creditors to make an informed decision as to whether to vote for or against the Plan.

The Court also finds it significant that the Plan and Disclosure Statement are jointly proposed by the Debtor and Committee – especially considering the size and voting power of the Committee’s constituents. The circumstances of this joint Plan lead this Court to conclude that there is little futility to requiring the Proponents to amend the Disclosure Statement and Plan to include additional information concerning potential fraudulent transfer and preference claims, the proposed settlement agreements, and Debtor’s merger with Green Anchor Lines, Inc.

The Court also finds that the People’s objections regarding the adequacy of disclosure concerning its priority wage claim and yet-to-be-filed administrative claim and the sufficiency of the liquidation analysis are without merit. These issues appear to center on the feasibility of the Plan and, as such, should be raised in connection with plan confirmation.

The following dates will apply with respect to the solicitation of votes and plan confirmation:

- 1) A hearing will be held on the confirmation of the Joint Proposed Chapter 11 Plan of Reorganization on **December 5, 2018, at 10:00 a.m.**
- 2) In accordance with FRBP 3017(a), the Disclosure Statement, the Plan, a notice of hearing on confirmation of the Plan, and if applicable, a ballot conforming to Official Form No. 14, shall be mailed to all creditors, equity security holders and to the Office of the United States Trustee, pursuant to Federal Rule of Bankruptcy Procedure 3017(d), on or before **October 5, 2018.**
- 3) **October 31, 2018** is fixed as the last day for creditors and equity security holders to return to Debtor’s counsel ballots containing written acceptances or rejections of the Plan, which ballots must be actually received by Debtor’s counsel by 5:00 p.m. on such date.
- 4) **November 7, 2018** is fixed as the last day on which the Proponents must file and serve a motion for an order confirming the Plan (the "Confirmation Motion") including declarations setting forth a tally of the

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ballots cast with respect to the Plan ("Ballots"), and attaching thereto the original Ballots, and setting forth evidence that the Proponents have complied with all the requirements for the confirmation of the Plan as set forth in Section 1129 of the Bankruptcy Code.

- 5) **November 14, 2018** (the "Objection Date"), is fixed as the last day for filing and serving written objections to confirmation of the Plan, as provided in Rule 3020(b)(1) of the Federal Rules of Bankruptcy Procedure.
- 6) **November 21, 2018** (the "Reply Date") is fixed as the last day on which the Proponents may file and serve their replies to any opposition to the Confirmation Motion.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

- #6.10** HearingRE: [307] Motion Debtor and Debtor-in-Possession's Motion for Entry of an Order (1) Establishing Administrative Claim Bar Date, (2) Approving the Form, Manner, and Sufficiency of the Administrative Bar Date Notice, and (3) Approving the Form of the Proof of Administrative Expense Claim and Related Administrative Expense Claim Procedures Declarations of Alfredo Barajas and Vanessa Haberbusch in Support; With Proof of Service (Haberbusch, Vanessa)

Docket 307

Tentative Ruling:

9/17/2018

No appearances required. The tentative ruling is to GRANT the motion and set an Administrative Claim Bar Date of **December 1, 2018**.

Pleadings Filed and Reviewed

1. Debtor's Motion for Entry of an Order (1) Establishing Administrative Claim Bar Date, (2) Approving the Form, Manner and Sufficiency of the Administrative Bar Date Notice, and (3) Approving the Form of the Proof of Administrative Expense Claim and Related Administrative Expense Claim Procedures [Doc. No. 307] (the "Administrative Bar Date Motion").
2. Amended Notice of Hearing on Bar Date Motion [Doc. No. 314]
3. As of the preparation of this tentative ruling, no oppositions have been filed.

I. Facts and Summary of Pleadings

Motion

Debtor seeks entry of an order establishing an administrative claim bar date of December 1, 2018 (the "Administrative Claim Bar Date") for all persons and entities holding a claim entitled to administrative expense priority under sections 503(b) and 507(a)(2) of the Bankruptcy Code that arose or accrued prior to the Administrative Claim Bar Date (an "Administrative Expense Claim") to file requests for payment and proof of such Administrative Expense Claim – with the exception of certain persons

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CONT... **Pac Anchor Transportation Consisting of the Merger** **Chapter 11**
and entities identified on page 12:12-22 of the Administrative Bar Date Motion.

Debtor further requests that the Court approve: (A) the form, manner, and sufficiency of the notice of the Administrative Claim Bar Date in substantially the same form as that attached to the Declaration of Alfredo Barajas (the "Barajas Decl.") as Exhibit 1 (the "Administrative Bar Date Notice"); (B) the proposed form for submission of an Administrative Expense Claim (the "Proof of Administrative Expense Claim") attached as Exhibit 2 to the Barajas Decl.; and (C) Debtor's proposed procedures for filing Proofs of Administrative Expense Claims.

Opposition(s)

As of the preparation of this tentative ruling, no oppositions have been filed.

II. Findings of Fact and Conclusions of Law

Pursuant to Rule 3003(c)(3), the "court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Fed. R. Bankr. P. 3003(c)(3). "This rule contributes to one of the main purposes of bankruptcy law, securing, within a limited time, the prompt and effectual administration and settlement of the debtor's estate" *In re Smidth & Co.*, 413 B.R. 161, 165 (Bankr. D. Del. 2009).

The Court finds it appropriate to set an Administrative Claim Bar Date of **December 1, 2018**. The Court approves the form, manner, and sufficiency of the Administrative Bar Notice (Exhibit 1), the proposed Proof of Administrative Expense Claim (Exhibit 2), and the proposed procedures for filing Proofs of Administrative Expense Claims (Doc No. 307, p. 11:15-12:3 or PDF pp. 14-15).

Debtor is directed to lodge a proposed order within 7 days of the hearing and to send out notice no later than five business days after entry of an order granting the motion in the manner proposed in the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... Pac Anchor Transportation Consisting of the Merger Chapter 11
determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#7.00 Hearing
RE: [5] Debtor's Emergency Motion For Order Authorizing Debtor To Maintain Bank Accounts, Cash Management System, And Use Of Existing Business Forms

FR. 7-17-18

Docket 5

Tentative Ruling:

9/17/2018

For the reasons set forth below, the Cash Management Motion is granted on a final basis.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Motion for Order Authorizing Debtor to Maintain Bank Accounts, Cash Management System, and Use of Existing Business Forms [Doc. No. 5] (the "Cash Management Motion")
 - a) Omnibus Declaration of Randall C. Sultan in Support of Debtor's First-Day Motions [Doc. No. 10]
- 2) Ruling Granting Cash Management Motion [Doc. No. 39] (the "Interim Cash Management Ruling")
- 3) No opposition is on file

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") commenced a voluntary Chapter 11 petition on July 13, 2018 (the "Petition Date"). On July 18, 2018, the Court granted, on an interim basis, the Debtor's first-day motion for authorization to continue to use its existing bank accounts, cash management system, and business forms. *See* Ruling Granting Emergency Motion for Interim Order Authorizing the Debtor to Maintain Bank Accounts, Cash Management System, and Use of Existing Business Forms [Doc. No. 39] (the "Interim Cash Management Ruling") and Order on Debtor's Emergency Motion for Order Authorizing Debtor to Maintain Bank Accounts, Cash

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CONT... **Sultan Financial Corporation**

Chapter 11

Management System, and Use of Existing Business Forms [Doc. No. 44] (the “Interim Cash Management Order”). Among other things, the Interim Cash Management Order authorized the Debtor to continue to use its (1) existing pre-petition accounts and its (2) pre-petition cash management system, for a period of sixty days from the Petition Date. This is a final hearing on the Cash Management Motion, in which the Debtor seeks continued authorization to use its pre-petition accounts and pre-petition cash management system. No opposition to the Cash Management Motion has been filed.

II. Findings and Conclusions

The Court adopts and incorporates herein by reference all the findings set forth in the Interim Cash Management Ruling. As set forth in the Interim Cash Management Ruling, §§1107(a) and 1108 authorize a debtor-in-possession to operate its business, and §363(c) authorizes a debtor-in-possession to use property of estate in the ordinary course of business. Read together, these sections provide authority for the Debtor to continue using its pre-petition bank accounts and pre-petition cash management system.

Having received no objections to the Cash Management Motion; finding the relief sought in the Motion to be appropriate; and for the reasons set forth in the Interim Cash Management Ruling, the Court GRANTS the Cash Management Motion on a final basis.

The Debtor shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 1568

10:00 AM

2:18-11345 Maria Hernandez Huerta

Chapter 7

#8.00 APPLICANT: Trustee - John J Menchaca

Hearing re [28] & [29] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

9/17/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$750.00

Total Expenses: \$63.80

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria Hernandez Huerta

Represented By
Daniel A Higson

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:16-17965 Guillermo Alvarado

Chapter 7

#9.00 Hearing
RE: [102] Compliance. Motion for Turnover of Property and Accounting of Estate's Property, with proof of service (Chung, Toan)

fr:8-15-18

Docket 102

Tentative Ruling:

9/17/2018

For the reasons set forth below, the Court finds that the accounting provided by the Debtor is adequate.

Pleadings Filed and Reviewed:

- 1) Order Granting Chapter 7 Trustee's Motion Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 112]
- 2) Declaration Regarding Service of Andrea M. Castro Regarding Declaration of Guillermo Alvarado Regarding Accounting Required by that Order Granting Chapter 7 Trustee's Motion Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 113]
- 3) Declaration of Trustee's Counsel Regarding Turnover and Accounting of Estate's Property [Doc. No. 115]
- 4) Chapter 7 Trustee's Reply to Debtor's Opposition to Motion for Order Compelling (1) Turnover and (2) Accounting of Estate's Property [Doc. No. 107] (the "Reply")

I. Facts and Summary of Pleadings

Guillermo Alvarado (the "Debtor") filed a voluntary Chapter 7 petition on June 15, 2016 (the "Petition Date"). Doc. No. 1. The Debtor received a discharge on November 7, 2016. Doc. No. 31. On March 14, 2018, after conducting a trial on a dischargeability action brought by C.H. Robinson Worldwide, Inc. ("CH Robinson"), the Court found that the Debtor was indebted to CH Robinson in the amount of

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CONT... Guillermo Alvarado

Chapter 7

\$68,361.00, and that such indebtedness was excepted from the Debtor's discharge pursuant to §523(a)(2)(A) and (a)(4). Adv. Doc. Nos. 55–56. Among other things, the Court found that the Debtor had committed "actual fraud" by causing Global Fresh, a company which he controlled, to transfer a substantial salary to himself instead of remitting the funds to CH Robinson, per the requirements of the Perishable Agricultural Commodities Act ("PACA"). Adv. Doc. No. 55 at p. 11. The Court further found that the Debtor had committed defalcation by misappropriating PACA trust assets. *Id.* at 12–13.

In his Statement of Financial Affairs (the "SOFA"), the Debtor stated that during the one year period prior to the Petition Date, he received \$70,000.00 from the sale of real property to Rebecca Segovia. The SOFA stated that the Debtor did not make any payments to any creditors within one year of the Petition Date, other than a payment of \$1,406.12 to Infinity Financial Services made in June 2016. The SOFA further provided that the Debtor did not transfer any property to anyone within one year of the Petition Date. The Debtor's Schedule A/B provides that as of the Petition Date, the Debtor had \$800.00 in cash and \$585.80 in various bank accounts, of which \$580.62 belonged to his children, leaving the Debtor with \$5.18.

On August 24, 2018, the Court entered an order granting a motion filed by the Chapter 7 Trustee (the "Trustee") for an accounting and turnover of the \$70,000.00 the Debtor received from the sale of the real property. Doc. No. 24. The Court ordered the Debtor to turnover the \$70,000 that he received from the sale to the Trustee by no later than August 24, 2018, provided that the Debtor had the ability to turnover the funds. Doc. No. 112 (the "Turnover Order"). The Court further ordered the Debtor to provide an accounting of the funds.

On August 24, 2018, the Debtor filed a declaration regarding the disposition of the \$70,000 (the "Alvarado Decl."). Ex. A, Doc. No. 115. The Alvarado Decl. provides in relevant part:

In regards to the \$70,000.00 I received from the sale of the real property ..., I spent the funds in product for my business in an attempt to save it and provide an accounting. Unfortunately my records are not in as orderly a fashion as they were when [my] business was operating and I have spent a long time looking for the appropriate records. Nevertheless, hereinbelow is an accounting of the funds as far as I have been able to find so far. I used the money to pay part or some of the invoices listed below

Alvarado Decl. at ¶3.

The declaration contains two tables setting forth the payment of invoices. The

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aggregate amount of invoices paid is approximately \$200,000. Alvarado Decl. at ¶¶ 3–5.

The Trustee states that the \$70,000 has not been turned over to the estate.

According to the Trustee, the Alvarado Decl. is inadequate for the following reasons:

- 1) The bulk of the invoices attached to the Alvarado Decl. are in Spanish, and there is no English translation.
- 2) The invoices attached to the declaration state that the produce was consigned to M&B Produce Imports, Inc. and J&K Fresh, LLC. There is no description of how these entities are related to the Debtor or his company, Global Fresh.
- 3) The Debtor provided only a partial bank statement. The pages containing the account's name and other identifiable information were omitted.

II. Findings and Conclusions

The Bankruptcy Code requires the Debtor to cooperate with the Trustee "as necessary to enable the trustee to perform the trustee's duties under this title" § 521(a)(3). Among other duties, the Trustee has the obligation to "collect and reduce to money the property of the estate" and to "investigate the financial affairs of the debtor" §704(a)(1) and (a)(4). "[T]he Trustee has a statutory authorization to require production of documents in the furtherance of an investigatory duty also created by statute," and the debtor has a "duty to provide information and to cooperate in this investigation." *Rigby v. Mastro (In re Mastro)*, 585 B.R. 587, 596 (B.A.P. 9th Cir. 2018).

The Court finds that the accounting provided by the Debtor is sufficient to allow the Trustee to perform his duties to liquidate the property of the estate and investigate the financial affairs of the Debtor. The accounting that the Debtor has provided is hardly a textbook example of precision. However, as was made apparent in the trial in the dischargeability action brought by C.H. Robinson, the Debtor never did an exemplary job of keeping records of his business activities. The Court finds that the shortcomings in the accounting provided here are a reflection of the Debtor's casual approach to bookkeeping, rather than an attempt to mislead the Trustee and the Court.

Addressing the Trustee's specific objections, although certain of the documents are in Spanish, they still permit even a non-Spanish speaker to assess in general terms the products purchased and the amounts paid. Although the invoices do not bear the names of the Debtor or his company Global Fresh, the Debtor has offered sworn testimony that he used the \$70,000 to buy "product for my business in an attempt to save it" Alvarado Decl. at ¶3. The reasonable inference from this testimony is that

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CONT...

Guillermo Alvarado

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the entities listed on the invoices were affiliates of or were otherwise related to the Debtor or Global Fresh.

In sum, the Court finds that the Debtor has sufficiently complied with the Turnover Order by providing an accounting of the expenditure of the funds. The Court will enter an order finding that the Debtor has complied with the requirements of the Turnover Order.

The Trustee shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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10:00 AM

2:18-16301 Javier Valencia and Maria Irene Valencia

Chapter 7

#10.00 HearingRE: [10] Motion to Avoid Lien JUDICIAL LIEN with LA FINANCIAL CREDIT UNION with proof of service

Docket 10

Tentative Ruling:

9/17/2018

No appearances are required. To provide LA Financial an opportunity to respond to the late-filed Johnson Appraisal, the hearing is CONTINUED to **October 10, 2018, at 10:00 a.m.**

After LA Financial Credit Union ("LA Financial") filed papers in opposition to this Lien Avoidance Motion, the Debtors submitted additional evidence in support of the Motion—an appraisal of the Property prepared by Daryl Johnson (the "Johnson Appraisal"). Local Bankruptcy Rule ("LBR") 9013-1(g)(4) prohibits the introduction of new evidence or arguments in reply papers. LBR 9013-1(g)(4) is a codification of the Ninth Circuit's well-established "general rule that [litigants] cannot raise a new issue for the first time in their reply briefs." *Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996).

Because the Johnson Appraisal will assist the Court in determining the Property's value, the Court declines to strike the Johnson Appraisal from the record. However, due process requires that LA Financial be provided an opportunity to respond to the Johnson Appraisal. Accordingly, the hearing on the Motion is CONTINUED to **October 10, 2018, at 10:00 a.m.** The deadline for LA Financial to file papers in opposition to the Johnson Appraisal is **October 3, 2018**. Other than LA Financial's opposition to the Johnson Appraisal, the Motion has been fully briefed. No further briefing will be accepted absent further order of the Court.

Party Information

Debtor(s):

Javier Valencia

Represented By
Steven A Alpert

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CONT... Javier Valencia and Maria Irene Valencia

Chapter 7

Joint Debtor(s):

Maria Irene Valencia

Represented By
Steven A Alpert

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:11-58228 Robert W. Hunt, a medical corporation

Chapter 7

#100.00 HearingRE: [670] Amended Motion (related document(s): 668 Motion For Sale of Property of the Estate under Section 363(b) - No Fee Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Estate Free and Clear of Liens, Claims Interest, and Emcumbrances and Related filed by Trustee David M Goodrich (TR)) with proof of service (Goodrich (TR), David)

Docket 670

Tentative Ruling:

9/17/2018

For the reasons set forth below, the Sale Motion is GRANTED in its entirety.

Key Sale Terms:

- 1) Proposed purchaser: Oak Point Partners, LLC
- 2) Property for Sale: Remaining assets of the estate, whether known or unknown (the "Remnant Assets")
- 3) Purchase price: \$5,000
- 4) Overbids: Minimum overbid is \$6,000, with all subsequent overbids to be in increments of \$1,000 (subject to adjustment by the Court to facilitate bidding)

Pleadings Filed and Reviewed:

- 1) Amended Notice of Motion and Motion of Chapter 7 Trustee for Order Authorizing Sale of Certain Assets of the Debtor's Estate Free and Clear of Liens, Claims, Interests, and Encumbrances and Related Relief [Doc. No. 670] (the "Sale Motion")
 - a) Amended Notice of Sale of Estate Property [Doc. No. 671]
- 2) Order Rejecting Document Presented for Filing by Peli Popovich Hunt Pursuant to this Court's "Order Determining Peli Popovich Hunt, Individually and as Trustee of the Robert and Peli Hunt Living Trust and as Agent of Robert W. Hunt MD, a Medical Corporation, Frankly P. Jeffries and Robert L. Jarrett Jr. to be Vexatious Litigants" [Doc. No. 673]

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CONT... Robert W. Hunt, a medical corporation

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3) No opposition is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") moves to sell the estate's remaining assets, whether known or unknown (the "Remnant Assets") to Oak Point Partners, LLC ("Oak Point"), free and clear of liens, claims, interests, and encumbrances. The purchase price is \$5,000, and the sale is subject to overbids.

On October 16, 2014, this Court issued an order (the "Vexatious Litigant Order," Doc. No. 434) deeming Peli Popovich Hunt, individually and as Trustee of the Robert and Peli Hunt Living Trust, and as purported "agent" of Robert W. Hunt, MD, a medical corporation, the debtor herein, and all persons acting in concert therewith, including, but not limited to, Franklin P. Jeffries and Robert L. Jarrett, Jr., to be vexatious litigants (collectively, "Vexatious Litigants"). The Vexatious Litigant Order placed a pre-filing bar on filing documents that the Court determines to be duplicative or frivolous. The Vexatious Litigant Order is strengthened by a similar order issued on May 4, 2015 by Judge Andrew J. Guilford of the U.S. District Court for the Central District of California imposing further pre-filing restrictions on the Vexatious Litigants. *See* Case No. 2:15-cv-00667-AG, Doc. No. 46.

In this Court, the pre-filing restrictions require the Vexatious Litigants to provide the Court with a copy of any attempted filing so that the Court may determine whether it is duplicative or frivolous. The Vexatious Litigants are permitted, without leave of court, "to respond to pleadings filed by another party seeking relief against Hunt, Jeffries, or Jarrett[.]" Vexatious Litigant Order at 2.

On August 23, 2018, Peli Popovich Hunt ("Ms. Hunt") presented for filing a document captioned *Memorandum Opposition to Chapter 7 Trustees Motion for Order Authorizing Sale of Certain Assets of the Debtors Estate Free and Clear of Liens, Claims, Encumbrances and Related Relief* (the "Filing"). On August 24, 2018, the Court issued an order rejecting the Filing as barred by the Vexatious Litigant Order.

Other than the frivolous and duplicative papers presented by Ms. Hunt which the Court has not accepted for filing, no opposition to the Sale Motion is on file.

II. Findings and Conclusions

The Court has rejected the papers presented by Ms. Hunt in opposition to the Sale Motion as frivolous, duplicative, and barred by the Vexatious Litigant Order. Ms. Hunt's previous oral presentations have been of no assistance to the Court. Ms. Hunt

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will not be allowed to present any arguments in opposition to the Sale Motion.

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Remnant Assets include unknown assets of the estate and therefore cannot be delineated with particularity. The Trustee asserts that to the extent that any interests may be asserted in the Remnant Assets, one or more of the conditions set forth in § 363(f) have been satisfied.

The sale is approved free and clear of liens, claims, and interests, pursuant to § 363(f). Although the sale of unknown assets does not permit the kind of precise analysis that the Court normally undertakes when applying §363(f), sales of unknown assets have become common in bankruptcy, and have been recognized by courts as a useful and efficient means of allowing Trustees to complete the administration of the estate. Therefore, the Court finds it appropriate to approve the sale, free and clear of liens, claims, and interests, with such liens, claims and interests (if any) to attach to the sales proceeds.

The Trustee has demonstrated ample business justification for the sale. Sale of the Remnant Assets will allow the Trustee to complete his statutory obligation of liquidating the estate's remaining assets.

Having reviewed the declaration submitted by the Trustee, the Court finds that the sale to Oak Point was negotiated at arms-length, and that Oak Point is entitled to the protections of §363(m).

Notwithstanding Bankruptcy Rule 6004(f), the order approving the sale shall take

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effect immediately upon entry.

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Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$6,000, with subsequent overbids to be increments of \$1,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED in its entirety. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Party Information

Debtor(s):

Robert W. Hunt, a medical

Represented By
Steven E. Wohn
Franklin P Jeffries
Franklin P Jeffries
Douglas A Crowder

Trustee(s):

David M Goodrich (TR)

Represented By
David Gould

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#1.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14; 7-9-14; 10-8-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

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CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02579 Rund, Chapter 7 Trustee v. JSP Properties, Inc., a Tennessee corporation

#2.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02579. Complaint by Jason M Rund, Chapter 7 Trustee against JSP Properties, Inc., a Tennessee corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13' 3-6-14

fr. 7-10-14; 7-9-14; 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

JSP Properties, Inc., a Tennessee

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

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CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#3.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

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CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02580 Rund, Chapter 7 Trustee v. M.C. Entertainment, LLC, a California limited

#4.00 Motion for default judgment

RE: [1] Adversary case 2:12-ap-02580. Complaint by Jason M Rund, Chapter 7 Trustee against M.C. Entertainment, LLC, a California limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 8-15-17; 12-12-17; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

fr. 6-7-16; 10-18-16; 4-11-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

M.C. Entertainment, LLC, a

Pro Se

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CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

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11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#5.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 5-12-15

FR. 12-8-15; 2-14-18

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

10/2/2013

Continued to March 6, 2014 at 11:00 a.m.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Skyville, Inc., a California

Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill

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Chapter 7

Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02584 Rund, Chapter 7 Trustee v. Skyville, Inc., a California corporation

#6.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02584. Complaint by Jason M Rund, Chapter 7 Trustee against Skyville, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14; 2-14-18

fr. 7-10-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 4-11-17

FR. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Skyville, Inc., a California

Pro Se

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CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#7.00 Motion for Default Judgment RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14;fr. 7-10-14; 7-9-14; 10-8-14; 5-12-15; 12-8-15; 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18; 5-16-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Financial, LLC

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams

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Chapter 7

Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02599 Rund v. Broadway Financial, LLC

#8.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02599. Complaint by Jason M Rund against Broadway Financial, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-10-14; 7-9-10; 5-16-18

FR. 10-8-14; 5-12-15; 10-18-16; 4-11-17

FR. 12-8-15

fr. 6-14-16; 6-7-16; 8-15-17; 12-12-17; 2-14-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

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7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Broadway Financial, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By

Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#9.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02601 Rund v. Site Synergy

#10.00 Motion for Default Judgment [1] Adversary case 2:12-ap-02601. Complaint by Jason M Rund against Site Synergy. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Site Synergy

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#11.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Fallbrook Investments, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02604 Rund v. Fallbrook Investments, LLC

#12.00 Status Conference

RE: [1] Adversary case 2:12-ap-02604. Complaint by Jason M Rund against Fallbrook Investments, LLC. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gubner, Steven)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16

fr. 10-18-16; 8-15-17

FR. 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Fallbrook Investments, LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Steven T Gubner
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#13.00 Motion for Default Judgment re : [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02606 Rund v. K & A General Contracting, Inc, a California corpo

#14.00 Status Hearing: [1] Adversary case 2:12-ap-02606. Complaint by Jason M Rund against K & A General Contracting, Inc, a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16

FR. 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

K & A General Contracting, Inc, a Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#15.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr: 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr: 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By

Daniel H Gill

Ronald P Abrams

Corey R Weber

Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02607 Rund v. Plush Lounge Las Vegas, LLC, a Nevada limited liab

#16.00 Motion for Default Judgment : [1] Adversary case 2:12-ap-02607. Complaint by Jason M Rund against Plush Lounge Las Vegas, LLC, a Nevada limited liability company. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14

fr. 7-10-14; 7-9-14; 5-12-15; 6-7-16

FR. 6-14-16

fr. 6-14-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17;2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Plush Lounge Las Vegas, LLC, a

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#17.00 Status Hearing: [1] Adversary case 2:12-ap-02608. Complaint by Jason M Rund against Tina Fraccola, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers [11 U.S.C. §§ 544, 548(a)(1)(a) and (b), 550(a)(1) and (2) and California Civil Code § 3439, et seq.] Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13; 4-4-13; 8-1-13; 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

FR. 12-8-15

fr. 6-14-16; 6-7-16

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02608 Rund v. Fraccola

#18.00 Hearing re Motion for Default Judgment

FR. 2-20-14

fr. 7-10-14; 7-9-14

fr. 10-8-14; 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 0

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Tino Fraccola

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Daniel H Gill
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#19.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Bruce Johnston, an individual Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02629 Rund, Chapter 7 Trustee v. Johnston, an individual

#20.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02629. Complaint by Jason M Rund, Chapter 7 Trustee against Bruce Johnston, an individual. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; 7-9-14

fr. 7-10-14

FR. 10-8-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Bruce Johnston, an individual Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee Represented By
 Daniel H Gill
 Ronald P Abrams
 Corey R Weber
 Michael W Davis

Trustee(s):

Jason M Rund (TR) Represented By
 Corey R Weber
 Robert A Hessling
 Richard K Diamond
 Daniel H Gill
 Michael W Davis
 Steven T Gubner
 Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#21.00 Motion for Default Judgment re [1] Adversary Complaint

fr: 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15

fr. 6-14-16; 6-7-16; 2-14-18

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

PREHA INVESTMENTS, a general	Pro Se
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KEITH PRESSMAN, an individual	Pro Se
-------------------------------	--------

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02635 RUND v. PREHA INVESTMENTS, a general partnership et al

#22.00 Status Hearing
RE: [1] Adversary Complaint

fr. 6-6-13; 7-11-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15

fr. 12-8-15; 2-14-18

fr. 6-14-16; 6-7-16

FR. 4-11-17

fr. 8-15-17

fr. 12-12-17

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default as to Preha Investments.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

PREHA INVESTMENTS, a general

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC
KEITH PRESSMAN, an individual

Pro Se

Chapter 7

Plaintiff(s):

JASON M. RUND

Represented By
Ronald P Abrams
Daniel H Gill
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#23.00 Status Hearing: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;
fr. 10-8-14; 1-8-15; 6-9-15;fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17; 2-14-18

fr. 5-16-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

Barbara J. Mintz	Pro Se
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Virginia R. Coombes	Pro Se
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Edward Mintz	Pro Se
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Mintz Management, Inc.	Pro Se
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Mildred V. Zalis	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

1 through 5, Inclusive DOES

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02641 Rund v. Mintz et al

#24.00 Motion for default judgment: [1] Adversary case 2:12-ap-02641. Complaint by Jason M Rund against Barbara J. Mintz, Virginia R. Coombes, Edward Mintz, Mintz Management, Inc., Mildred V. Zalis, 1 through 5, Inclusive DOES. (Charge To Estate). Complaint to Avoid and Recover Fraudulent and Preferential Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(12 (Recovery of money/property - 547 preference)) (Davis, Michael)

fr. 2-7-13; 4-4-13; 6-20-13; 9-19-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15;fr. 10-8-14; 1-8-15; 6-9-15; fr. 6-14-16

FR. 4-11-17

fr. 8-15-17; 12-12-17; 2-14-18

fr. 5-16-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC	Pro Se
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Defendant(s):

Barbara J. Mintz	Pro Se
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Virginia R. Coombes	Pro Se
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Edward Mintz	Pro Se
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Mintz Management, Inc.	Pro Se
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Mildred V. Zalis	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

1 through 5, Inclusive DOES

Pro Se

Plaintiff(s):

Jason M Rund

Represented By
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#25.00 Status Hearing

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17; 2-14-18

fr. 5-16-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Entertainment Marketing, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02644 Rund, Chapter 7 Trustee v. Broadway Entertainment Marketing, Inc., a

#26.00 Motion for Default Judgment

RE: [1] Adversary case 2:12-ap-02644. Complaint by Jason M Rund, Chapter 7 Trustee against Broadway Entertainment Marketing, Inc., a California corporation. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr: 2-21-13; 5-2-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14; 12-8-15

FR. 10-8-14

fr. 5-12-15

fr. 6-14-16

FR. 6-7-16

fr. 10-18-16

FR. 4-11-17; 8-15-17; 12-12-17; 2-14-18

fr. 5-16-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Defendant(s):

Broadway Entertainment Marketing, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee
Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)
Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#27.00 Status Hearing

RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15; 2-14-18

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02645 Rund, Chapter 7 Trustee v. S.C. Club, L.P., a limited partnership, d/b/a Key

#28.00 Motion for Default Judgment
RE: [11] Declaration re: Declaration of Daniel H. Gill in Support of Issuance of Alias Summons 1 Complaint). (Attachments: # (1) Appendix Alias Summons) (Gill, Daniel)

FR. 6-6-13; 10-3-13; 3-6-14; fr. 7-10-14; 7-9-14

FR. 5-12-15; 2-14-2018

FR. 12-8-15

fr. 6-14-16

FR. 6-7--16

FR. 4-11-17; 8-15-17

FR. 12-12-17

Docket 11

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

S.C. Club, L.P., a limited

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Daniel H Gill
Ronald P Abrams
Corey R Weber
Michael W Davis

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#29.00 Status Hearing: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC Pro Se

Defendant(s):

Katharine J Werner, an individual, Pro Se

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Daniel H Gill
Ronald P Abrams
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02657 Rund, Chapter 7 Trustee v. Werner, an individual, aka Katharine Jean Sabich

#30.00 Motion for default judgment: [1] Adversary case 2:12-ap-02657. Complaint by Jason M Rund, Chapter 7 Trustee against Katharine J Werner, an individual, aka Katharine Jean Sabich-Robison and aka Katy Werner. (Charge To Estate). Complaint to Avoid and Recover Fraudulent Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Gill, Daniel)

fr. 2-21-13, 4-4-13; 6-20-13; 10-3-13; 1-9-14; 5-8-14; 7-9-14

fr. 5-12-15

FR. 12-8-15

fr. 6-14-16; 6-7-16; 10-18-16; 4-11-17; 8-15-17; 12-12-17; 2-14-18

Docket 1

***** VACATED *** REASON: DISMISSED ON 6-7-18**

Tentative Ruling:

7/7/2014

Continued to October 8, 2014 at 11:00 for plaintiff to proceed with default.

No appearance required.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

Katharine J Werner, an individual,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By

Daniel H Gill

Ronald P Abrams

Michael W Davis

Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By

Corey R Weber

Robert A Hessling

Richard K Diamond

Daniel H Gill

Michael W Davis

Steven T Gubner

Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 19, 2018

Hearing Room 1568

11:00 AM

2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#31.00 Status Hearing
RE: [91] Disclosure Statement Describing Chapter 11 Plan of Reorganization,
with Proof of Service

fr: 2-21-18; 3-14-18; 6-20-18

Docket 91

Tentative Ruling:

9/18/2018

No appearances required. This is a status hearing on the Debtor's Motion for Approval of the Disclosure Statement [Doc. No. 91]. The status hearing is CONTINUED to **December 19, 2018** at 11:00 a.m. to allow for resolution of the declaratory relief action re: IRS claim subordination. The Debtor shall file a status report by no later than December 5, 2018.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:14-27148 Rudy Eberto Fuentes

Chapter 7

Adv#: 2:17-01475 Fuentes v. Goodrich, Chapter 7 Trustee of Estate of Aida Fuen

#1.00 Trial Date Set re RE: [16] Amended Complaint (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service by Robert G Uriarte on behalf of Rudy E. Fuentes against all plaintiffs. (RE: related document(s)1 Adversary case 2:17-ap-01475. Complaint by Rudy E. Fuentes against David M. Goodrich, Chapter 7 Trustee of Estate of Aida Fuentes. (Fee Not Required). for (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief with Proof of Service Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (91 (Declaratory judgment)), (72 (Injunctive relief - other)) filed by Plaintiff Rudy E. Fuentes. (Uriarte, Robert)

Docket 0

***** VACATED *** REASON: DISMISSED 2-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rudy Eberto Fuentes

Represented By
Robert G Uriarte

Defendant(s):

David M. Goodrich, Chapter 7

Represented By
Robert A Hessling

Plaintiff(s):

Rudy E. Fuentes

Represented By
Robert G Uriarte

Trustee(s):

Sam S Leslie (TR)

Represented By
Carolyn A Dye

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT... Rudy Eberto Fuentes

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01425 Gonzalez, Chapter 7 Trustee v. SVH Travel Tours and Travel Services, Inc.,

#2.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01425. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against SVH Travel Tours and Travel Services, Inc., a California Corporation. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 6-25-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-2-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

SVH Travel Tours and Travel

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:16-15536 Hahn Jake Kim

Chapter 7

Adv#: 2:16-01339 Nobel Textile, Inc., a California corporation v. Kim

#3.00 TRIAL RE: [1] Adversary case 2:16-ap-01339. Complaint by Nobel Textile, Inc., a California corporation against Hahn Jake Kim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-27-16,12-6-16,1-24-17,4-25-17,5-2-17,5-9-17, 8-15-17
10-24-17

Docket 1

***** VACATED *** REASON: CONTNUED 10-29-18 AT 9:00 A.M.**

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self calendaring.)

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT...

Hahn Jake Kim

Chapter 7

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will not require the Plaintiff to submit an order referring this matter to the Mediation Panel, but the Court expects that the parties will complete a second day of mediation before Mr. Nassif as the parties have stated they intend to do in the most recent Status Report.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hahn Jake Kim

Represented By
Sanaz S Bereliani

Defendant(s):

Hahn Jake Kim

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT... Hahn Jake Kim

Chapter 7

Plaintiff(s):

Nobel Textile, Inc., a California

Represented By
Nico N Tabibi

Trustee(s):

David A Gill (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

FR. 7-30-18

Docket 1

***** VACATED *** REASON: CONTINUED 11-26-18 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT...

Timothy M Rosen

Sonia Singh

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#5.00 Trial Date Set
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

Adv#: 2:17-01568 Rund et al v. Barclays Bank Delaware, a Delaware Corporation

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01568. Complaint by Jason M. Rund against Barclays Bank Delaware, a Delaware Corporation. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: DISMISSED 2-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Barclays Bank Delaware, a

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Jason Rund, Chapter 7 Trustee

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#7.00 Trial Date Set
RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#8.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

FR. 7-30-18

Docket 1

***** VACATED *** REASON: DISMISSED 8-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT... Green Jane Inc

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#9.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

Docket 1

***** VACATED *** REASON: PER HEARING HELD ON 9-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-21027 Lorenzo Arteaga

Chapter 7

Adv#: 2:17-01575 FIDELITY NATIONAL TITLE INSURANCE COMPANY, assigne v.

#10.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01575. Complaint by FIDELITY NATIONAL TITLE INSURANCE COMPANY, assignee to Weiss Investments, a California limited partnership against Angelica Maria Arteaga, Lorenzo Arteaga. false pretenses, false representation, actual fraud)) (Ragland, Karen)

Docket 1

***** VACATED *** REASON: CONTINUED 1/28/2019 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lorenzo Arteaga	Pro Se
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Defendant(s):

Angelica Maria Arteaga	Pro Se
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Lorenzo Arteaga	Pro Se
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Joint Debtor(s):

Angelica Maria Arteaga	Pro Se
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Plaintiff(s):

FIDELITY NATIONAL TITLE	Represented By Karen A Ragland
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-22344 Jihee Byun

Chapter 7

Adv#: 2:18-01010 Travelers Express Company, Inc nka Moneygram Payme v. Byun

#11.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01010. Complaint by Travelers Express Company, Inc. against Jihee Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-26-18 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jihee Byun

Represented By
Kelly K Chang

Defendant(s):

Jihee Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-22345 Youngjae Byun

Chapter 7

Adv#: 2:18-01011 Travelers Express Company, Inc nka Moneygram Payme v. Youngjae Byun

#12.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01011. Complaint by Travelers Express Company, Inc. against Youngjae Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

***** VACATED *** REASON: CONTINUED TO 11-26-18 at 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Youngjae Byun

Represented By
Kelly K Chang

Defendant(s):

Youngjae Byun aka Young Jae Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#13.00 TRIAL

RE: [1] Adversary case 2:17-ap-01533. Complaint by Robin Williams against Darren James Searle. false pretenses, false representation, actual fraud)
(Anaya, Alana)

fr. 2-21-18

Docket 1

***** VACATED *** REASON: PRETRIAL 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

2/20/2018 (amended after hearing in RED)

Tentative Ruling:

Defendants have demanded a jury trial. However, "[b]ankruptcy litigants ... have no Seventh Amendment right to a jury trial in dischargeability proceedings." *American Express v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124 (9th Cir. 1996). A bench trial will be conducted in this matter.

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-scheduling dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-scheduling, the deadline for hearings on expert discovery motions is the next closest date which is available for self-scheduling.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT...

Darren James Searle

Chapter 7

date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self calendaring.)

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within **30** days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

CONT... Darren James Searle

Chapter 7

Defendant(s):

Darren James Searle Pro Se

DOES 1 through 10, inclusive Pro Se

Joint Debtor(s):

Andrea Lynn Searle Represented By
Mark J Markus

Plaintiff(s):

Robin Williams Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01477 Official Unsecured Creditors Committee for Liberty v. Blue Sky

#14.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01477. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Blue Sky Communications, Inc., a Delaware Corporation, Lantern Brands, Inc., a California Corporation, TT Investment Los Angeles Fund I, LLC, a California limited liability company. priority or extent of lien or other interest in property)),(91 (Declaratory judgment)) (Richards, Jeremy)

FR. 6-25-18

Docket 1

***** VACATED *** REASON: DISMISSED 2-28-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Blue Sky Communications, Inc., a

Pro Se

Lantern Brands, Inc., a California

Pro Se

TT Investment Los Angeles Fund I,

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Jeremy V Richards

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, September 24, 2018

Hearing Room 1568

10:00 AM

2:18-19230 Paola Eunice Martinez

Chapter 7

#100.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 19XF C2F5 2GE2 09483 .

Docket 8

Tentative Ruling:

9/20/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, September 24, 2018

Hearing Room 1568

10:00 AM

CONT... Paola Eunice Martinez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Paola Eunice Martinez

Represented By
Francis Guilardi

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#101.00 HearingRE: [106] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Maria Lemus v. Sultan Financial Corporation et al.. (Reynolds, Russell)

Docket 106

Tentative Ruling:

9/20/2018

Tentative Ruling:

This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property. The claim is insured. Movant may seek recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or estate property.

The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, September 24, 2018

Hearing Room 1568

10:00 AM

CONT... Sultan Financial Corporation

Chapter 11

Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

10:00 AM

2:18-18075 Rogelio Gonzalez and Carol Gonzalez

Chapter 7

#102.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Property known as 47 OAK CLIFF DRIVE, POMONA, CA 91766 . (Richey, Cassandra)

Docket 10

Tentative Ruling:

9/20/2018

For the reasons stated below, the tentative ruling is to DENY the R/S Motion without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 10]
2. Trustee's Opposition to R/S Motion ("Trustee's Opposition") [Doc. No. 15]
3. As of the preparation of this tentative ruling, Movant has not filed a reply.

I. Facts and Summary of Pleadings

Motion

Rogelio and Carol Gonzalez (together, the "Debtors") filed this voluntary joint chapter 7 case on July 16, 2018. On August 30, 2018, creditor Wells Fargo Bank, N.A. ("Movant") filed a "Motion for Relief From the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 10] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 47 Oak Cliff Drive, Pomona, CA 91766 (the "Property"). Movant asserts that cause exists to grant it relief from stay under § 362(d)(1) because the Debtors filed a Statement of Intention that indicates the Debtors' intent to surrender the Property ("Statement of Intention"). *See* Motion, Exhibit 8.

Movant also asserts that cause exists to grant it relief from stay under § 362(d)(2) because the Debtors have no equity in the Property and the Property is not necessary for an effective reorganization because this is a chapter 7 case. In support, Movant states that the total debt on the Property is \$591,518.92 which is comprised of

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Monday, September 24, 2018

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez

Chapter 7

Movant's first priority deed of trust secured by a lien in the amount of \$248,386.30 and approximately fifteen other liens securing an approximate indebtedness of \$351,518.92. *See* Request for Judicial Notice, Doc No. 10, PDF p. 15. After factoring in 8% costs of sale (\$49,384.64), Movant contends that the total debt exceeds the Property's \$617,308 fair market value.

Opposition

On September 10, 2018, the chapter 7 trustee filed an Opposition to the R/S Motion [Doc. No. 15] ("Trustee's Opposition"). The Trustee requests that the Court deny the R/S Motion as follows. First, the Trustee contends that Movant has not established sufficient cause for relief from stay under § 362(d)(1) because (i) Movant is adequately protected by an equity cushion of \$368,921.71 or 149%; and (ii) Debtors' Statement of Intention has no bearing on whether to grant Movant relief from stay because the Property is subject to administration by the Trustee pursuant to § 541.

Second, the Trustee contends that the Court should not grant Movant relief from stay pursuant to § 362(d)(2) because, using Movant's figures and assuming all the alleged liens are legitimate, the Debtors have approximately \$17,402.78 in equity in the Property. [NOTE 1] Additionally, the Trustee states that he is currently evaluating the validity of the other asserted liens on the Property and requests an opportunity to try to negotiate with those creditors for a consensual sale that might provide some benefit to the estate or pursue a sale free and clear of some or all those interests.

Reply

As of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Based on Movant's figures, the Court finds that Movant is adequately protected by a 149%

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, September 24, 2018

Hearing Room 1568

10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez
equity cushion.

Chapter 7

The Court also finds that the Trustee has the better argument with respect to Debtors' Statement of Intention.

Based on the foregoing, the Court finds that Movant is not entitled to relief from stay under § 362(d)(1).

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

Since this is a chapter 7 case, it is undisputed that the Property is not necessary for an effective reorganization. Therefore, the Court must only determine whether the Debtors enjoy any equity in the Property. Using Movant's figures and deducting costs of sale, Debtors' \$100,000 homestead exemption, the Trustee's fees, and administrative claims, it appears unlikely that the Trustee will be able to administer the Property for the benefit of general unsecured creditors.

However, none of the purported junior lienholder filed a response to this R/S Motion. On balance, the Court is persuaded that it is premature to find that there is no equity in the Property given the relatively newness of this case and the lack of meaningful investigation by the Trustee into the validity of the junior liens.

III. Conclusion

The tentative ruling is to DENY the R/S Motion without prejudice.

The Trustee shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

**United States Bankruptcy Court
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Los Angeles
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Monday, September 24, 2018

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10:00 AM

CONT... Rogelio Gonzalez and Carol Gonzalez Chapter 7

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

NOTE 1: This figure represents the total equity in the Property prior to deducting any costs of sale or taking into consideration Debtors' \$100,000 homestead exemption.

Party Information

Debtor(s):

Rogelio Gonzalez

Represented By
Peter L Lago

Joint Debtor(s):

Carol Gonzalez

Represented By
Peter L Lago

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#103.00 HearingRE: [85] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Claims for Declaratory Relief, Fraud, and Injunctive Relief .

Docket 85

Tentative Ruling:

9/20/2018

No appearances required. The matter is CONTINUED to **October 15, 2018 at 10:00 a.m.** to be heard concurrently with Debtor's Motion to Convert Case to Chapter 11 [Doc. No. 122]. The Court finds that considerations of judicial economy and convenience warrant deferring any determination on whether to grant relief from stay until after the Court determines whether the Trustee or the Debtor will take the lead in litigating the underlying state court action.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, September 24, 2018

Hearing Room 1568

10:00 AM

CONT... M & A Enterprises, LLC

Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 26, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01434 TIMOTHY J. YOO, Chapter 7 Trustee v. ZETA INTERACTIVE

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01434. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against ZETA INTERACTIVE. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), and 551]; and (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

FR. 6-25-18; 8-27-18

Docket 1

***** VACATED *** REASON: JUDGMENT ENTERED 9-12-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

ZETA INTERACTIVE

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 26, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#100.00 Hearing
RE: [133] Emergency motion Notice of Motion and Emergency Motion for
Authority to Refinance Apartment Properties

Docket 133

Tentative Ruling:

Tentative Ruling:

Subject to additional argument which may be presented at the hearing, the Court is prepared to dismiss this case, so that the Debtor will be able to close the contemplated refinancing transaction. However, as set forth in greater detail below, the Court will retain jurisdiction to ensure that creditors are repaid, and will require that the proceeds of the refinancing transaction and the cash on hand in the Debtor's bank account be transferred to an escrow account under the joint control of the Chapter 7 Trustee and the Debtor's counsel. The case will not be dismissed until the funds have been deposited into escrow.

Pleadings Filed and Reviewed:

- 1) Debtor's Emergency Notice of Motion and Motion Requesting Refinance of Apartment Properties, Subject to Trustee Approval [Doc. No. 133] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 134]
 - b) Declaration of Mary L. O'Neill in Support of Debtor's Request to Refinance the Subject Apartment Properties [Doc. No. 139]
- 2) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 136]
- 3) Response of Luis Munoz to Debtor's Emergency Motion Requesting Refinance of Apartment Property [Doc. No. 144]
 - a) Declaration of Robert M. Yaspan in Support of Response of Luis Munoz to Debtor's Emergency Motion Requesting Refinance of Apartment Property [Doc. No. 145]
- 4) Trustee's Opposition to Debtor's Emergency Motion Requesting Refinancing of Apartment Properties [Doc. No. 149]
 - a) Evidentiary Objections to Declaration of Mary L. O'Neill in Support of

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 26, 2018

Hearing Room 1568

10:00 AM

CONT... M & A Enterprises, LLC Chapter 7

Debtor's Request to Refinance the Subject Apartment Properties [Doc. No. 148]

- 5) Debtor's Reply to Declaration of Robert M. Yaspan with Respect to Debtor's Emergency Motion Requesting Refinance of Certain Apartment Properties [Doc. No. 150]
- 6) Debtor's Reply to Trustee's Opposition to Debtor's Emergency Motion Requesting Refinance of Apartment Properties [Doc. No. 151]

I. Facts and Summary of Pleadings

M&A Enterprises, LLC (the "Debtor") commenced a voluntary Chapter 7 petition on May 29, 2018. The Debtor owns two adjacent apartment buildings, located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Properties"). According to the declaration of Luis Munoz submitted in support of a motion for stay-relief set for hearing on October 15, 2018, [**Note 1**] the Properties are encumbered by the following deeds of trust:

- 1) First Deed of Trust (the "First DOT") in favor of East West Bank, in the original principal amount of \$3,432,154.81. According to a payoff demand provided to Debtor's counsel by East West Bank, as of August 23, 2018, the amount owing on the First DOT was \$3,210,575.03. *See* Doc. No. 133, Ex. E.
- 2) Second Deed of Trust (the "Second DOT") in favor of Luiz Munoz. The Second DOT is a "wrap-around" DOT that fully incorporates the First DOT. According to a declaration filed by Mr. Munoz on August 13, 2018, the amount owing on the Second DOT is \$4,422,564 (this amount includes the amounts owed on the First DOT, since the Second DOT is an all-inclusive or "wrap around" deed of trust).
- 3) Third Deed of Trust (the "Third DOT"), also in favor of Luiz Munoz. According to a declaration filed by Mr. Munoz on August 13, 2018, the balance on the Third DOT is \$1,386,488.
- 4) Fourth Deed of Trust (the "Fourth DOT") in favor of Hahn Tran, in the amount of \$250,000.

Based upon the foregoing figures, the total debt against the Properties is \$6,064,450 as of August 13, 2018.

On August 22, 2018, the Court denied, without prejudice, the Debtor's motion to convert the case from Chapter 7 to Chapter 11 (the "First Motion to Convert"). The Debtor has filed a renewed motion to convert to Chapter 11 (the "Second Motion to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 26, 2018

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

Convert”), which is currently scheduled to be heard on October 15, 2018.

Mr. Munoz has filed a motion seeking stay-relief as to the Properties, which is also set to be heard on October 15, 2018. Based upon an appraiser’s declaration, Mr. Munoz asserts that the Properties are worth only \$5.9 million, and that there is no equity in the Properties. *See* Doc. No. 65. The Debtor has obtained a competing appraisal which values the Properties at \$6.85 million. *See* Doc. No. 69.

On or about September 14, 2018, the Chapter 7 Trustee (the “Trustee”) caused the bank holding the Debtor’s funds to place a hold on approximately \$2,465,000 of those funds. *See* Decl. of John Bauer [Doc. No. 134] at ¶4. The Trustee has filed a motion seeking turnover of the funds, which is set for hearing on October 15, 2018.

Summary of the Debtor’s Refinancing Motion, the Opposition of Mr. Munoz and the Trustee, and the Debtor’s Replies in Support of the Refinancing Motion

The Debtor seeks authorization to obtain a loan in the amount of \$4.0 million from Capital Direct Funding (“Capital Direct”). The Debtor asserts that the loan from Capital Direct, when combined with the \$2,465,000 in funds in the Debtor’s bank account, will be sufficient to repay all debt against the Properties and to repay all unsecured creditors. The Debtor states that the instant motion seeking authorization to refinance the Properties (the “Refinancing Motion”) is filed as a prelude to a motion for a structured dismissal, which the Debtor contemplates filing shortly.

In support of the Refinancing Motion, the Debtor submits a declaration from Frank Williams, the Divisional Manager of Capital Direct. The Williams Declaration states that all conditions for funding the refinancing loan have been satisfied, except for (1) Court approval, (2) deposit into escrow of the \$2.3 million in funds held by the estate, and (3) submission of all loan payoff demands.

The Debtor also submits a declaration from Mary L. O’Neill. Ms. O’Neill has represented the Debtor in various real estate litigation. According to Ms. O’Neill, an action against the Debtor brought by SMN Lo. Inc. (“SMN”) currently pending in the state court will not impact the Debtor’s other assets. Ms. O’Neill states that the action is a lien priority dispute pertaining to an unrelated property, and that regardless of the outcome of the dispute, there is sufficient equity in the property to cover any claims asserted by SMN in the event that it prevails.

The Trustee opposes the Refinancing Motion. The Trustee states that he does not consent to the refinancing of the Properties, and argues that the Refinancing Motion should be denied because the Debtor has refused to cooperate with the Trustee’s administration of the estate. According to the Trustee, the Debtor has (1) failed to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

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CONT... M & A Enterprises, LLC

Chapter 7

turnover to the Trustee the funds in its bank account, has (2) continued to operate a cash lending business post-petition without Court authorization, and has (3) failed to promptly disclose to the Trustee the existence of the cash lending business. The Trustee states that although he has not had time to fully evaluate the proposed refinancing, there is no evidence that the 9.5% loan is at market rate, and that it “does not make any sense to put \$2.5 million in unencumbered estate cash into the Property without any benefit to unsecured creditors.” Doc. No. 149 at p. 8.

Mr. Munoz, who holds the Second and Third DOTs, states that he supports the purpose of the Refinancing Motion, but questions whether Capital Direct will fund the loan. Mr. Munoz argues that the Refinancing Motion should either be denied without prejudice, or continued to give the Trustee more time to analyze the situation.

In Reply to the Trustee’s Opposition, the Debtor argues that the Trustee’s opposition to the proposed refinancing is not in the best interests of the estate, because the refinancing could pay off all creditors and allow the case to be expeditiously closed. In Reply to Mr. Munoz’s Opposition, the Debtor argues that Mr. Munoz’s primary motive is to obtain a windfall by obtaining stay-relief as to the Properties, and then foreclosing upon his Second and Third DOTs, so that the \$250,000 Fourth DOT will be extinguished.

II. Findings and Conclusions

As a threshold matter, the Court addresses the Trustee’s evidentiary objections to the O’Neill Declaration. The Trustee objects to Ms. O’Neill’s statement that the state court claims asserted against the Debtor by SMN will not affect the Properties. The Trustee contends that Ms. O’Neill’s testimony is inadmissible under Federal Rules of Evidence (“FRE”) 602 (lack of personal knowledge), 701 (as improper lay opinion), and 801 and 802 (as hearsay). The Trustee further asserts that the testimony lacks foundation and is an inadmissible legal conclusion.

The Trustee’s evidentiary objections are overruled. Ms. O’Neill testifies that she has represented the Debtor and its principal “in its state court judicial foreclosure actions and real estate litigation for the past fifteen years,” and that she is “intimately familiar with each and every one of those state court actions.” O’Neill Decl. at ¶3. This testimony establishes that Ms. O’Neill has personal knowledge of the action brought by SMN, and that she is qualified to offer expert opinion as to the likely outcome of that action. Ms. O’Neill’s opinion that the SMN action will not affect the Properties is not hearsay.

Turning to the merits, the Court notes that the Debtor seeks to accomplish its

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, September 26, 2018

Hearing Room 1568

10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

objective of obtaining a structured dismissal of this case through a two-step process. First, through the instant Refinancing Motion, the Debtor seeks authorization to obtain the \$4.0 million loan from Capital Direct. The Debtor then intends to file a motion to dismiss the case.

The Court notes that from a procedural perspective, the Debtor faces a Catch-22. Because this is a Chapter 7 case, the Trustee is charged with administering the Properties, and the Debtor cannot encumber the Properties absent the Trustee's consent. However, in order to obtain dismissal of the case (which would make obtaining the Trustee's consent to encumber the Properties unnecessary), the Debtor must show that creditors will not suffer legal prejudice, such as a reduced distribution. *Leach v. Internal Revenue Service (In re Leach)*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991). To make this showing, it is necessary for the Debtor to obtain the financing.

In the Court's view, the refinancing of the Properties and the dismissal of the case is in the interests of the Debtor, the Trustee and his professionals, creditors, and the objectives of the Bankruptcy Code. The funds from the proposed refinancing, when combined with cash on hand in the estate, are sufficient to satisfy the claims of all secured and unsecured creditors, as well as administrative expenses accrued by the Trustee and his professionals. The Debtor operates a profitable lending business which would be liquidated if this case remained in Chapter 7. Where, as here, the Debtor's principal does not wish to proceed under Chapter 7 and has, through counsel, made multiple attempts to undo the consequences of the initial Chapter 7 filing, the liquidation of a profitable enterprise is not consistent with the objectives of the Bankruptcy Code.

Although the Refinancing Motion does not explicitly request dismissal of the case, it makes clear that a structured dismissal is the Debtor's ultimate objective. *See, e.g.*, Refinancing Motion [Doc. No. 133] at p. 3 ("This motion is filed as a prelude to the filing of a motion to dismiss this Chapter 7 case. Upon the refinance as will be described below, Debtor's estate will have full and complete ownership of the subject apartment properties subject *only* to the lien of refinance and there will be no further need for the Trustee to liquidate this estate. There will be no further estate debts to repay. There will be no further need for the administration of this Chapter 7 case."). The Court finds it appropriate to construe the Motion as a motion for a structured dismissal, with such dismissal conditioned upon the Debtor's ability to close on the financing from Capital Direct. The Motion makes clear that the Debtor's ultimate objective in obtaining the financing was to facilitate dismissal. All creditors have received notice of the Motion and therefore have been afforded an opportunity to

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, September 26, 2018

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

object to either the refinancing or the contemplated dismissal.

Section 707(a)(1) provides that the "court may dismiss a case under this chapter only after notice and a hearing and only for cause." In *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008), the court observed that the "term 'for cause' is defined in the Bankruptcy Code only by way of a list of three examples—unreasonable delay prejudicial to creditors, nonpayment of filing fees, and not filing schedules—that is plainly incomplete." The *Hickman* court explained that courts should examine the totality of the circumstances in determining whether "cause" under §707(a) is present. *Id.* at 840. A "case will not be dismissed on the motion of a debtor if such dismissal would cause 'some plain legal prejudice' to a creditor." *Id.* Legal prejudice exists if dismissal will result in a decreased distribution to creditors. *See, e.g., Leach v. Internal Revenue Service (In re Leach)*, 130 B.R. 855, 858 (B.A.P. 9th Cir. 1991) (upholding denial of debtor's motion to dismiss, because dismissal would prejudice the Internal Revenue Service by permitting the debtor to refile at a later date when tax liabilities would be dischargeable).

Provided that the proposed refinancing transaction with Capital Direct closes, dismissal will not prejudice creditors because the refinancing will yield funds sufficient to repay all creditors in full. Having reviewed the Declaration of Frank Williams, Capital Direct's Divisional Manager, the Court finds that the refinancing offer is legitimate. Mr. Williams testifies that states that all conditions for funding the refinancing loan have been satisfied, except for (1) Court approval, (2) deposit into escrow of the \$2.3 million in funds held by the estate, and (3) submission of all loan payoff demands.

To enable the Debtor to complete the refinancing transaction, the Court is prepared to dismiss this case. However, the Court will retain jurisdiction to ensure that the refinancing transaction is completed; that the Debtor repays all secured and unsecured creditors; and that the Debtor repays reasonable administrative fees incurred by the Trustee and his professionals. To ensure that creditors are repaid, all cash in the Debtor's account at JPMorgan Chase Bank, N.A. ("Chase") shall be transferred to an escrow account under the joint control of the Trustee and the Debtor's counsel prior to dismissal of the case. **[Note 2]** The Trustee and the Debtor's counsel shall meet and confer and make arrangements to establish an escrow account that is acceptable to both parties. The administrative freeze on the Chase account shall remain in effect pending the transfer of the Debtor's funds into escrow.

The proceeds of the contemplated refinancing transaction must also be deposited into the escrow account. Once (a) the funds in the Chase account and (b) the proceeds

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 26, 2018

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

of the refinancing transaction have been transferred to escrow, the Trustee shall submit a declaration so stating.

The Court will prepare and enter an order (a) authorizing Capital Direct to fund the loan, (b) requiring that the loan proceeds be deposited directly into escrow, and (c) ordering Chase to transfer the funds in the Debtor's bank account into escrow. Upon receipt of a declaration from the Trustee establishing that the funds from both the refinancing transaction and the Debtor's Chase account have been deposited into escrow, the Court will prepare and enter an order dismissing the case, but retaining jurisdiction to (a) supervise the distribution of funds in the escrow account to creditors and to (b) determine the amount of administrative fees allowable to the Trustee and his professionals.

Note 1

The Court does not make any findings as to the exact amounts owing on any of the deeds of trust. This information is set forth for background purposes. The information is based upon Mr. Munoz's declaration because that is the source that the Debtor relied upon when preparing the instant motion seeking authorization to refinance the Properties.

Note 2

The Debtor asserts that of the \$2,750,000 on deposit in the Chase account, approximately \$2,465,000 belongs to the Debtor and approximately \$300,000 belongs to the Debtor's principal, Miguel Arreola. The Debtor has not submitted sufficient evidence to support a finding that \$300,000 of the funds in the Chase account are not property of the estate. Therefore, all funds on deposit in the Chase account shall be transferred to escrow.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, September 26, 2018

Hearing Room 1568

10:00 AM

CONT... M & A Enterprises, LLC

Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 1, 2018

Hearing Room 1568

10:00 AM

2:18-16120 Silvana Agostino

Chapter 7

#1.00 Hearing
RE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1115 East Sierra Madre Avenue, Glendora, CA 91741 . (Jafarnia, Merdaud)

fr: 9-4-18

Docket 19

Tentative Ruling:

9/27/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court previously continued this hearing after finding inadequate service on JPMorgan Chase as holder of the second deed of trust on the property. On August 9, 2018, Movant filed a notice of continued hearing on motion for relief from the automatic stay [Doc. No. 23] and an amended proof of service [Doc. No. 24]. The Court finds service is now proper.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 1, 2018

Hearing Room 1568

10:00 AM

CONT...

Silvana Agostino

Chapter 7

property. See, e.g., Martens v. Countrywide Home Loans (In re Martens), 331 B.R. 395, 398 (8th Cir. BAP 2005); Ramco Indus. v. Preuss (In re Preuss), 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$800,000 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the expected costs of sale total \$997,846.97. The Court finds there is no equity and there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Silvana Agostino

Represented By
Derik N Lewis

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 1, 2018

Hearing Room 1568

10:00 AM

2:18-18424 Jose Joel Flores

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 ACURA TLX, VIN: 19UU B1F5 1GA0 10353 .

Docket 9

Tentative Ruling:

9/27/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 1, 2018

Hearing Room 1568

10:00 AM

CONT... Jose Joel Flores

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jose Joel Flores

Represented By
Leon D Bayer

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 1, 2018

Hearing Room 1568

10:00 AM

2:18-18871 Darlene Anise Renteria

Chapter 7

#3.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 BMW 3 Series Sedan 4D 328I 2016 BMW 3 Series Sedan 4D 328I. (Skigin, Cheryl)

Docket 12

Tentative Ruling:

9/27/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 1, 2018

Hearing Room 1568

10:00 AM

CONT... Darlene Anise Renteria

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Darlene Anise Renteria	Pro Se
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Trustee(s):

John J Menchaca (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 1, 2018

Hearing Room 1568

10:00 AM

2:18-19539 Soon Ok Hong

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 32 Aldgate Drive East, Manhasset, New York 11030 .

Docket 8

Tentative Ruling:

9/27/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. *See* Declaration of Shane Ellis in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real

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CONT... Soon Ok Hong

Chapter 7

property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

The Court notes that Debtor's case was dismissed on 9/4/2018. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Soon Ok Hong

Pro Se

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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2:18-19621 Sonia D Sandoval Villanueva

Chapter 7

#5.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA ACCORD, VIN: 1HGC R2F1 6HA0 10697 .

Docket 10

Tentative Ruling:

9/27/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Sonia D Sandoval Villanueva	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:09-36696 Jonathan Anthony Thomas and Aquenda Tamesha Scott-

Chapter 7

#1.00 APPLICANT: Other Expenses: International Sureties, LTD

Hearing re [46] & [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

See Cal. No. 2, incorporated by reference.

Party Information

Debtor(s):

Jonathan Anthony Thomas

Represented By

Gregory A Paiva - DISBARRED -

Joint Debtor(s):

Aquenda Tamesha Scott-Thomas

Represented By

Gregory A Paiva - DISBARRED -

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Howard M Ehrenberg

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10:00 AM

2:09-36696 Jonathan Anthony Thomas and Aquenda Tamesha Scott-

Chapter 7

#2.00 APPLICANT: Trustee: Howard M Ehrenberg

Hearing re [46] & [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,167.58

Total Expenses: \$738.25

International Sureties, Ltd: \$113.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jonathan Anthony Thomas

Represented By

Gregory A Paiva - DISBARRED -

Joint Debtor(s):

Aquenda Tamesha Scott-Thomas

Represented By

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10:00 AM

CONT... Jonathan Anthony Thomas and Aquenda Tamesha Scott- Chapter 7
Gregory A Paiva - DISBARRED -

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Howard M Ehrenberg

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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#3.00 HearingRE: [129] Motion Plaintiff's Notice of Motion and Motion to Voluntarily Dismiss Second and Fourth Claims for Relief Without Prejudice; Declaration of Zev Shechtman in Support Thereof with Proof of Service

Docket 129

Tentative Ruling:

10/1/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Chapter 7 Trustee's Notice of Motion and Motion to Voluntarily Dismiss Second and Fourth Claims for Relief Without Prejudice [Doc. No. 129] (the "Motion to Dismiss")
2. As of the preparation of this tentative ruling, no opposition to the Motion is on file

I. Facts and Summary of Pleadings

On October 19, 2017, the Trustee commenced this action by filing a Complaint against Defendants Ronald Peterson ("Peterson"), Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona," collectively with Peterson and Maitreya Nevada, the "Defendants"). On January 22, 2018, the Trustee filed an amended complaint [Adv. Doc. No. 21]. On February 26, 2018, Defendants filed their Answer [Adv. Doc. No. 42].

On June 14, 2018, the Court entered summary judgment in favor of the Trustee on his first, third and fifth claims for relief [Adv. Doc. Nos. 64, 65]. Defendants did not appeal the summary judgment, but have filed an appeal of a subsequent order denying their motion for reconsideration of the summary judgment [Adv. Doc. Nos. 96, 97, 110]. That appeal is presently pending.

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CONT... Anne Lan Peterson

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In the Trustee's motion for summary judgment, the Trustee requested dismissal of his second and fourth claims for relief after entry of a judgment in his favor on his first, third and fifth claims for relief. However, on June 6, 2018, the eve of the hearing on the Trustee's motion for summary judgment, Defendants filed a purported cross-complaint against the Trustee [Adv. Doc. No. 66]. In light of that filing, the Trustee requested that the second and fourth claims remain pending. The Court granted that request [Adv. Doc. No. 64].

On July 27, 2018, the Court entered an order dismissing the purported cross-complaint as to the Trustee, with prejudice [Adv. Doc. No. 113].

On September 6, 2018, the Trustee filed the instant motion to voluntarily dismiss his second and fourth claims for relief against the Defendants without prejudice pursuant to Civil Rule 41(a)(2) [Adv. Doc. No. 129] (the "Motion to Dismiss"). The Trustee states that dismissal is necessary to avoid further litigation costs and facilitate the Trustee's administration of the case. The Trustee further states that a Court order authorizing dismissal is necessary because Defendants have refused to stipulate to dismissal of the Trustee's remaining claims.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Absent a stipulation of dismissal signed by all parties who have appeared, Civil Rule 41(a)(2) provides that "an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper." If a defendant has pleaded a counterclaim, "the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication." Civil Rule 41(a)(2).

Defendants have not filed an objection to the Motion to Dismiss. Defendants have filed a counterclaim, but the Trustee is no longer a defendant to that purported cross-complaint and that action can remain pending against the remaining defendant. The operative Complaint does not contain a request for relief under § 727, so this Court need not apply Bankruptcy Rule 7041, which provides that a complaint asserting § 727 claims for relief may be dismissed "only on order of the court containing terms and conditions which the court deems proper." The Court also finds that continued prosecution of the Trustee's remaining claims for relief would be economically

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CONT... Anne Lan Peterson

Eric P Israel
Zev Shechtman

Chapter 7

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10:00 AM

2:14-11022 Alexandra Samuel Goldfarb

Chapter 7

#4.00 APPLICANT: Attorney for Trustee: Gonzalez& Gonzalez Law PC

Hearing re [101] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,825

Expenses: \$80.03

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Alexandra Samuel Goldfarb

Represented By
Daniel King

Trustee(s):

Peter J Mastan (TR)

Represented By
Rosendo Gonzalez

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10:00 AM

2:14-11022 Alexandra Samuel Goldfarb

Chapter 7

#5.00 APPLICANT: Trustee: Peter J Mastan

Hearing re [101] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,709.85

Total Expenses: \$34.87

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Alexandra Samuel Goldfarb

Represented By
Daniel King

Trustee(s):

Peter J Mastan (TR)

Represented By
Rosendo Gonzalez

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:14-16243 Salvador Ibarra Hernandez and Rosa Maria Ibarra

Chapter 7

#6.00 APPLICANT: Accountant for Trustee: LEA Accountancy, LLP

Hearing re [34] & [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,518.50

Expenses: \$135.64

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Salvador Ibarra Hernandez

Represented By

Richard Clay Mendez - DISBARRED -

Joint Debtor(s):

Rosa Maria Ibarra

Represented By

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**CONT... Salvador Ibarra Hernandez and Rosa Maria Ibarra Chapter 7
Richard Clay Mendez - DISBARRED -**

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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2:14-16243 Salvador Ibarra Hernandez and Rosa Maria Ibarra

Chapter 7

#7.00 APPLICANT: Trustee: Rosendo Gonzalez

Hearing re [34] & [35] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,366.38

Total Expenses: \$221.55

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Salvador Ibarra Hernandez

Represented By

Richard Clay Mendez - DISBARRED -

Joint Debtor(s):

Rosa Maria Ibarra

Represented By

Richard Clay Mendez - DISBARRED -

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CONT... Salvador Ibarra Hernandez and Rosa Maria Ibarra

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:16-16496 JW Wireless Inc.

Chapter 7

Adv#: 2:18-01097 John J. Menchaca, Solely in his Capacity as Chapte v. CELLCO Partnership

#8.00 Hearing
RE: [40] Motion for Default Judgment with proof of service

Docket 40

***** VACATED *** REASON: PER ORDER ENTERED 10-2-18**

Tentative Ruling:

10/1/2018

For the reasons set forth below, the Motion is GRANTED IN-PART AND DENIED IN-PART.

Pleadings Filed and Reviewed

1. Trustee's Motion for Default Judgment Under LBR 7055-1 [Adv. Doc. No. 40] ("Default Judgment Motion")
 - a. Memorandum of Points and Authorities in Support of Default Judgment [Adv. Doc. No. 41] (the "Memo")
 - b. Declaration of Linda Lee in Support of Motion for Default Judgment [Adv. Doc. No. 42] ("Lee Declaration" or "Lee Decl.")
2. As of the preparation of this tentative ruling, JWK has not filed an opposition.

I. Facts and Summary of Pleadings

JW Wireless, Inc. ("Debtor"), filed a voluntary petition for relief under chapter 7 on May 27, 2016 (the "Petition Date"). On July 22, 2016, the Court approved the Trustee's application to employ CBIZ Valuation Group, LLC to serve as the Trustee's financial advisors and consultants with respect to the Trustee's analysis and investigation of avoidable transfers.

On April 10, 2018, the Trustee commenced this action against by filing a complaint against JWK Management, Inc. ("JWK"), among others, for avoidance and recovery of certain pre-petition transfers. On April 18, 2018, the Trustee file a proof of service reflecting service of the Summons and Complaint on JWK [Adv. Doc. No. 8].

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CONT... JW Wireless Inc.

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The deadline for JWK to file an answer or response to the Complaint expired on May 11, 2018. JWK did not timely file an answer and, as of the preparation of this tentative ruling, has not filed an answer. The Clerk of the Court entered JWK's default on August 7, 2018 [Adv. Doc. No. 32].

The Trustee now seeks entry of default judgment against JWK Management, Inc on the Trustee's:

Eleventh claim for relief for avoidance and recovery of intentional fraudulent transfer pursuant to 11 U.S.C. §§ 502(d), 544, 548, 550, 551; Cal. Civ. Code §§ 3439.04, 3439.07, 3439.08 and 3439.09; and

Twelfth claims for relief for avoidance and recovery of constructive fraudulent transfer pursuant to 11 U.S.C. §§ 502(d), 544, 548, 550, 551; Cal. Civ. Code §§ 3439.04, 3439.05, 3439.07, 3439.08 and 3439.09.

As of the preparation of this tentative ruling, JWK has not filed an opposition.

II. Findings of Fact and Conclusions of Law

Service of the Default Judgment Motion was Adequate

To determine whether the Default Judgment Motion was properly served on JWK, the Court relies upon the documents that JWK filed with the California Secretary of State.

Pursuant to Bankruptcy Rule 7004(b)(4)—made applicable to the instant Motion by Bankruptcy Rule 9014(b)—service upon a domestic corporation is effectuated “by mailing [the motion] to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.” Cal. Civ. Proc. Code §416.10 provides that service upon a corporation may be made by serving the person that the corporation has designated as its agent for service of process; there is no requirement that both the agent for service of process and some other agent of the corporation be served.

Where, as here, a corporation has been dissolved, service upon the corporation's

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CONT... JW Wireless Inc.

Chapter 7

agent for process is sufficient to provide the corporation actual notice of the litigation. *See Pulte Homes Corp. v. Williams Mech., Inc.*, 2 Cal. App. 5th 267, 274, 206 Cal. Rptr. 3d 244, 250 (Cal. Ct. App. 2016) (“Here, however, Williams [the corporation] dissolved in 2012 and has been wound up; presumably it no longer has any directors, officers, agents or employees. At least under these circumstances, we believe that notice to the person designated by the corporation as its agent for service of process is actual notice. An agent for service of process has the necessary authority because the corporation has expressly held that person out to the world as authorized to receive notice of actions. Indeed, in the case before us, if actual notice to Morris [the agent for service of process] was not sufficient to make a default judgment stick, who else was there?”).

Here, the Trustee served the Default Judgment Motion upon Michael Lee, the agent for service of process of JWK. Therefore, the Court finds that service is adequate.

The Trustee is Entitled to Entry of Default Judgment Avoiding and Recovering \$1,545,131.31 in Fraudulent Transfers Made to JWK

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). Based upon the Complaint’s allegations, as well as the evidence submitted in support of the Default Judgment Motion [**Note 1**], the Court makes the following findings:

The Trustee Has Not Adequately Established Entitlement to Entry of Default Judgment on His § 548 Claim

Section 548(a)(1) provides: "The trustee may avoid any transfer ... of an interest of the debtor in property ... that was *made or incurred on or within 2 years before the date of the filing of the petition*, if the debtor voluntarily or involuntarily made such transfer" (emphasis added).

The Complaint alleges that JWK received transfers in the total amount of \$1,659,477.48 within four years of the Petition Date. Complaint, ¶¶ 108, 109. The Complaint also attaches a general ledger identifying a series of payments the Debtor purported made to JWK within the relevant timeframe. Complaint, Exhibit 3.

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CONT... JW Wireless Inc.

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However, nothing in the Complaint, Default Judgment Motion, Memo, or Lee Declaration attempts to separate out which transfers fall within the 2-year reach back period to constitute avoidable transfers under § 548.

The Court recognizes that the general ledger identifies the dates of the alleged transfers. But the Court is not prepared to do the Trustee's work for him by independently identifying the transfers that fall within the applicable period and calculating the value of the total transfers made during that timeframe. In any event, for the reasons stated below, the Court finds entry of default judgment under § 548 unnecessary because the Trustee is entitled to entry of default judgment under §§ 544(b) and Cal. Civ. Code §§ 3439.04 and 3439.05, resulting in avoidance of the same transfers the Trustee seeks to avoid under § 548.

If the Trustee wishes to pursue his request for entry of Default Judgment under § 548, the Trustee may appear at the hearing to request an opportunity to file a supplemental brief that specifically identifies the relevant transfers, the sum of those transfers, and demonstrates the Trustee's entitlement to default judgment under § 548.

The Trustee is Entitled to Avoid \$1,545,131.31 In Fraudulent Transfers Pursuant to § 544(b), Applying California Civil Code §§ 3439.04(a)(1), (2)(A) and (B) and 3439.05

Section 544(b)(1) permits the trustee to "avoid any transfer of an interest of the debtor in property ... that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." The "applicable law" in this case is California's Uniform Voidable Transfers Act, codified at California Civil Code § 3439.01 et seq.

The relevant provisions of California Uniform Voidable Transfers Act (the "UVTA"), §3439.04(a)(1), (2)(A) and (B) provide in relevant part:

A transfer made or obligation incurred by a debtor is voidable as to a creditor ... if the debtor made the transfer or incurred the obligation as follows:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor.

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JW Wireless Inc.

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(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor either:

(A) Was engaged or was about to engage in a business or transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction.

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

Cal. Civ. Code §§ 3439.04(a)(1), (2)(A) and (B).

Section 3439.04(b) provides in relevant part:

In determining actual intent under paragraph (1) of subdivision (a), consideration may be given, among other factors, to any or all of the following:

...

(8) Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(9) Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred

Cal. Civ. Code § 3439.04(b).

Section 3439.05(a) provides:

A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

Cal. Civ. Code § 3439.05.

Pursuant to §§ 3439.07 and 3439.09, the Trustee may avoid the transfer of a debtor's assets that is actually or constructively fraudulent and which is made within four years prior to the date the avoidance action is filed. "A trustee's action under §

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544 is also subject to the time limitations set forth in § 546(a), which provides, in relevant part, that an action or proceeding under § 544 to avoid a transfer must be commenced within '2 years after the entry of the order for relief.'" *Rund v. Bank of Am. Corp. (In re EPD Inv. Co., LLC)*, 523 B.R. 680 at *685 (B.A.P. 9th Cir. 2015) (quoting 11 U.S.C. § 546(a)(1)(A)).

The Complaint was timely filed within 2 years of the May 27, 2016 Petition Date as required by § 546. The Trustee has presented evidence to show that the Debtor made transfers to JWK in the amount of \$1,659,477.48 between May 21, 2012 and October 3, 2014. Based on the Court's own calculation, the four-year reach back period extends to May 27, 2012. Accordingly, the Trustee has not shown that he is entitled to default judgment avoiding the transfer made on May 21, 2012 in the amount of \$114,346.17.

The Court finds that the Complaint contains sufficient allegations to plead a claim for relief under § 3439.04(a)(1) for actual fraudulent transfers. The Trustee alleges that the Debtor transferred \$1,545,131.31 in funds within four years of the Petition Date and that such transfers were made: (i) "either in anticipation of bankruptcy and/or to prevent JW from paying its debts;" (ii) "for the purpose of preventing a prospective bankruptcy trustee and/or creditors of JW from obtaining the value of the transfers;" and "with the actual intent to hinder, delay or defraud creditors, including the Trustee." Complaint, ¶¶ 107-112.

The Court also finds that the Complaint contains sufficient allegations to plead claims for relief under §§ 3439.04(a)(2)(A) and (B) and § 3439.05 for constructively fraudulent transfers. The Trustee alleges that the Debtor transferred \$1,545,131.31 in funds within four years of the Petition Date and that such transfers were made:

- (a) For less than reasonably equivalent value, or any value, in exchange for the transfers, and
- (b) While JW was engaged or about to engage in a business or transaction for which the remaining assets of JW were unreasonably small in relation to the business or transaction.
- (c) While JW intended to incur, or believed or reasonably should have believed that it would incur, debts beyond the debtor's ability to pay them as they became due; and/or

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JW Wireless Inc.

Chapter 7

(d) At a time when JW was insolvent and/or was rendered insolvent by virtue of the constructive fraudulent transfers; and/or
(e) JW made the constructive fraudulent transfers to or for the benefit of BJ, an insider, or incurred such obligation to or for the benefit of an insider, and not in the ordinary course of business.

Complaint, ¶¶ 116-118.

For the reasons stated above, the Court finds that transfers totaling \$1,545,131.31 are actual fraudulent transfers pursuant to § 544(b), applying California Civil Code § 3439.04(a)(1) and constructively fraudulent transfers pursuant to § 544(b), applying California Civil Code §§ 3439.04(a)(2)(A) and (B) and § 3439.05.

The Trustee is Entitled to Recover the Transfers from JWK Pursuant to 11 U.S.C. § 550(a)

Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to recover an avoided transfer from the transferee. Accordingly, the Trustee is entitled to a judgment against JWK in the amount of the transfers.

The Trustee is Entitled to Preserve the Transfers for the Benefit of the Estate Pursuant to § 551

Pursuant to § 551, "any transfer avoided under section ... 544 ... is preserved for the benefit of the estate but only with respect to property of the estate." Accordingly, the Trustee is entitled to a judgment against JWK preserving the avoided transfer for the benefit of the estate.

Any Claim JWK May File is Disallowed Pursuant to §502(d)

Section 502(d) requires the Court to disallow any claim of an entity that is a transferee of an avoidable transfer. Here, JWK has not filed a Proof of Claim. However, the Court will enter judgment providing that in the event the JWK does file a claim, such claim shall be disallowed pursuant to §502(d) until such time as JWK turns over the amounts due and owing under the default judgment.

III. Conclusion

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For the reasons set forth above, the Motion is GRANTED IN-PART and DENIED IN-PART. The Trustee is entitled to judgment in his favor pursuant to 11 U.S.C. §§ 544(b), 550(a), 551 and 502(d) and Cal. Civ. Code §§ 3439.04(a)(1), (2)(A) and (B), and 3439.05. The Trustee's request for entry of default judgment under § 548 is DENIED.

Although the Trustee's § 548 claims shall remain pending, pursuant to Civil Rule 54(b), the Court finds that there is no just reason to delay entry of judgment in favor of the Trustee with respect to his claims for relief under 11 U.S.C. §§ 544(b), 550(a), 551 and 502(d) and Cal. Civ. Code §§ 3439.04(a)(1), (2)(A) and (B), and 3439.05.

The Trustee should lodge a proposed order and judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Default Judgment Motion, Memo and Lee Declaration are devoid of any meaningful analysis of the specific claims for relief upon which the Trustee seeks entry of default judgment. Nowhere in any of those pleadings does the Trustee identify the specific elements of each claim for relief or which corresponding allegations in the Complaint or supplemental evidence satisfy each of those elements. As a result, the Court has had to expend unnecessary judicial time and resources to perform that work for the Trustee. The Trustee is cautioned that filing deficient pleadings like the ones before the Court in the future may result in adverse consequences. In any event, the Estate should not be charged for such shoddy work.

Party Information

Debtor(s):

JW Wireless Inc.

Represented By

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2:16-17965 Guillermo Alvarado

Chapter 7

#9.00 Hearing RE [106] Motion Of Debtors For Order Compelling Chapter 7 Trustee To Abandon Debtors Principal Residence

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Guillermo Alvarado

Represented By
Giovanni Orantes

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Toan B Chung

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2:17-12677 Green Jane Inc

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#10.00 Show Cause Hearing re [148] Order To Show Cause Why Green CO2 IP, LLC, Bevtch, Inc., Michael K. Shutte, Daniel Schneider, Brette Schutte, Randall Willard, And Willard & Associates, P.C. Should Not Be Held In Contempt For Violation Of The Automatic Stay

fr. 2-21-18; 4-25-18; 7-18-18

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 9-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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2:17-12677 Green Jane Inc

Chapter 7

Adv#: 2:17-01517 Gonzalez v. BevTech, Inc, dba GreenCO2 Systems et al

#11.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01517. Complaint by Rosendo Gonzalez against BevTech, Inc, dba GreenCO2 Systems, Green CO2 IP, LLC, a Colorado limited liability company. (Charge To Estate). Complaint for 1. Declaratory Relief; 2. Avoidance of Equitable Claim to Debtor's Bevtch Shares and Interest in License Agreement Pursuant to 11 U.S.C. § 544(a); 3. Recovery on Account of Avoided Claims Pursuant to 11 U.S.C. § 550(a); 4. Turnover of Withheld Dividends Pursuant to 11 U.S.C. § 542; 5. Subordination of Claim Pursuant to 11 U.S.C. § 510(b); and 6. Objection to Claim Pursuant to 11 U.S.C. § 502(b) Nature of Suit: (91 (Declaratory judgment)),(11 (Recovery of money/property - 542 turnover of property)),(81 (Subordination of claim or interest)) (Melissinos, C)

fr. 1-16-18; 1-17-18; 3-13-18; 5-15-18; 7-17-18

Docket 1

***** VACATED *** REASON: DISMISSED 8-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Defendant(s):

BevTech, Inc, dba GreenCO2

Pro Se

Green CO2 IP, LLC, a Colorado

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
C John M Melissinos

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#12.00 HearingRE: [31] Motion For Summary Judgment with proof of service

Docket 31

Tentative Ruling:

10/1/2018

For the reasons set forth below, the matter is CONTINUED to November 6, 2018 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Complaint to Determine Dischargeability of Debt [11 U.S.C. § 523(a)(4)] [Adv. Doc. No. 1] (the "Complaint")
2. Plaintiffs' Motion for Summary Judgment [Adv. Doc. No. 31] (the "MSJ" or "Motion")
 - a. Plaintiffs' Separate Statement of Uncontroverted Facts and Conclusions of Law in Support of Motion for Summary Judgment [Adv. Doc. No. 32]
 - b. Declaration of Fred Rosenberg in Support of Motion for Summary Judgment [Adv. Doc. No. 33]
 - c. Plaintiffs' Request for Judicial Notice in Support of Motion for Summary Judgment [Adv. Doc. No. 34] ("Plaintiffs' RFJN")
 - d. Notice of Hearing on Motion for Summary Judgment [Adv. Doc. No. 35]
3. Defendant's Separate Statement of Uncontroverted Facts and Conclusions of Law in Opposition to Motion for Summary Judgment [Adv. Doc. No. 38]
 - a. Defendant's Request for Judicial Notice in Opposition to Motion for Summary Judgment [Adv. Doc. No. 39]
 - b. Declaration of Robert Carpenter in Opposition to Motion for Summary Judgment [Adv. Doc. No. 40]
4. Reply deadline: September 18, 2018. As of the preparation of this tentative ruling, Plaintiffs have not filed a reply.

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I. Facts and Summary of Pleadings

On July 16, 2015, Fred Rosenberg ("Mr. Rosenberg") and Friendgift, Inc., a Delaware corporation ("Friendgift," and together with Mr. Rosenberg, the "Plaintiffs") filed a Second Amended Complaint in Los Angeles Superior Court ("LASC") against Robert Mark Carpenter ("Mr. Carpenter" or "Defendant") asserting the following causes of action: (1) Damages for Conversion; (2) Breach of Fiduciary Duty; and (3) Fraud by Deceit (Case No. BC563329) (the "State Court Action").

On October 31, 2016, the LASC entered an order granting Plaintiffs' *Motion for Summary Judgment* against the Defendant on all three causes of action (the "Order Granting MSJ"). See Plaintiffs' RFJN, Ex. 1. The entirety of the LASC's findings of fact and conclusions of law are set forth below:

Though defendant provides an opposition, he fails to provide an opposing separate statement. "When a moving party makes the required *prima facie* showing, failure to comply with [the separate statement] requirement may, in the court's discretion, constitute a sufficient ground for *granting* the motion." (Weil & Brown, Civ. Proc. Before Trial (The Rutter Group 2015 ¶ 10:189.) Moreover, defendant's declaration is signed under penalty of perjury under the laws of the United States, and not under California law. (See Code Civ. Proc., § 2015.5.)

Plaintiff has alleged causes of action for conversion, breach of fiduciary duty, and concealment.

"Conversion is the wrongful exercise of dominion over the property of another. The elements of conversion are the plaintiff's ownership or right to possession of the property at the time of conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to its own use." (*Oakdale Village Group c. Fong* (1996) 43 Cal.App.4th 539, 543-44.)

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"The elements of a cause of action for breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) breach of fiduciary duty; and (3) damages proximately caused by the breach." (*People ex rel. Harris v. Rizzo* (2013) 214 Cal.App.4th 921, 950.) "A fiduciary relationship has been defined as 'any relation existing between parties to a transaction wherein one of the parties is ... duty bound to act with the utmost good faith for the benefit of the other party. Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter's knowledge or consent.'" *Id.*

"[T]he elements of an action fraud an [sic] deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damages." (*Blickman Turkin, LP v. MF Downtown Sunnyvale LLC* (2008) 162 Cal.App.4th 858, 868.)

Defendant was co-CEO and co-President of the Board of Directors of Friendgiftr from 2008 to 2012, and was CEO and President from 2009 to 2012. (PMF 204.) Defendant admits that he owed a fiduciary duty to Friendgiftr during the relevant times. (PMF 5.)

In 2012, John Fabiano, CPA, conducted an audit of Friendgiftr's bank accounts. (PMF 7.) Fabiano declares that his audit revealed what he believed to be a total of \$209,825.24 improperly transferred from the Friendgiftr accounts by defendant. (See PMF 8.) The transfers included \$9,500.00 to

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Donald Uwanawich. (PMF 9.) The transfers also included over \$3,000.00 to various charities. (PMF 10.) Defendant admits that he made transfers to Uwanawich or the charities. (PMF 12.) Plaintiffs present evidence that defendant made the transfers in his capacity as an officer of Friendgift and on its behalf. (PMF 13.) Plaintiffs present evidence that defendant did not receive approval from the Board for the transfers to Uwanawich or the charities, there are no invoices or expense reports for the transfers, and no tax benefits could be received for the transfers. (PMF 14.) Plaintiffs assert that the transfers have no discernable business purpose and Friendgift received nothing of value for the transfers. (PMF 15.) Plaintiffs assert that they were unaware of the transfers until the audit results in April 2012. (PMF 17.)

Defendant's conclusory declaration is not sufficient to raise a triable issue of fact. (*See* Carpenter Decl.) Defendant does not appear to provide any admissible evidence to support its assertion that the claims are time-barred.

Based upon the above, **IT IS ORDERED** that the issue of liability as it relates to the three causes of action alleged in the Second Amended Complaint are summarily adjudicated in favor of Plaintiffs and against Robert Carpenter. Specifically, the Court finds that:

1. Plaintiffs are entitled to summary adjudication in their favor as to the issue of defendant Robert Carpenter's liability under Plaintiffs' First Cause of Action for Conversion on the ground that there is no triable issue of fact as to the establishment of each essential element to support such a claim.

2. Plaintiffs are entitled to summary adjudication in their favor as to the issue of defendant Robert Carpenter's liability under Plaintiffs' Second Cause of Action for Breach of Fiduciary Duty on the ground that there is no triable issue of fact as to the establishment of each essential element to support such a claim.

3. Plaintiffs are entitled to summary adjudication in their favor as to the issue of defendant Robert Carpenter's

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liability under Plaintiffs' Third Cause of Action for Concealment on the ground that there is no triable issue of fact as to the establishment of each essential element to support such a claim.

Plaintiffs shall be entitled to prove up damages at trial.

IT IS SO ORDERED.

Plaintiffs' RFJN, Ex. 1.

On November 17, 2016 and March 13, 2017, the LASC conducted a trial on the issue of damages. On May 15, 2017, the LASC entered a judgment for Plaintiffs in the amount of \$262,722.42 (the "Judgment"). *See* Plaintiffs' RFJN, Ex. 2.

On July 19, 2017, Mr. Carpenter filed a voluntary chapter 7 petition (Case No. 2:17-bk-18805-ER).

On October 23, 2017, Plaintiffs filed this action, alleging that the indebtedness established by the Judgment is non-dischargeable pursuant to 11 U.S.C. § 523(a)(4) (the "Complaint"). After conducting a Pretrial Conference on July 17, 2018, this Court entered an order vacating the trial date and directing Plaintiffs to file a motion for summary judgment [Adv. Doc. No. 29]. Based on Plaintiffs' contention that the Judgment was entitled to preclusive effect, this Court found that the matter could be most efficiently resolved by way of a motion for summary judgment. *Id.*

On August 16, 2018, Plaintiffs filed the instant motion for summary judgment arguing that Defendant is precluded from contesting his liability under § 523(a)(4). Plaintiffs contend that the LASC's findings and conclusions are entitled to preclusive effect and satisfy all elements necessary for a determination of non-dischargeability under 11 U.S.C. § 523(a)(4) for fraud or defalcation while acting in a fiduciary capacity.

On September 7, 2018, Defendant timely filed the following pleadings: (i) a Separate Statement of Uncontroverted Facts and Conclusions of Law in Opposition to Motion for Summary Judgment [Doc. No. 38] ("Defendant's Statement of Controverted Facts") [**Note 1**]; (ii) a Request for Judicial Notice [Doc. No. 39] ("Defendant's RFJN") [**Note 2**]; and (iii) a Declaration of Robert Carpenter in Opposition to Motion for Summary Judgment [Doc. No. 40] (the "Carpenter Decl.").

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Defendant opposes summary judgment on several grounds. First, Defendant contends that the Order Granting MSJ was entered as a default and technicality because Plaintiffs did not provide any evidence to support their motion and "the judge in the case would not accept [his] paperwork because [he] was Defendant in Pro Se and did not know how to properly file an 'opposing separate statement.'" Carpenter Decl., paragraph 2. Second, Defendant argues that the Judgment was simply an extension of the MSJ default because the "judge would not allow [him] to enter ANY evidence." *Id.*, paragraph 3. Third, Defendant argues that the LASC's decision not to award Plaintiffs punitive damages establishes that the Court did not find he committed fraud. *Id.* Fourth, Defendant contends that Plaintiffs' current Motion is deficient because (1) it does not respond to his pretrial statement in which Defendant outlines his affirmative defenses; (2) Plaintiffs have failed to conduct any discovery in this action; and (3) Plaintiffs have not presented any evidence in support of the MSJ. *Id.*, paragraphs 4-6.

As of the preparation of this tentative ruling, Plaintiffs have not filed a reply.

II. Findings of Fact and Conclusions of Law

Applicable law

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material facts and the movant is entitled to judgment as a matter of law." Civil Rule 56 (made applicable to these proceedings by Bankruptcy Rule 7056). The moving party has the burden of establishing the absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). "[S]ummary judgment will not lie if the dispute about a material fact is 'genuine,' that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "A fact is 'material' only if it might affect the outcome of the case[.]" *Fresno Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). If the moving party shows the absence of a genuine issue of material fact, the nonmoving party must "go beyond the pleadings and by her own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at

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324 (quoting Fed. R. Civ. P. 56(e)). The court is "required to view all facts and draw all reasonable inferences in favor of the nonmoving party" when reviewing the Motion. *Brosseau v. Haugen*, 543 U.S. 194, 195 n.2 (2004).

To determine the preclusive effect of an existing state court judgment, the "bankruptcy court must apply the forum state's law of issue preclusion." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 452, 462 (9th Cir. BAP 2015). California preclusion law requires that:

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

Lucido v. Super. Ct., 795 P.2d 1223, 1225 (Cal. 1990).

Even if all five elements are satisfied, preclusion is appropriate "only if application of preclusion furthers the public policies underlying the doctrine." *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001) (citing *Lucido v. Super. Ct.*, 795 P.2d at 1225). In California, the public policies supporting preclusion are "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation." *Lucido*, 795 P.2d at 1227.

This Court must first determine whether the Order Granting MSJ and Judgment establish that Defendant committed fraud or defalcation while acting in a fiduciary capacity within the meaning of § 523(a)(4).

Section 523(a)(4) excepts from discharge a debt "for fraud or defalcation while acting in a fiduciary capacity." 11 U.S.C. § 523(a)(4). To prevail on a nondischargeability claim under § 523(a)(4) the plaintiff must prove: "1) an express trust existed, 2) the debt was caused by fraud or defalcation, and 3) the debtor acted as a fiduciary to the creditor at the time the debt was created." *Mele v. Mele (In re Mele)*, 501 B.R. 357, 363 (B.A.P. 9th Cir. 2013) (quoting *Otto v. Niles*, 106 F.3d 1456, 1459

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(9th Cir. 1997)). Plaintiff must show "not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation." *Honkanen v. Hopper (In re Honkanen)*, 446 B.R. 373, 378 (B.A.P. 9th Cir. 2011) (citations omitted).

"The definition of 'fiduciary capacity' under § 523(a)(4) is a question of federal law." *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1124 (9th Cir. 2003). "The broad definition of fiduciary under nonbankruptcy law – a relationship involving trust, confidence, and good faith – is inapplicable in the dischargeability context. *Id.* at 1125. "The Ninth Circuit has adopted a narrow definition of 'fiduciary' as a relationship 'arising from an express trust or technical trust that was imposed before, and without reference to, the wrongdoing that caused the debt as opposed to a trust *ex maleficio*, constructively imposed because of the act of wrongdoing from which the debt arose.'" *In re Honkanen*, 446 B.R. at 378-79 (citations omitted).

"While the scope of the 'fiduciary capacity' is a question of federal law, the Ninth Circuit considers state law to ascertain whether the requisite trust relationship exists." *Id.* at 379 (citations omitted). "For a trust relationship under § 523(a)(4) to be established, the applicable state law must clearly define fiduciary duties and identify trust property." *Id.* (citation omitted). "The mere fact that state law puts two parties in a fiduciary-like relationship does not necessarily mean it is a fiduciary relationship within 11 U.S.C. § 523(a)(4)." *Id.* (citation omitted).

The Briefs Do Not Address a Necessary Element of Plaintiffs' § 523(a)(4) Claim

Based on the Court's review of the briefing submitted in support of and, in opposition to, the Motion for Summary Judgment, it appears neither party briefed the issue of whether an express or statutory trust existed as required by § 523(a)(4). Absent any analysis of that element, the Court cannot determine whether Plaintiffs have established that Defendant was acting in a fiduciary capacity within the narrow confines of § 523(a)(4).

The Court notes that the LASC found that "Defendant was co-CEO and co-President of the Board of Directors of Friendgift ... and admit[ted] that he owed a fiduciary duty to Friendgift during the relevant times." Plaintiffs' RFJN, Ex. 1. But

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the Ninth Circuit made clear in *In re Cantrell* that "under California law a corporate officer is not a fiduciary within the meaning of § 523(a)(4)." 329 F.3d at 1128. The *Cantrell* court explained, "although officers and directors [under California law] are imbued with the fiduciary duties of an agent and certain duties of a trustee, they are not trustees with respect to corporate assets." *Id.* at 1126; *see also Saccheri v. St. Lawrence Valley Dairy (In re Saccheri)*, 2012 WL 5359512, at *11 (B.A.P. 9th Cir. Nov. 1, 2012), *aff'd*, 559 F. App'x 687 (9th Cir. 2015) (Rejecting argument that defendant was a trustee for purposes of § 523(a)(4) based on the fact that defendant was "entrusted with the bank accounts" and "had virtually 'unlimited sway over them'").

Therefore, the fact that Defendant was an officer and director of Friendgift and admitted to owing certain fiduciary duties, without more, is insufficient to show that he stood in a "fiduciary capacity" for purposes of § 523(a)(4).

Since neither side has briefed these issues, the Court finds it appropriate to continue the matter for further briefing as set forth below.

III. Conclusion

For the reasons stated above, the matter is **CONTINUED to November 6, 2018 at 10:00 a.m.** for further briefing on the issues of: (1) whether an express or statutory trust existed; and (2) whether Defendant was acting in a fiduciary capacity within the narrow meaning of § 523(a)(4).

The deadline for Plaintiffs to file a supplemental brief is **October 16, 2018**.

The deadline for Defendant to file a reply brief is **October 23, 2018**.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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hearing.

Note 1:

Despite Defendant's use of the caption "Separate Statement of *Uncontroverted* Facts and Conclusions of Law ...," it is clear Defendant intended the pleading to be a statement of *controverted* facts and conclusions of law. For example, Defendant interlineated Plaintiffs' asserted uncontroverted facts by typing either "Admit" or "Deny" next to each fact. Defendant also identified nine separate issues of fact for which he contends remain to be litigated, and which incorporate Defendant's affirmative defenses.

Note 2:

Exhibits 1 and 2 to Defendant's RFJN are the Order Granting MSJ and Judgment. Defendant does not request that this Court take judicial notice of these documents. Instead, Defendant hand-wrote various objections he has with the LASC's findings in the Order Granting MSJ. However, Defendant concedes that he has not appealed those findings and conclusions. *See* Carpenter Decl., paragraph 7. Since Defendant did not file an appeal within the time prescribed by Rule 8.104 of the California Rules of Court, the Judgment is now final. Furthermore, Defendant has not presented any persuasive arguments to show why the LASC's findings and conclusions should not be entitled to preclusive effect. Therefore, Defendant is estopped from challenging the LASC's findings and conclusions.

Exhibit 3 to Defendant's RFJN is the unilateral Pretrial Stipulation he filed in this action [Adv. Doc. No. 26]. It appears Defendant requests the Court take judicial notice of this document to show that Plaintiffs have failed to respond to his asserted affirmative defenses. For the same reason as stated above, the Court finds Defendant estopped from asserting affirmative defenses regarding his liability in the State Court Action in this action.

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

CONT... ROBERT MARK CARPENTER

Chapter 7

Plaintiff(s):

Fred Rosenberg

Represented By
Leonard Pena

FRIENDGIFTR, INC

Represented By
Leonard Pena

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:18-11145 Felix E Zurita

Chapter 7

#13.00 APPLICANT: Trustee - Howard M. Ehrenberg

Heang re [21] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$452.25

Total Expenses: \$11.97

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix E Zurita

Represented By
Gary R Wallace

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:18-17390 Teri Breier

Chapter 7

#14.00 HearingRE: [16] Motion for Turnover of Property (amended); Notice of Motion with proof of service (Sawdayi, Devin)

Docket 16

Tentative Ruling:

10/1/2018

For the reasons set forth below, the Motion is DENIED with prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion for Turnover of Estate Property Pursuant to 11 U.S.C. §§ 542 and 522(h) [Doc. No. 16] ("Amended Turnover Motion")
2. As of the preparation of this tentative ruling, no opposition to the Amended Turnover Motion is on file

I. Facts and Summary of Pleadings

On April 25, 2018, Citibank, N.A. ("Citibank") obtained a judgment against Teri Breier (the "Debtor") in the amount of \$21,170.73 (the "Judgment"). To enforce the Judgment, Citibank obtained a *Writ of Execution*. On June 21, 2018, the Santa Barbara County Sheriff's Office (the "Sheriff"), acting as the levying officer, levied upon the Debtor's deposit account at Chase Bank, N.A. ("Chase"). See Motion at Ex. A (Notice of Levy Under Writ of Execution). At the time of the levy, the Debtor's deposit account contained approximately \$19,000 (the "Funds"). Decl. of Debtor at ¶ 3.

Debtor commenced a voluntary Chapter 7 petition on June 27, 2018 (the "Petition Date"). Debtor claimed an exemption in all \$19,000 of the Funds in the Chase deposit account. No party in interest timely objected to Debtor's claimed exemptions, so Debtor's entitlement to those exemptions is now final.

On June 28, 2018, Debtor filed a *Motion for Turnover of Property* [Doc. No. 5] (the "Turnover Motion"). Pursuant to the Turnover Motion, the Debtor moved for an

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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CONT... Teri Breier

Chapter 7

order requiring Chase to turn over the Funds, pursuant to §542, on the ground that the Funds are property of the estate, and that the Debtor is entitled to the Funds as a result of her claim of exemption. The premise of the Turnover Motion was that Chase has not transferred the Funds to the Sheriff pursuant to the levy, and that the Funds remain under Chase's control. *See* Doc. No. 5. However, no specific evidence in support of that premise was submitted.

On July 26, 2018, the Court conducted a hearing on the Turnover Motion. Prior to the hearing, the Court issued a tentative ruling (the "Tentative Ruling"). *See* Doc. No. 13, Exhibit A. The Tentative Ruling stated the Court's intent to deny the Motion, without prejudice, based on various defects.

Devin Sawdayi ("Counsel") appeared at the hearing on behalf of the Debtor. Counsel requested that in lieu of a denial of the Motion, the Court set a continued hearing to provide Counsel an opportunity to file an amended motion correcting the defects identified by the Court. There were no other appearances at the hearing. Accordingly, the Court issued its *Order Setting Continued Hearing on Debtor's Motion to Obtain Possession of Funds* [Doc. No. 13] continuing the hearing to September 4, 2018 and directing Debtor to file an amended motion by August 14, 2018.

On August 31, 2018, the Court issued an *Order Deeming Turnover Motion to Be Withdrawn and Vacating Hearing on Turnover Motion* [Doc. No. 18], based on Debtor's failure to file an amended motion by the August 14, 2018 deadline.

On August 30, 2018, Debtor filed the instant amended *Motion for Turnover of Estate Property Pursuant to 11 U.S.C. §§ 542 and 522(h)* [Doc. No. 16] (the "Amended Turnover Motion"). Debtor contends that because a Chapter 7 Trustee is empowered to seek turnover of exempt funds under § 542, § 522(h) empowers the Debtor to stand in the Trustee's shoes and pursue turnover of the Funds.

As of the preparation of this tentative ruling, no opposition to the Amended Turnover Motion is on file.

II. Findings of Fact and Conclusions of Law

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

CONT... Teri Breier

Chapter 7

The Amended Turnover Motion still has several defects that require the Court to deny the motion.

First, § 522(h) does not permit the Debtor is to seek relief under § 542. Section 522(h) provides:

The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if –

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

11 U.S.C. § 522(h).

Section 522(h) identifies several code sections under which a debtor may seek relief, and § 542 is not listed. Debtor has not presented, nor has this Court been able to locate, any authority to find that Congress intended § 522(h) to extend to § 542. Accordingly, the Debtor has not demonstrated that she has standing to seek turnover of the Funds under § 542.

Second, the Debtor has not identified any section that is identified in § 522(h) under which the Debtor could avoid Chase's purported lien.

Third, in exercising the trustee's avoidance powers, the Debtor must file an adversary proceeding. Fed. R. Bankr. P. 7001(2) (requiring an adversary proceeding for "a proceeding to determine the validity, priority, or extent of a lien or other interest in property . . ."); *see also In re Wilkinson*, 196 B.R. 311, 315 (Bankr. E.D. Va. 1996) ("a debtor's action under § 522(h) . . . must be brought as an adversary proceeding"); *In re Shorts*, 63 B.R. 2, 3-4 (Bankr. D.D.C. 1985) (same). Accordingly, the Court finds the Amended Turnover Motion is procedurally improper.

Finally, this Court's prior Tentative Ruling on the original Turnover Motion stated: "if the Debtor brings a renewed motion, such motion must be served upon . . . (2) Hunt & Henriques" Doc. No. 13, Exhibit A. Debtor's proof of service does not

**United States Bankruptcy Court
Central District of California
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Tuesday, October 2, 2018

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CONT... Teri Breier

Chapter 7

reflect service on Hunt & Henriques. Therefore, the Court finds that service remains inadequate based on this Court's prior directive.

III. Conclusion

Based upon the foregoing, the Amended Turnover Motion is DENIED. Additionally, given the numerous deficiencies discussed above and the fact that the Debtor has now had two opportunities to seek turnover of the Funds, such denial is **with prejudice**.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Teri Breier

Represented By
Devin Sawdayi

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#15.00 HearingRE: [489] Motion to Disallow Claims MOTION FOR ORDER DISALLOWING THE CLAIM OF SEQUOIA HOSPITALITY F&B CORPORATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF HOWARD GROBSTEIN

Docket 489

Tentative Ruling:

10/1/2018

Tentative Ruling:

For the reasons set forth below, any claim asserted against Crystal's estate by Sequoia is DISALLOWED. Crystal shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Pleadings Filed and Reviewed:

- 1) Motion for Order Disallowing the Claim of Sequoia Hospitality F&B Corporation [Doc. No. 489] (the "Claim Objection")
 - a) Original Signature Page [Doc. No. 492]
- 2) No Opposition is on file

I. Facts and Summary of Pleadings

Crystal Waterfalls, LLC ("Crystal") filed a voluntary Chapter 11 petition on November 19, 2015. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Doc. No. 478] (the "Approval Order"). The Approval Order provides that "[n]either the Debtor nor the Disbursing Agent shall make any payments to or for the benefit of Lucy Gao, Benny Kirk, Shelby Ho or persons or entities affiliated with them or any insiders of the Debtor or equity holders ... either before or after the entry of this Order." Approval Order at ¶F.1.

Crystal's original Schedule F states that Sequoia Hospitality F&B Corporation ("Sequoia") holds an "unliquidated" claim for "business debt" in the amount of \$850,000. Doc. No. 41. Crystal's Amended Schedule F states that Sequoia holds an "unliquidated" claim for "business debt" in the amount of \$18,500. Doc. No. 85.

On October 21, 2016, Sequoia received notice that the Court had set November 7,

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CONT... Crystal Waterfalls LLC

Chapter 11

2016, as the claims bar date. Doc. No. 235. Sequoia has not filed a Proof of Claim.

Pursuant to a *Statement of Information* filed with the California Secretary of State on April 13, 2015, Lucy Gao is the chief executive officer, secretary, and chief financial officer of Sequoia.

Crystal moves for an order disallowing any claim against the estate asserted by Sequoia. Crystal argues that any such claim should be disallowed because (1) Sequoia failed to file a Proof of Claim, which it was required to do because its claim was scheduled as unliquidated, and (2) Sequoia is not entitled to receive any distribution from the estate pursuant to the Approval Order, because it is an entity affiliated with Lucy Gao.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, any claim asserted by Sequoia against Crystal's estate is unenforceable and

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CONT... Crystal Waterfalls LLC

Chapter 11

therefore must be disallowed. First, Sequoia failed to file a Proof of Claim. Pursuant to Bankruptcy Rule 3003(b)(1), Sequoia was required to file a Proof of Claim in order to receive a distribution from Crystal's estate, because Crystal's schedules listed Sequoia's claim as "unliquidated." Second, the Approval Order provides that entities affiliated with Lucy Gao shall not be entitled to receive any distribution from the estate. According to the *Statement of Information* filed with the California Secretary of State on April 13, 2015, Lucy Gao is the chief executive officer, secretary, and chief financial officer of Sequoia. Because Sequoia is an entity affiliated with Lucy Gao, it is not entitled to receive any distribution from the estate pursuant to the Approval Order.

Based upon the foregoing, any claim asserted against Crystal's estate by Sequoia is **DISALLOWED**. Crystal shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz at 213-894-0295. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By
Ian Landsberg
Amelia Puertas-Samara

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

#16.00 HearingRE: [488] Motion to Disallow Claims MOTION FOR ORDER DISALLOWING THE CLAIM OF ACE MANAGEMENT SERVICES CORPORATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LUCY GAO

Docket 488

Tentative Ruling:

10/1/2018

Tentative Ruling:

For the reasons set forth below, any claim asserted against Crystal's estate by Ace is DISALLOWED. Crystal shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Pleadings Filed and Reviewed:

- 1) Motion for Order Disallowing the Claim of Ace Management Services Corporation [Doc. No. 488] (the "Claim Objection")
- 2) No Opposition is on file

I. Facts and Summary of Pleadings

Crystal Waterfalls, LLC ("Crystal") filed a voluntary Chapter 11 petition on November 19, 2015. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Doc. No. 478] (the "Approval Order"). The Approval Order provides that "[n]either the Debtor nor the Disbursing Agent shall make any payments to or for the benefit of Lucy Gao, Benny Kirk, Shelby Ho or persons or entities affiliated with them or any insiders of the Debtor or equity holders ... either before or after the entry of this Order." Approval Order at ¶F.1.

Crystal's original Schedule F states that Ace Management Services Corporation ("Ace") holds an "unliquidated" claim for "business debt" in the amount of \$1,445,240.79. Doc. No. 41. Crystal's Amended Schedule F states that Ace holds an "unliquidated" claim for "business debt" in the amount of \$1,145,240.79. Doc. No. 41.

On October 21, 2016, Ace received notice that the Court had set November 7, 2016, as the claims bar date. Doc. No. 235. Ace has not filed a Proof of Claim.

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Hearing Room 1568

10:00 AM

CONT... Crystal Waterfalls LLC

Chapter 11

According to a declaration submitted in support of the Claim Objection by Lucy Gao, Benjamin Kirk and Ms. Gao were principals of Ace, and created Ace "to manage our properties prior to transitioning to a third party management company." Gao Decl. at ¶2. The Gao declaration also states that neither she nor Kirk, among others would receive payments under the Plan. Gao Decl. at ¶3 (Which contains a typographical error at line 10. "Either" should read "Neither.")

Crystal moves for an order disallowing any claim against the estate asserted by Ace. Crystal argues that any such claim should be disallowed because (1) Ace failed to file a Proof of Claim, which it was required to do because its claim was scheduled as unliquidated, and (2) Ace is not entitled to receive any distribution from the estate pursuant to the Approval Order, because it is an entity affiliated with Lucy Gao and Benjamin Kirk.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a

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CONT... Crystal Waterfalls LLC

Chapter 11

reason other than because such claim is contingent or unmatured."

Here, any claim asserted by Ace against Crystal's estate is unenforceable and therefore must be disallowed. First, Ace failed to file a Proof of Claim. Pursuant to Bankruptcy Rule 3003(b)(1), Ace was required to file a Proof of Claim in order to receive a distribution from Crystal's estate, because Crystal's schedules listed Ace's claim as "unliquidated." Second, the Approval Order provides that entities affiliated with Lucy Gao and Benjamin Kirk shall not be entitled to receive any distribution from the estate. According to Ms. Gao's declaration, Mr. Kirk and Ms. Gao were principals of Ace, and created Ace "to manage our properties prior to transitioning to a third party management company." Gao Decl. at ¶2. Because Ace is an entity affiliated with Ms. Gao and Mr. Kirk, it is not entitled to receive any distribution from the estate pursuant to the Approval Order.

Based upon the foregoing, any claim asserted against Crystal's estate by Ace is **DISALLOWED**. Crystal shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz at 213-894-0295. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC

Represented By

Ian Landsberg

Amelia Puertas-Samara

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01337 LIBERTY ASSET MANAGEMENT CORPORATION et al v. Gao et al

#17.00 Hearing re [169] Appearance and Examination of Judgment Debtor Lucy Gao

Docket 0

***** VACATED *** REASON: PER ORDER ENTERED 10-1-18**

Tentative Ruling:

10/1/2018

As of the date of this Tentative Ruling, Judgment Creditor has not filed a Proof of Service indicating that the Judgment Debtor has been served, as required by the *Special Instructions for Judgment Creditors* incorporated into the *Order to Appear for Examination*.

Tentative Ruling:

Appearances required.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Lucy Gao

Represented By
Stephen R Wade

Benjamin Kirk

Represented By
Derrick Talerico

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Plaintiff(s):

LIBERTY ASSET MANAGEMENT

Represented By
Jeremy V Richards
Gail S Greenwood

Official Committee of Unsecured

Represented By
Gail S Greenwood
Jeremy V Richards

Bradley D. Sharp

Represented By
Jeremy V Richards
Mitchell B Ludwig

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01337 LIBERTY ASSET MANAGEMENT CORPORATION et al v. Gao et al

#18.00 Hearing
RE: [170] Application for Appearance and Examination of Judgment Debtor
Benjamin Kirk

Docket 170

*** VACATED *** REASON: PER ORDER ENTERED 10-1-18

Tentative Ruling:

10/1/2018

As of the date of this Tentative Ruling, Judgment Creditor has not filed a Proof of Service indicating that the Judgment Debtor has been served, as required by the *Special Instructions for Judgment Creditors* incorporated into the *Order to Appear for Examination*.

Tentative Ruling:

Appearances required.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Lucy Gao

Represented By
Stephen R Wade

Benjamin Kirk

Represented By
Derrick Talerico

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

Plaintiff(s):

LIBERTY ASSET MANAGEMENT

Represented By
Jeremy V Richards
Gail S Greenwood

Official Committee of Unsecured

Represented By
Gail S Greenwood
Jeremy V Richards

Bradley D. Sharp

Represented By
Jeremy V Richards
Mitchell B Ludwig

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

Adv#: 2:12-02424 Rund, Chapter 7 Trustee v. Kirkland, individually et al

#19.00 ORDER TO SHOW CAUSE re why the Court should not stay adjudication of the claims against the BC Trust until the District Court has entered final judgment on the claims against Mr. Kirkland. RE: [234] Amended Complaint Fourth Amended Complaint Against: (1) John C. Kirkland; and (2) Poshow Ann Kirkland as Trustee of The Bright Conscience Trust Dated September 9, 2009 for: 1. Disallowance of Proofs of Claim, or in the alternative, Equitable Subordination of Proofs of Claim; 2. Avoidance of Fraudulent Transfers (Actual Intent); 3. Avoidance of Fraudulent Transfers (Actual Intent); 4. Avoidance of Fraudulent Transfers (Constructive Fraud); 5. Avoidance of Fraudulent Transfers (Constructive Fraud); 6. Recovery of Avoided Transfers by Corey R Weber on behalf of Jason M Rund, Chapter 7 Trustee against Poshow Ann Kirkland, as Trustee of the Bright Conscience Trust Dated September 9, 2009, John C Kirkland, individually. (Weber, Corey)

FR. 7-11-17; 9-12-17; fr. 11-7-17; 11-21-17; 1-17-18; 2-21-18; 5-15-18; 8-14-18; 9-11-18

Docket 234

Tentative Ruling:

10/1/2018

This hearing is taken off calendar. The Trustee has filed a motion seeking authorization to abandon and dismiss his claims against John Kirkland (the "Abandonment Motion"). The October 17, 2018 hearing on the Abandonment Motion renders this hearing MOOT.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Defendant(s):

John C Kirkland, individually

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

Autumn D Spaeth ESQ
Lewis R Landau

Poshow Ann Kirkland, individually

Represented By
Lewis R Landau

Poshow Ann Kirkland, as Trustee of

Represented By
Lewis R Landau

Plaintiff(s):

Jason M Rund, Chapter 7 Trustee

Represented By
Larry W Gabriel
Michael W Davis
Corey R Weber

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 2, 2018

Hearing Room 1568

11:00 AM

2:15-21624 Harry Roussos

Chapter 7

#100.00 HearingRE: [951] Motion RE: Objection to Claim Number 5,11,13 by Claimant First Interstate Bank and Coast Federal Bank. Notice of Objection to Claims of First Interstate Bank and Coast Federal Bank; Notice of Motion and Chapter 7 Trustee's Motion Objecting to Claims of First Interstate Bank (Claims No. 5 and 13) and Coast Federal Bank (Claim No. 11); Memorandum of Points and Authorities; Declaration of Howard M. Ehrenberg in Support Thereof (Lev, Daniel)

Docket 951

Tentative Ruling:

10/1/2018

For the reasons set forth below, the Chapter 7 Trustee's Claim Objection is GRANTED in its entirety, and the Proofs of Claim at issue are DISALLOWED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Chapter 7 Trustee's Motion Objecting to Claims of First Interstate Bank (Claims No. 5 and 13) and Coast Federal Bank (Claim No. 11) [Doc. No. 951] (the "Claim Objection")
 - a) Notice of Errata Re Chapter 7 Trustee's Motion Objecting to Claims of First Interstate Bank (Claims No. 5 and 13) and Coast Federal Bank (Claim No. 11) [Doc. No. 953]
- 2) No Opposition is on file

I. Facts and Summary of Pleadings

The Chapter 7 Trustee (the "Trustee") objects to two Proofs of Claim asserted by First Interstate Bank ("First Interstate"), [Note 1] and one Proof of Claim asserted by J.P. Morgan Chase Bank, N.A., as successor in interest to Coast Federal Bank ("Chase"). No opposition to the Claim Objection is on file.

On March 22, 2018, the Court entered an order substantively consolidating the estates of Harry Roussos and Theodosios Roussos. Doc. No. 947. The claims at issue were filed before these cases were reopened in 2015.

A. Proofs of Claim Asserted by First Interstate

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CONT... **Harry Roussos**

Chapter 7

On July 19, 1999, R. Todd Neilson, who served as the Trustee before the cases were reopened (the "Predecessor Trustee"), filed motions to disallow two Proofs of Claim asserted by First Interstate in Theodosios' case. The Predecessor Trustee subsequently obtained orders disallowing both First Interstate claims in Theodosios' case. However, apparently as a result of inadvertence, the Predecessor Trustee did not obtain orders disallowing the identical claims in Harry's case.

The Trustee moves to disallow the two Proofs of Claim asserted by First Interstate against Harry's estate, on the grounds that the claims are duplicates of the claims disallowed in Theodosios' case.

B. Proof of Claim Asserted by Chase

During the administration of these cases, the Trustee used a portion of the net sales proceeds derived from the sale of the San Vicente Property to pay off the secured claim of J.P. Morgan Chase Bank, N.A., as successor in interest to Coast Federal Bank ("Chase").

The Trustee moves to disallow the claim asserted by Chase on the ground that it has been paid in full.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown

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enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, the Proofs of Claim asserted by First Interstate against Harry's estate are identical to Proofs of Claim that it asserted against Theodosios' estate and that were disallowed. The Trustee's objection to the duplicate Proofs of Claim that First Interstate asserts against Harry's estate is SUSTAINED.

The Court finds that the claim asserted by Chase is not allowable because the Trustee has already paid in full the indebtedness at issue.

Based upon the foregoing, the Claim Objection is GRANTED in its entirety, and the Proofs of Claim at issue are DISALLOWED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Wells Fargo Bank, N.A. ("Wells Fargo") is the successor-in-interest to First Interstate with respect to one of the Proofs of Claim, Claim No. 13.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

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Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:17-20920 Patricio Diaz Guevarra

Chapter 7

#101.00 APPLICANT: Trustee- Wesley H. Avery

Hearing re [78] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$6,175

Total Expenses: \$267.26

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

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2:17-20920 Patricio Diaz Guevarra

Chapter 7

#102.00 APPLICANT: Attorney for Trustee (Other Firm) - LAW OFFICES OF BRETT B CURLEE

Hearing re [78] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,665

Expenses: \$2,008.57

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

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2:17-20920 Patricio Diaz Guevarra

Chapter 7

#103.00 APPLICANT: Accountant for Trustee (Other Firm) - Menchaca & Company LLP

Hearing re [78] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

10/1/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$16,356.50

Expenses: \$20.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Patricio Diaz Guevarra

Represented By
Steven B Lever

Trustee(s):

Wesley H Avery (TR)

Represented By
Brett B Curlee

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2:18-10294 Dianne Gwen King

Chapter 7

#104.00 APPLICANT: Trustee - David M. Goodrich

Hearing re [27] and [28] re Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals

Docket 0

Tentative Ruling:

10/1/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$714.09

Total Expenses: \$27.25

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Dianne Gwen King

Represented By
Jeffrey N Wishman

Trustee(s):

David M Goodrich (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#1.00 Hearing
RE: [74] Motion For Summary Judgment (Partial) Against California International Bank

fr. 7-3-18

Docket 74

Tentative Ruling:

10/2/2018

Tentative Ruling:

This hearing is VACATED and no appearances are required. On September 17, 2018, the Plan Administrator under the Confirmed First Amended Chapter 11 Plan of Liquidation for Liberty Asset Management Corporation (the "Plan Administrator") filed a *Notice of Compromise of Claims in Adversary Proceeding* [Doc. No. 774, Case No. 2:16-bk-13575-ER] (the "Notice of Compromise"). Pursuant to the terms of the Plan of Liquidation, parties have fourteen days to object to the Notice of Compromise. Under the Plan, the Plan Administrator may compromise this litigation without further order of the Court if no objections to the Notice of Compromise are timely filed.

In the event the Plan Administrator is unable to proceed with the proposed compromise of this litigation as a result of an objection, the Court will reschedule the hearing on this Motion for Summary Judgment. Otherwise, this litigation will be resolved pursuant to the compromise negotiated by the Plan Administrator. All future litigation deadlines in this action are VACATED.

The Court will prepare and enter an appropriate order.

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CONT... Liberty Asset Management Corporation

Chapter 11

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Represented By
Kimberly A Posin

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

Sunshine Valley, LLC

Pro Se

California International Bank, N.A.

Pro Se

All Persons Unknown Claiming

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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Hearing Room 1568

10:00 AM

2:16-17463 **Gardens Regional Hospital and Medical Center, Inc.**

Chapter 11

#2.00

Hearing

RE: [1281] Application for Compensation Dentons US LLP's First Interim Application For Allowance And Payment Of Compensation And Reimbursement Of Expenses; Declaration Of Samuel R. Maizel In Support Thereof for Gardens Regional Hospital and Medical Center, Inc., Debtor's Attorney, Period: 6/6/2016 to 5/31/2018, Fee: \$3,179,815.60, Expenses: \$109,170.60. (Maizel, Samuel)

FR. 9-12-18

Docket 1281

Tentative Ruling:

10/2/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below which may be paid, with credit for amounts previously paid in accordance with the prior order of this court. All such payments are now deemed final.

Fees: \$3,179,815.60

Expenses: \$109,170.60

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By

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Gardens Regional Hospital and Medical Center, Inc.
Samuel R Maizel
John A Moe

Chapter 11

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing

RE: [31] Emergency motion Emergency Motion Of Debtors For Interim And Final Orders (A) Authorizing The Debtors To Obtain Post Petition Financing (B) Authorizing The Debtors To Use Cash Collateral And (C) Granting Adequate Protection To Prepetition Secured Creditors Pursuant To 11 U.S.C. §§ 105, 363, 364, 1107 And 1108

fr. 9-5-18

Docket 31

Tentative Ruling:

10/2/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Papers Filed and Orders Entered in Connection with Interim Hearing on Financing Motion:
 - a) Emergency Motion of Debtors for Interim and Final Orders (A) Authorizing the Debtors to Obtain Post-Petition Financing, (B) Authorizing the Debtors to Use Cash Collateral, and (C) Granting Adequate Protection to Prepetition Secured Creditors Pursuant to 11 U.S.C. §§105, 363, 364, 1107, and 1108 [Doc. No. 31] (the "Financing Motion")
 - i) Declaration of Richard G. Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - ii) Declaration of Anita Chou, Chief Financial Officer, in Support of [Financing Motion] [Doc. No. 32]
 - iii) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - iv) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - v) Declaration of Patrick Coffey, Managing Director, in Support of Debtors' [Financing Motion] [Doc. No. 80]
 - b) Attorney General's Initial Limited Objection to Debtor's Emergency First Day

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Verity Health System of California, Inc.

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- Motions [Doc. No. 60]
- c) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and as Series 2017 Note Trustee, to [Financing Motion] [Doc. No. 67]
 - d) Ruling Granting Financing Motion on an Interim Basis [Doc. No. 124]
 - e) Interim Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief [Doc. No. 86] (the "Interim Financing Order")
- 2) Notice of Final Hearing on [Financing Motion] [Doc. No. 201]
- 3) Papers Filed in Opposition to Granting Financing Motion on a Final Basis:
- a) SEIU-UHW's Objection to [Prepetition Wages Motion and Financing Motion] [Doc. No. 213]
 - i) Declaration of Caitlin Gray in Support of SEIU-UHW's Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 214]
 - ii) Declaration of David Miller in Support of SEIU-UHW's Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 215]
 - b) Objection of Retirement Plan for Hospital Employees to [Financing Motion] [Doc. No. 218]
 - c) Renewed Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee to [Financing Motion] [Doc. No. 219]
 - d) Attorney General's Limited Objection to [Financing Motion] [Doc. No. 220]
 - i) Proof of Service Re Attorney General's Limited Objection to Debtors' [Financing Motion] [Doc. No. 222]
 - e) Limited Objection of Swinerton Builders to [Financing Motion] [Doc. No. 269] (the "Swinerton Objection")
 - i) Declaration of Curtis Johnson in Support of Limited Objection of Swinerton Builders to [Financing Motion] [Doc. No. 270]
 - f) McKesson Corporation's Opposition to [Financing Motion] [Doc. No. 279]
 - i) Notice of Resolution of Disputes and Withdrawal of McKesson Corporation's Opposition to [Financing Motion] [Doc. No. 308]
 - g) Objection to [Financing Motion] [filed by UMB Bank, N.A.] [Doc. No. 292]
 - h) The United Nurses Association of California/Union of Health Care Professionals' Limited Objection to [Prepetition Wages and Financing

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- Motions] [Doc. No. 297]
- i) Official Committee of Unsecured Creditors' Limited Objection to [Financing Motion] [Doc. No. 316]
 - j) Combined Limited Response of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to Master Trustee and Series 2005 Trustee's Objection to [Financing Motion] [Doc. No. 367]
 - k) Reservation of Rights of Verity MOB Financing LLC and Verity MOB Financing II LLC with Respect to Proposed Final DIP Order
- 4) Reply Papers Filed in Support of Granting Financing Motion on a Final Basis:
- a) Omnibus Reply o Debtors to the Objections to the [Financing Motion] [Doc. No. 309]
 - b) Omnibus Supplemental Reply of Debtors to the Objections to the [Financing Motion] [Doc. No. 355]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On September 6, 2018, the Court authorized the Debtors to borrow \$30 million from Ally Financial, Inc. (the "DIP Lender") on an interim basis. *See* Doc. No. 86 (the "Interim Financing Order"). The Debtor now seeks authorization to borrow up to an additional \$155 million from the DIP Lender on a final basis.

A. General Background Information

Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five Debtor nonprofit public benefit corporations that operate acute care hospitals: O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastsides (collectively, the "Hospitals"). Adcock Decl. [Doc. No. 8] at ¶11. VHS, the Hospitals, and their affiliated entities (collectively, the "Verity Health System") operate a nonprofit health care system in the State of California, with approximately 1,680 inpatient beds, six active emergency rooms, a trauma center, and various medical specialties. *Id.* at ¶12. In 2017, the Hospitals provided medical services to over 50,000 inpatients and approximately 480,000

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outpatients. *Id.*

Debtor Verity Medical Foundation (“VMF”), incorporated in 2011, is a medical foundation that contracts with physicians and other healthcare professionals to provide patient care throughout California. *Id.* at ¶14. VMF offers medical, surgical, and related healthcare services at community-based, multi-specialty clinics located in areas served by the Debtor Hospitals. *Id.*

Verity Holdings LLC (“Holdings”), a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance Verity’s interests in six medical office buildings whose tenants are primarily physicians, medical groups, healthcare providers, and certain of the Hospitals. *Id.* at ¶15. Holdings’ real estate portfolio includes over 30 properties. *Id.*

Debtors Saint Louise Regional Hospital Foundation, St. Francis Medical Center Foundation, St. Vincent Medical Center Foundation, Seton Medical Center Foundation, and O’Connor Medical Center Foundation handle fundraising and grant-making programs for each of their respective Debtor Hospitals. *Id.* at ¶16.

As of August 30, 2018, the Debtors’ facilities had approximately 850 patients, and are currently at approximately 50% occupancy. *Id.* at ¶17. As of August 31, 2018, the Debtors have approximately 7,385 employees, of whom 4,733 are full-time employees. *Id.* at ¶18. Approximately 74% of these employees are represented by collective bargaining units. *Id.*

VHS operates Debtor Verity Business Services (“VBS”), a nonprofit public benefit corporation. *Id.* at ¶30. VBS provides support services to the Verity Health System, including accounting, finance, patient financial services, supply chain management, and purchasing services. *Id.*

O’Connor Hospital operates a 358 bed, general acute care hospital that serves residents from the greater San Jose area, and contains an emergency department with 23 emergency treatment stations. *Id.* at ¶32. St. Vincent Medical Center operates a 366 bed, regional acute care facility located in Los Angeles, CA. *Id.* at ¶34. St. Vincent Medical Center is the sole corporate member of the St. Vincent Dialysis Center, located on the Hospital’s campus. *Id.* at ¶36. St. Vincent Dialysis Center provides dialysis services for kidney disease patients. *Id.*

St. Francis Medical Center operates a 384 bed, general acute care hospital located in Lynwood, California. *Id.* at ¶37. Seton Medical Center operates a 357 bed hospital located in Daly City, California. *Id.* at ¶39. Seton Coastside is located in the City of Half Moon Bay, California, and contains 116 skilled nursing beds and five general, acute-care beds. *Id.* at ¶40. Saint Louise Hospital is located in Gilroy, California and

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operates a 93 bed, general acute care hospital. *Id.* at ¶42.

DePaul Ventures, LLC is a wholly-owned and operated holding company of the Debtors that was formed in August 2010 for the purpose of investing in a freestanding surgery center and other healthcare entities. *Id.* at ¶45. In April 2013, DePaul Ventures, LLC formed DePaul Ventures—San Jose Dialysis, LLC ("Dialysis"), a general and limited partner of Priday Dialysis, LLC ("Priday"). Priday—which is not a Debtor—is a healthcare center specializing in end-stage renal disease treatment. *Id.* at ¶46.

B. The Debtors' Capital Structure

VHS, VBS, and VHS' five acute care hospital subsidiaries (O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside) are jointly obligated parties on approximately \$461.4 million in outstanding secured debt consisting of (a) \$259.4 million in outstanding principal amount of tax exempt revenue bonds, Series 2005 A, G and H issued by the California Statewide Communities Development Authority (the "2005 Bonds") and (b) \$202 million in outstanding principal amount of tax exempt revenue notes, Series 2015 A, B, C, and D and Series 2017 issued by the California Public Financing Authority (the "Working Capital Notes").

For the 2005 Bonds, Wells Fargo Bank, N.A. ("Wells Fargo") is the Bond Trustee and UMB Bank, N.A. ("UMB") is the successor Master Trustee. The 2005 Bonds were issued to provide funds for capital improvements and to refinancing certain tax exempt bonds that had been issued in 2001. For the Working Capital Notes, U.S. Bank, N.A. ("U.S. Bank") is the Note Trustee and Collateral Agent. (The Working Capital Notes, together with the 2005 Bonds, are collectively referred to as the "MTI Obligations" ("MTI" is an abbreviation for "Master Trustee Indenture").)

Holdings, a direct subsidiary of its sole member VHS, was created in 2016 to hold and finance VHS' interests in six medical office buildings whose tenants are primarily physicians and medical groups affiliated with certain of the Hospitals operated by the Debtors. Holdings' real estate portfolio consists of over 30 properties, including, but not limited to, apartment buildings, parking lots, and condominiums. Holdings is the borrower on approximately \$66 million on two series of non-recourse financing secured by separate deeds of trust and revenue and accounts pledges, including lease rents on medical buildings (the "MOB Financing"). The secured lenders for the MOB Financing are affiliates of NantWorks, LLC, which is an affiliate of the Debtors' prepetition manager, Integrity Healthcare, LLC ("Integrity"). (Integrity has not sought

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bankruptcy protection.)

Debtor Seton Medical Center is liable for repayment of \$20 million of limited obligation tax exempt bonds issued in September 2017 by the California Statewide Communities Development Authority (the "Clean Fund Bonds"). The Clean Fund Bonds were issued to assist with clean energy-related capital improvements to Seton Medical Center. No other Debtor is liable for repayment of the Clean Fund Bonds. Wilmington Trust National Association ("WTNA") is the Trustee holding the construction funds raised in connection with the Clean Fund Bonds.

Debtor Seton Medical Center is also liable for repayment of \$20 million in California 30-year tax exempt bonds, issued in September 2017 for the purpose of seismic improvements at Seton Medical Center (the "NR2 Petros Bonds"). No other Debtor is liable for repayment of the NR2 Petros Bonds. WTNA is the Trustee holding the construction funds raised in connection with the NR2 Petros Bonds.

NantCapital, LLC has provided \$40 million in unsecured debt financing for VHS, as reflected in two \$20 million unsecured notes dated March 7, 2018 and March 29, 2018 (the "Unsecured Notes").

All of the Debtors' income is subject to prepetition perfected pledges. The gross revenue of the Hospitals is pledged in favor of the 2005 Bonds. The prepetition accounts receivable and government receivables of the Hospitals are pledged in favor of the Working Capital Notes. As of August 31, 2018 (the "Petition Date"), the Debtors had less than \$40 million of cash on hand that is not subject to control accounts in favor of either the 2005 Bonds, the Working Capital Notes, or the MOB Financing (excluding cash held by WTNA on account of the Clean Fund Bonds and/or the NR2 Petros Bonds).

C. Summary of Papers Filed in Connection with the Final Hearing on the Financing Motion

The Debtors seek entry of a final order authorizing them to borrow an additional \$155 million from the DIP Lender (such order, the "Final Financing Order"). Numerous parties object to the terms of the financing package. Those objections, as well as the Debtors' responses thereto, are summarized briefly below.

The Official Committee of Unsecured Creditors (the "Committee") contends that the terms of the financing package are unduly favorable to secured creditors and that unsecured creditors have been unfairly prejudiced. The Debtors maintain that the terms of the financing package are the best that could be negotiated under the circumstances and that the provisions to which the Committee objects were necessary

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to induce the DIP Lender to provide the financing.

The Attorney General asserts that the Debtor has failed to show that it has properly segregated charitable trust funds in its possession. The Debtors contend that they are in compliance with applicable law regarding the charitable trust assets, and that the Attorney General has failed to point to specific facts showing otherwise.

Various unions representing the Debtors' employees object to the proposed budget (the "Budget") on the grounds that the Budget does not provide for the full payments required under various collective bargaining agreements ("CBAs"). The Debtors assert that under applicable provisions of the Bankruptcy Code, they are not required at this time to make certain of the payments required under the CBAs.

Swinerton Builders ("Swinerton") asserts that it holds an inchoate mechanic's lien against the Seton Medical Center, and objects to the priming of its asserted lien. The Debtors do not concede the validity of the asserted lien, and argue that even if Swinerton does hold a mechanic's lien, it may be primed pursuant to §364(d).

Creditors holding subordinated debt (the "2005 Bond Parties") object to the priming of their liens. The Debtors contend that the holder of the senior secured debt is authorized to consent to the priming of the liens held by the 2005 Bond Parties pursuant to an intercreditor agreement. The Debtors contend that even if the senior secured creditor is not so authorized, the liens of the 2005 Bond Parties may be primed pursuant to §364(d).

II. Findings and Conclusions

Based upon its review of the declarations of James Moloney and Anita Chou, the Court finds that the Debtor has submitted competent evidence establishing the need for the proposed financing from the DIP Lender. Specifically, as of the Petition Date, the book value of the Debtors' assets was approximately \$857 million. Moloney Decl. [Doc. No. 309] at ¶8. After proper marketing, the aggregate realizable value of those same assets is in the range of \$725 million to \$800 million. *Id.* As of the Petition Date, aggregate secured claims against the Debtors totaled approximately \$565 million. *Id.* at ¶9. The realizable value of the Debtors' assets, in excess of prepetition secured liabilities, is between \$150–\$225 million. *Id.*

During the first thirteen weeks of the case, the Debtors are projected to collect approximately \$239 million in patient revenue, but spend approximately \$405 million to maintain operations. Chou Decl. [Doc. No. 309], Ex. 1. The total cash shortfall during the first thirteen weeks is approximately \$109 million. *Id.*

These figures establish that the Debtors are in dire need of post-petition financing.

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If the Debtors continue operations, they have a realistic opportunity to sell their assets for a price that will yield between \$150–\$225 million in excess of existing secured debt. A sale at that price would result in a meaningful recovery for unsecured creditors. However, simply to maintain operations over the first thirteen weeks of the case, the Debtors must plug a funding shortfall in excess of \$100 million.

Against this backdrop, the Court finds it appropriate to approve the financing package that the Debtors have negotiated with the DIP Lender. In this respect, the Court notes that secured creditors holding a significant portion of the outstanding secured indebtedness also support the proposed financing. As addressed in greater detail below, the objections to the financing asserted by the Committee, the 2005 Bond Parties, Swinerton, the Attorney General, and various unions representing the Debtors' employees are OVERRULED.

B. The Debtors Are Entitled to Borrow on a Superpriority Basis

Section 364 provides in relevant part:

(c) If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

(d)(1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

(2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

Having reviewed the declaration submitted by Anita Chou, the Chief Financial Officer of VHS (the “Chou Decl.”), the Court finds that the Debtors were unable to

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obtain financing on more favorable terms than those proposed by the DIP Lender.

The Court finds that the Secured Creditors whose liens are primed by the DIP Facility are adequately protected. The Maloney Decl. establishes that the aggregate secured debt on the Debtors' balance sheet as of the Petition Date was approximately \$565 million. Maloney Decl. at ¶9. The approximate realizable value of the Debtors' assets, in excess of prepetition secured liabilities, is between \$150 and \$225 million. *Id.* That is, secured creditors are protected by an equity cushion of between 26% to 40%. It is well established that an equity cushion of 20% or more constitutes adequate protection. *See, e.g., In re James River Associates*, 148 B.R. 790, 796 (E.D. Va. 1992) ("The amount of equity cushion sufficient to adequately protect the creditor is determined on a case-by-case basis. *Kost*, 102 B.R. at 831. However, the reported cases do provide some guidance: Case law has almost uniformly held that an equity cushion of 20% or more constitutes adequate protection.... Case law has almost as uniformly held that an equity cushion under 11% is insufficient to constitute adequate protection.... Case law is divided on whether a cushion of 12% to 20% constitutes adequate protection....").

In addition to adequate protection through the equity cushion, the replacement liens and superpriority claims provide the secured creditors additional adequate protection. The financing provided by the DIP Lender will enable the Debtors to continue to operate and generate additional receivables. Those receivables will be subject to the replacement liens. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]"). There is no evidence before the Court that the Debtors' assets are declining in value. However, the abrupt cessation of operations would almost certainly result in a decline in value.

B. The Objections Asserted by the Committee are Overruled

The gravamen of the Committee's opposition is that the financing package negotiated by the Debtors places too much risk upon unsecured creditors because the Debtors have granted liens on unencumbered assets. The Committee's opposition is overruled.

The Committee cites *In re Four Seasons Marine & Cycle, Inc.*, 263 B.R. 764, 771 (Bankr. E.D. Tex. 2001) for the proposition that the granting of replacement liens on

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unencumbered assets is fundamentally unfair to the Debtors' unsecured creditors. The Committee's reliance upon *Four Seasons* is misplaced, as the case is easily distinguishable. In *Four Seasons*, the secured lender sought a replacement lien on unencumbered assets after the debtor's case was converted to Chapter 7 as a result of the debtor's unauthorized use of cash collateral. Noting that the debtor was proceeding to liquidate, the *Four Seasons* court observed that granting the secured lender a replacement lien would punish unsecured parties, not the debtor who had engaged in the wrongdoing necessitating conversion to Chapter 7. The court explained that although the granting of replacement liens "would obviously restore certain funds to [the secured lender], it would do nothing to discourage debtors-in-possession from engaging in this type of misconduct, and it would impose the burden for such restitution upon parties who are wholly innocent of any wrongdoing." *Four Seasons*, 263 B.R. at 771.

In the present case, there is no indication that the Debtors have engaged in any type of wrongdoing. To the contrary, the record shows that the Debtors, under difficult circumstances, negotiated a financing package providing much-needed liquidity. The presence of this financing affords the Debtors critical breathing space, during which their assets can be exposed to the market. The facts of this case could not be more different from the facts of *Four Seasons*.

The premise underlying the Committee's objections is that the Debtors have prejudiced unsecured creditors by giving too much away to the secured creditors and the DIP Lender. Quite simply, that premise is incorrect. As discussed above, the Debtors are in a dire financial position. Under the circumstances, the Debtors were very fortunate to have negotiated a financing package containing such favorable terms.

The Committee objects to the Debtors' proposal to grant a §506(c) waiver, arguing that the Debtors are giving away a potential recovery for unsecured creditors. The Committee is correct that certain courts have declined to grant §506(c) waivers. However, the Committee overlooks the case that many other courts have granted § 506(c) waivers upon a finding that the waiver was necessary to induce the lender to extend the necessary credit. *See, e.g., In re Real Mex Restaurants, Inc.*, Case No. 11-13122 (BLS) (Bankr. D. Del. Nov. 4, 2011); *In re Metaldyne Corp.*, 2009 WL 2883045 (Bankr. S.D.N.Y. 2009); *In re Antico Mfg. Co.*, 31 B.R. 103, 106 n.1

(Bankr. E.D.N.Y. 1983) (holding that the §506(c) waiver was "not so detrimental or improper as to jeopardize the loss of the entire financing package"). Here, the Court

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finds that the §506(c) was necessary to induce the DIP Lender to extend the financing. The Committee's objection to the §506(c) waiver is overruled.

The Committee objects to the proposed §552(b) waiver, making arguments similar to those presented in opposition to the §506(c) waiver. Once again, the Court overrules the Committee's objections. Like §506(c) waivers, §552(b) waivers are routinely granted in large Chapter 11 cases as a means of adequately protecting the cash collateral of secured creditors. In view of the approximately \$550 million in secured debt, the fact that the Debtors were able to obtain the assent of most of the secured creditor body with respect to the proposed financing package is significant. It was reasonable for the Debtors to grant the secured creditors a §552(b) waiver in order to obtain such consent.

The Committee's request that its budget to investigate the validity of the secured creditors' liens (the "Investigation Budget") be increased, as well as its request that its allocation under the carve-out be increased, are denied. The Debtors and the DIP Lender have already agreed to increase the Investigation Budget from \$50,000 to \$100,000. In the Court's view, the Committee's request for a further increase to \$250,000 is not warranted.

Similarly, the Court finds that the currently budgeted amounts of \$100,000 per month for the Committee's counsel and \$50,000 per month for the Committee's financial advisors is sufficient, and that a further increase is not warranted.

The Committee objects to provisions of the financing package requiring that the Debtors commence a process to sell their assets within sixty days of the Petition Date. According to the Committee, these conditions improperly circumscribe the parameters of the sale process. The Court disagrees. As discussed, the Debtors' financial position is not strong. In fact, the Debtor is hemorrhaging money at an unsustainable rate. In the Court's view, a rapid sale of the Debtors' assets would be an expeditious means of resolving this case.

C. The Swinerton Objection is Overruled

Swinerton Builders ("Swinerton") asserts that it holds a mechanic's lien against the Seton Medical Center property, and objects to any priming of its asserted lien. Swinerton states that it has not taken action to formalize the perfection of its lien, but asserts that it will do so in the coming weeks.

In the context of this hearing, the Court makes no determination as to whether Swinerton holds a mechanic's lien against the Seton Medical Center Property. Even if Swinerton does hold such a lien, there is nothing in the Bankruptcy Code preventing

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that lien from being primed where necessary to facilitate post-petition financing. The financing package negotiated by the Debtor primes the liens of all secured creditors, not just Swinerton's. There is no reason why Swinerton's lien should not be primed in the same manner as the liens of other secured creditors. Swinerton's objection is overruled.

D. The Attorney General's Objection is Overruled

The Attorney General of the State of California (the "Attorney General") objects to the Motion on the grounds that the Debtors may be seeking to use restricted charitable funds as cash collateral. The Attorney General and the Debtors do not dispute that to the extent that the Debtors hold restricted donor funds, such funds may not be encumbered or used for non-charitable purposes.

The Attorney General argues that the Debtors should be required to include the following language in the Final Financing Order:

Nothing in this order shall create or validate liens on or allow the use of any temporarily or permanently restricted assets held by Debtors for any purpose other than their restricted purpose. These temporarily and permanently restricted assets are not property of the bankruptcy estate.

Nothing in this order shall in any way diminish the obligation of any entity, including the debtors, to comply with applicable state law and conditions including, but not limited to, charitable trust laws and the conditions set forth in the California Attorney General's Decision dated December 3, 2015.

Further, nothing in this order or the budget shall prevent the debtors from complying with any such obligations or conditions.

Having reviewed the Supplemental Chou Decl., the Court finds that the Debtors have adopted procedures to ensure that they remain compliant with their legal obligations with respect to the maintenance of restricted donor funds. Specifically, the Debtors have established procedures denominating funds as either "permanent donor restricted funds" or "temporarily restricted funds." Supplemental Chou Decl. at ¶6. As required by GAAP, the Debtors segregate permanent donor restricted funds from temporarily restricted funds. *Id.* The Court finds that the Debtors have established that they are in compliance with applicable charitable trust laws.

In its opposition, the Attorney General does not point to any specific conduct of the Debtors that violates applicable law. In view of the procedures implemented by the Debtors to ensure compliance with the law, and the absence of any showing by the

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Attorney General that the Debtors have not fulfilled their legal obligations, the Court declines to require the Debtors to insert into the Final Financing Order the provisions requested by the Attorney General. The DIP Credit Agreement, which is incorporated by reference into the proposed Final Financing Order, already contains language requiring the Debtors to "comply with the requirements of all Applicable Laws." DIP Credit Agreement, §5.5. Provisions in the Final Financing Order requiring compliance with applicable laws are unnecessary.

E. The 2005 Bond Parties' Objection is Overruled

The 2005 Bond Parties object to the priming of their liens, unless certain language is included in the Final Financing Order.

U.S. Bank, in its capacity as Note Trustee for the Working Capital Notes, has consented to the DIP Liens. Pursuant to an Intercreditor Agreement between U.S. Bank and the 2005 Bond Parties, U.S. Bank is authorized to subordinate the security interests held by the 2005 Bond Parties.

Based on the provisions set forth in the Intercreditor Agreement, the Court finds that the consent of the 2005 Bond Parties to the priming of their liens is unnecessary. To the extent that consent is required, it has been provided by U.S. Bank. The 2005 Bond Parties are bound by the provisions of the Intercreditor Agreement, and cannot escape the effect of those provisions simply as a result of the Debtors' bankruptcy.

In addition, even assuming *arguendo* that U.S. Bank had not consented or that its consent was somehow not effective, the provisions of §365(d) authorize the Court to prime the liens of secured creditors where necessary to facilitate post-petition financing. Further, the Court finds that the liens of the 2005 Bond Parties are adequately protected by, among other things, the assets of the Debtors, the equity cushion, the proposed package of payments, and the Prepetition Replacement Liens.

The 2005 Bond Parties' objections are overruled.

F. The Debtors are Not Required to Accord Superpriority Status to Postpetition Ordinary Course Transfers Between Debtors

As set forth in the tentative ruling issued in connection with the Cash Management Motion, the Court finds that Committee's contention that the Debtors should be required to accord super-priority claim status to transfers made between Debtors in the ordinary course of business is more appropriately addressed in the context of the Financing Motion. As set forth below, the Court declines to require the Debtors to accord super-priority status to intercompany transfers.

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The Debtors are seventeen separate legal entities, but operate those legal entities as a consolidated business enterprise. In the course of their business operations, it is common for one Debtor to purchase or sell goods and/or services to other Debtors.

The Committee's objection appears to be motivated by the concern that because these transfers are not at arms-length, the purchase price paid by one Debtor for goods and services purchased from another Debtor may not be commercially reasonable. The Court notes that it is conceivable that transfers from one Debtor to another on commercially unreasonable terms could function as a backdoor means of transferring funds from a financially stronger to a financially weaker Debtor.

There is no competent evidence before the Court showing that financially stronger Debtors are using intercompany transfers as an improper means of subsidizing financially weaker Debtors. Were such transfers to occur, the Committee would not be without legal remedies. The Committee's request that such ordinary transfers be accorded super-priority status would prove operationally burdensome. Absent concrete evidence of abuse, the Court declines to order the relief requested by the Committee.

G. Objections Asserted by Unions Representing the Debtors' Employees Are Addressed in the Prepetition Wages Motion

For the reasons set forth in the tentative ruling issued in connection with the Prepetition Wages Motion, the objections asserted by the unions representing the Debtors' employees are overruled.

H. Cash Collateral

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

As noted above, the vast majority of the creditors holding secured debt have consented to the terms of the financing package. The 2005 Bond Parties have objected to the priming of their liens; however, as stated above, U.S. Bank has the capacity to consent to the priming of the 2005 Bond Parties' liens as a result of the Intercreditor Agreement. Further, even assuming *arguendo* that U.S. Bank did not have such capacity, the liens of the 2005 Bond Parties are adequately protected by, among other

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things, the assets of the Debtors, the equity cushion, the proposed package of payments, and the Prepetition Replacement Liens.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. The Court is prepared to enter the order that has already been submitted by the Debtors.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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#4.00 Hearing
RE: [23] Emergency motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for PostPetition Intercompany Claims; and (5) Obtain Related Relief

fr. 9-5-18

Docket 23

Tentative Ruling:

10/2/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Papers Filed and Orders Entered in Connection with Interim Hearing Held on September 5, 2018:
 - a) Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 23] (the "Cash Management Motion")
 - i) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 68]

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- ii) Supplement to Emergency Motion of Debtors for Authority to: (1) Continue Using Existing Cash Management System, Bank Accounts and Business Forms; (2) Implement Changes to the Cash Management System in the Ordinary Course of Business; (3) Continue Intercompany Transactions; (4) Provide Administrative Expense Priority for Postpetition Intercompany Claims; and (5) Obtain Related Relief [Doc. No. 70]
 - iii) [Interim] Order Granting [Cash Management Motion] [Doc. No. 76] (the "Interim Cash Management Order")
- 2) Official Committee of Unsecured Creditors' Response to Cash Management Motion [Doc. No. 313]
- 3) Reply to Official Committee of Unsecured Creditors' Response to Cash Management Motion [Doc. No. 357]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On September 5, 2018, the Court granted, on an interim basis, the Debtor's motion for authorization to continue using its existing cash management system. *See* Doc. No. 76 (the "Interim Cash Management Order"). The Debtor now seeks a final order authorizing it to continue using its existing cash management system.

The Official Committee of Unsecured Creditors (the "Committee") and the Debtor have been unable to resolve certain disputes regarding the Motion. The unresolved disputes, and the parties' positions with respect thereto, are as follows:

Intercompany Transactions

The Committee requests that intercompany transfers be granted superpriority claims status. The Committee argues that in view of the DIP financing, it is unnecessary for one Debtor to be transferring funds to another. The Committee asserts that, if such transfers are necessary, they should be provided superpriority status, so that intercompany transfers do not wind up benefitting financially stronger debtors at the expense of weaker ones.

The Debtors oppose this request. The Debtors state that other than superpriority claims proposed to be given to the DIP Lender, prepetition lenders, and secured

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creditor McKesson, the Debtors have granted superpriority status only to Verity Holdings, LLC (“Holdings”), to the extent that it is a net creditor of another Debtor. The Debtors assert that granting superpriority status for ordinary course intercompany transfers would defeat the purpose of the DIP financing. The Debtors assert that the intercompany transactions issue is most appropriately addressed in the context of the financing motion.

Transfers from Debtors to Non-Debtors

The Committee requests that the Debtors be required to seek Court approval prior to transferring funds in excess of \$250,000 to a non-Debtor party.

The Debtors state that they are willing to acquiesce to the Committee’s respect, but not with respect to non-Debtor affiliates. That is, the Debtors do not agree to provide the Committee advance notice for ordinary course transfers to non-Debtor affiliates such as those already provided by the DIP financing arrangement. However, the Debtor is willing to provide the Committee notice of transfers to third parties that are not non-Debtor affiliates.

II. Findings and Conclusions

The findings made by the Court in its ruling granting the Cash Management Motion on an interim basis, *see* Doc. No. 118 (the “Interim Cash Management Ruling”), are incorporated herein by reference. As set forth more fully in the Interim Cash Management Ruling, the Court finds it appropriate to permit the Debtors to continue to use their existing cash management system and to implement changes to the system in the ordinary course of business.

As addressed in greater detail in the tentative ruling issued in connection with the Financing Motion, the Committee’s request that intercompany transfers, made in the ordinary course of business, be afforded superpriority status is **OVERRULED**.

With respect to transfers between the Debtor and non-Debtor affiliates, the Committee’s request that the Debtor be required to seek Court approval prior to transferring funds in excess of \$250,000 to such affiliates is **OVERRULED**. In the course of their business operations, the Debtors routinely make transfers to non-Debtor affiliates. For example, the Debtor depends heavily upon non-Debtor Marillac Insurance Company, Ltd. (“Marillac”), its wholly-owned subsidiary, for its insurance needs. Requiring the Debtor to provide advance notice to the Committee with respect to ordinary-course transfers to non-Debtor affiliates would prove unduly burdensome.

Based upon the foregoing, the Motion is **GRANTED** in its entirety.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
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Tania M Moyron

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#5.00 Hearing

RE: [22] E Emergency Motion Of Debtors For Entry Of Order: (I) Authorizing The Debtors To (A) Pay Prepetition Employee Wages And Salaries, And (B) Pay And Honor Employee Benefits And Other Workforce Obligations; And (II) Authorizing And Directing The Applicable Bank To Pay All Checks And Electronic Payment Requests Made By The Debtors Relating To The Foregoing

FR. 9-5-18

Docket 22

Tentative Ruling:

10/2/2018

For the reasons set forth below, the Court is prepared to overrule the objections asserted by the Unions and GRANT the Motion. However, as set forth in Part II.B., below, the Court requires clarification from the Debtors regarding the Debtors' position with respect to the payment of certain union benefits.

Pleadings Filed and Reviewed:

- 1) Emergency Motion of Debtors for Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay All Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing [Doc. No. 22] (the "Prepetition Wages Motion")
 - a) Declaration of Richard Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - b) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - d) Declaration of Service by Kurtzman Carson Consultants, LLC re Emergency First-Day Motions, Exhibit B [Doc. No. 50]
- 2) Papers Filed in Opposition:

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- a) SEIU-UHW's Objection to [Prepetition Wages Motion and Financing Motion] [Doc. No. 213]
 - i) Declaration of Caitlin Gray in Support of SEIU-UHW's Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 214]
 - ii) Declaration of David Miller in Support of SEIU-UHW's Opposition to [Prepetition Wages Motion and Financing Motion] [Doc. No. 215]
- b) Limited Objection of Retirement Plan for Hospital Employees to [Prepetition Wages Motion] [Doc. No. 229]
 - i) Objection of Retirement Plan for Hospital Employees to [Financing Motion] [Doc. No. 218]
- c) Objection by Creditor California Nurses Association to [Prepetition Wages Motion] [Doc. No. 223]
- d) Limited Objection of UNAC to Debtors' Motion for Entry of Final Order to Pay Prepetition Employee Wages, Etc. [Doc. No. 296]
- 1) Omnibus Response to Objections to [Prepetition Wages Motion] [Doc. No. 310]

I. Facts and Summary of Pleadings

On September 5, 2018, the Court entered an *Order Granting Emergency Motion of Debtors for Entry of Order: (I) Authorizing the Debtors to (A) Pay Prepetition Employee Wages and Salaries, and (B) Pay and Honor Employee Benefits and Other Workforce Obligations; and (II) Authorizing and Directing the Applicable Bank to Pay all Checks and Electronic Payment Requests Made by the Debtors Relating to the Foregoing* [Doc. No. 75] (the "Prepetition Wages Order"). The Prepetition Wages Order authorized the Debtors to pay wages and employee benefits that had been accrued pre-petition, up to the priority amounts set forth in §507(a)(4) and (5).

The Prepetition Wages Order further authorized the Debtors to continue to pay, in the ordinary course of business, certain post-petition contributions for employee defined benefit plans. *See, e.g.*, Prepetition Wage Order at ¶23.

At the interim hearing on the Prepetition Wages Motion, the Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW") requested that the Prepetition Wage Order be entered on an interim, rather than final, basis. SEIU-UHW requested that a final hearing be held so that it could have the opportunity to object to the Debtors' position regarding the payment of various pension obligations. The Debtors did not oppose entry of the Prepetition Wage Order on an interim basis. The Court set this final hearing on the Prepetition Wages Motion to allow the parties an opportunity to object to the Debtors' proposal with respect to the ongoing payment

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of pension obligations.

The Debtors propose to pay certain pension obligations of certain employees who continue to work for the Debtors. However, the Debtors do not intend, at this time, to pay other pension obligations in accordance with the requirements of various collective bargaining agreements (the “CBAs”). The pension obligations which the Debtors do not intend to pay at this time consist primarily of obligations to make monthly contributions to underfunded pension plans.

Service Employees International Union, United Healthcare Workers-West (“SEIU-UHW”), the United Nurses Associations of California/Union of Health Care Professionals (“UNAC”), the Retirement Plan for Hospital Employees (“RPHE”), and the California Nurses Association (“CNA”) (collectively, the “Unions”) object to the Debtors’ non-payment of certain obligations under the CBAs. The Unions assert that the obligations under the CBAs must be paid unless and until the CBAs are rejected. The Unions further assert that they are entitled to a superpriority administrative expense claim for any CBA obligations that the Debtors do not pay.

The Debtors respond that under the majority interpretation of §507, claims arising from non-performance under a CBA are not entitled to superpriority status.

II. Findings and Conclusions

A. Obligations Under Unrejected CBAs are Not Entitled to Superpriority Administrative Expense Status

The objections asserted by the unions representing the Debtors’ employees to the Debtors’ non-payment of obligations arising under CBAs are overruled.

In support of their contention that the Debtors are required to make payments required under various CBAs, the unions primarily rely upon the following language from *Teamsters Indus. Sec. Fund v. World Sales (In re World Sales, Inc.)*, 183 B.R. 872, 878 (B.A.P. 9th Cir. 1995):

Section 1113 was enacted to protect employees during the interim between the filing of the bankruptcy petition and court-supervised modification or ultimate rejection of the CBA. During this period, working employees benefit the estate. Their rights accrue as services are rendered on the basis provided for by the CBA. These rights vest post-petition, and as indicated it would violate § 1113(f) to transform these rights into general unsecured claims upon subsequent rejection of the CBA. Hence, employees working under a CBA are insulated from the consequences of immediate rejection under § 365(g); subsection 1113(f) mandates that any conflict between § 1113 and other code

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sections must be resolved in favor of § 1113 as a whole. Because a CBA may not be rejected retroactively, unilateral breaches prior to rejection cannot be relegated to unsecured status. *In re Hoffman Bros. Packing Co., Inc.*, 173 B.R. 177 (9th Cir. BAP 1994). We therefore hold that a debtor's unperformed post-petition obligations under an unmodified or unrejected CBA are beyond the scope of § 365(g), and claims based on such post-petition breaches must be given administrative status, even where the CBA is subsequently modified or rejected pursuant to § 1113.

World Sales, 183 B.R. at 878.

World Sales' holding regarding the superpriority status of claims arising from the post-petition breach of an unrejected CBA is the minority position, and *World Sales* has been rejected by other decisions in this district. In lieu of the minority approach set forth in *World Sales*, this Court follows the majority approach, which is well-articulated in *In re Certified Air Techs., Inc.*, 300 B.R. 355, 369 (Bankr. C.D. Cal. 2003):

Section 1113 was enacted to protect the existence of collective bargaining agreements in chapter 11 cases, not to re-order the priority scheme set by Congress in § 507. Had Congress intended for § 1113 to create a super-priority for pre-petition wage and benefit claims arising under a collective bargaining agreement, it would have either included language in § 1113 similar to that incorporated into § 1114 or amended § 507 to reflect the change it intended. Because Congress neither included explicit language in § 1113 to supercede § 507 nor amended § 507 to specifically create a super-priority status for such claims, the court concludes that pre-petition claims for wages and benefits due under a collective bargaining agreement are not entitled to treatment as administrative expenses but are to be accorded priority consistent with § 507.

Certified Air, 300 B.R. at 369.

In support of its position that the Debtors must make CBA payments, SEIU-UHW points to *Adventure Resources, Inc. v. Holland (In re Adventure Resources)*, 137 F.3d 786 (4th Cir. 1998). In *Adventure Resources*, the court held that where the debtor had not rejected a collective bargaining agreement under §1113 forty-three months after seeking bankruptcy protection, the debtor had assumed the collective bargaining agreement through inaction. As a result, the court held, the debtor was required to make postpetition payments due under the collective bargaining agreement.

Adventure Resources is readily distinguishable. This case is approximately one

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month old. There is no indication that the Debtors are engaged in the type of unreasonable delay with respect to CBAs that was at issue in *Adventure Resources*. Further, the payments at issue in *Adventure Resources* accrued postpetition. Here, the majority of the payments at issue arise in connection with obligations that accrued prepetition.

B. Clarification is Necessary Regarding the Debtors' Position as to Certain Benefit Payments

The Court requires clarification regarding the Debtors' position as to the payment of certain benefit payments to union members. RPHE objects to the Motion on the grounds that the Debtors have not proposed to pay RPHE plan contributions accrued in 2018 arising from services rendered by CNA members up to the priority cap provided in §507(a)(5). UNAC objects on the grounds that the Interim Prepetition Wages Order required that the Debtors make postpetition contributions to active employees of the Local 39 Stationary Engineers, but did not include similar provisions with respect to the CNA or UNAC-represented employees.

It appears to the Court that the omission of provisions protecting RPHE, CNA, or UNAC-represented employees may have been an oversight in the Pre-petition Wage Order. The Court requires clarification from the Debtors as to whether that is the case, or whether the omission was deliberate.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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2:17-16360 Michael McNulty

Chapter 11

#6.00 Show Cause Hearing re [102] Debtor's Motion for Order Approving Sale of Real Property Free and Clear of Designated Liens, Providing for Overbids, and for Ancillary Relief

Docket 0

***** VACATED *** REASON: CONTINUED 10-16-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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2:18-20151 Verity Health System of California, Inc.

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#7.00 Hearing
RE: [29] Debtors Emergency Motion For Entry Of An Order Authorizing Debtors
To Honor Prepetition Obligations To Critical Vendors

fr. 9-5-18

Docket 29

Tentative Ruling:

10/2/2018

For the reasons set forth below, the Motion is GRANTED on a final basis.

Pleadings Filed and Reviewed:

- 1) Papers Filed and Orders Entered in Connection with September 5, 2018 Interim Hearing:
 - a) Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 29] (the "Motion")
 - i) Declaration of Richard G. Adcock in Support of Emergency First-Day Motions [Doc. No. 8]
 - ii) Declaration of Anita Chou, Chief Financial Officer, in Support of Motion for Interim Order Authorizing (A) Use of Cash Collateral; (B) Debtor in Possession Credit Agreement; (C) Grant of Superpriority Priming Liens to DIP Lender; and (D) Grant of Junior Liens on Post-Petition Accounts and Inventory as Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§105(A), 363(C)(2), and 364(C) and (D)
 - iii) Order Setting Hearing on First Day Motions [Doc. No. 18]
 - iv) Amended Notice of Hearings on Emergency First-Day Motions Filed by Debtors [Doc. No. 34]
 - b) Combined Reservation of Rights of U.S. Bank National Association, as Series 2015 Note Trustee and Series 2017 Note Trustee, to Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 69]

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- c) Ruling Granting Critical Vendors Motion on an Interim Basis [Doc. No. 123]
- d) Interim Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 134]
- 2) Limited Objection to Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 289] (the "Limited Objection")
- 3) Official Committee of Unsecured Creditors' Response to Critical Vendor Motion [Doc. No. 314]
- 4) Reply to UMB Bank, N.A.'s Limited Objection to Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 354]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On September 7, 2018, the Court authorized the Debtors to continue to pay and/or honor prepetition claims asserted by certain medical suppliers, medical care providers, and critical service providers (collectively, the "Critical Vendors"), in an interim amount of up to \$5 million. *See* Ruling Granting Critical Vendor Motion on an Interim Basis [Doc. No. 123] (the "Interim Ruling") and Interim Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 134] (the "Interim Order").

The Debtors now seek authorization to pay prepetition claims of Critical Vendors in an amount of up to \$20 million (consisting of the \$5 million approved on an interim basis, plus an additional \$15 million sought in connection with this final hearing). UMB Bank, N.A., in its capacity as master trustee for obligations issued by VHS in the approximate aggregate amount of \$461 million ("UMB"), and Wells Fargo Bank, N.A., in its capacity as indenture trustee for debt instruments in the approximate aggregate amount of \$259 million ("Wells Fargo") (UMB and Wells Fargo collectively, the "Secured Parties"), filed a Limited Objection to the Motion. The Secured Parties consent to the granting of the Motion, provided that they may review in advance any payments the Debtors intend to make to Critical Vendors.

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Subsequent to the filing of the Limited Objection, the Debtors and the Secured Parties reached a compromise. Specifically, the Debtors have agreed to provide the Secured Parties (1) a list of Critical Vendors, (2) weekly reporting on Critical Vendor payments, and (3) three business days' notice regarding any proposed payments in excess of \$250,000 in the aggregate to vendors not on the initial Critical Vendor list.

The Official Committee of Unsecured Creditors (the "Committee") filed a response to the Motion. The Committee does not oppose the relief requested in the Motion; it seeks only that the final order on the Motion contain provisions requiring the Debtor to provide the Committee with certain information. The Debtor does not oppose providing the Committee the requested information.

II. Findings and Conclusions

The Court notes that in dicta, the Supreme Court has recently noted that Bankruptcy Courts have approved "'critical vendor' orders that allow payment of an essential suppliers' prepetition invoices." *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985, 197 L. Ed. 2d 398 (2017). The Supreme Court's statement in *Jevic* obviously was not a holding upon the validity of a critical vendor order; nonetheless, the Supreme Court's acknowledgment that Bankruptcy Courts have reasoned that critical vendor orders are necessary to "enable a successful reorganization and make even the disfavored creditors better off" is significant. *Id.* at 985.

More on point, in the context of a cross-collateralization clause, the Ninth Circuit has recognized that "[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts." *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). The Ninth Circuit's recognition of the necessity of paying prepetition debts to "providers of unique and irreplaceable supplies" is particularly salient; that relief is most analogous to the relief sought by the instant Motion.

The Debtors have established that there is a strong likelihood that they may suffer irreparable harm if they are not able to pay Critical Vendors. As set forth in the Interim Ruling [Doc. No. 123], the Debtors have adopted rigorous procedures to limit the amounts to be paid to Critical Vendors on account of prepetition debt.

Such prepetition payments obviously are frowned upon because they subvert the Bankruptcy Code's priority scheme. Yet the priority scheme will be of little use to anyone if value is destroyed because the Debtors cannot continue operations. There is

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a credible threat that the Debtors will not be able to obtain needed services and supplies absent authorization to pay Critical Vendors.

Based upon the foregoing, the Motion is GRANTED on a final basis. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe
Tania M Moyron

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#8.00 Hearing
RE: [108] Motion to Shorten to October 15, 2018, Debtor's Time to Assume or Reject Healthcare Services Risk Sharing Agreement

Docket 108

Tentative Ruling:

10/2/2018

For the reasons set forth below, the Motion is DENIED without prejudice.

Pleadings Filed and Reviewed:

- 1) Memorandum of Points and Authorities in Support of Motion to Shorten to October 15, 2018, Debtor's Time to Assume or Reject Healthcare Services Risk Sharing Agreement [Doc. No. 108] (the "Motion")
- 2) Debtors' Opposition to St. Vincent IPA Medical Services' Motion to Assume or Reject Health Services Risk Sharing Agreement on an Expedited Basis [Doc. No. 212] (the "Opposition")
- 3) Reply to Debtor's Opposition to Memorandum of Points and Authorities in Support of Motion to Shorten to October 15, 2018, Debtor's Time to Assume or Reject Healthcare Services Risk Sharing Agreement [Doc. No. 306] (the "Reply")
 - a) Supplemental Declaration of Jeffrey Hendel, M.D. [Doc. No. 307]
- 4) Official Committee of Unsecured Creditors' Response to St. Vincent IPA Medical Corporation's Motion to Shorten to October 15, 2018 Debtor's Time to Assume or Reject Healthcare Services Risk Sharing Agreement [Doc. No. 301]

I. Facts and Summary of Pleadings

St. Vincent IPA Medical Corporation (the "Group") moves for an order shortening the time by which St. Vincent Medical Center (the "Debtor") must assume or reject the *Healthcare Services Risk Sharing Agreement* (the "Agreement") with the Group.

The Group is an integrated practice association ("IPA") of doctors who provide medical services to patients treated at the Hospital operated by the Debtor. The Group consists of approximately 200 doctors, and has had a relationship with the Debtor for approximately twenty-five years.

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In providing medical services to patients, the Group's doctors are often required to use medical services provided by the Hospital. For example, patients of the Group's doctors may require diagnostic tests, surgical procedures, and other medical services.

The Agreement is a risk-sharing agreement between the Group and the Debtor, intended to allocate financial responsibility for medical services required by patients of the Group's doctors (such medical services, the "facility services"). Under the Agreement, the facility services may be provided by either the Debtor or a third-party medical facility.

The Group moves to compel the Debtor to assume or reject the Agreement by no later than October 15, 2018. The Group contends that the Debtor has defaulted under the Agreement and owes it at least \$1,228,516.08. The Group further seeks protections from the Debtor until the determination to assume or reject is made, including requirements (1) that the Debtor segregate risk pool funds held by the Debtor pursuant to the Agreement (the "Risk Pool Funds") in a separate debtor-in-possession account, and (2) that the Debtor use the Risk Pool Funds only as provided under the express terms of the Agreement.

The Debtor opposes the Motion, contending that the relief sought by the Group is premature and would complicate the Debtor's efforts to sell its Hospital. The Debtor asserts that requiring it to determine whether to assume or reject the Agreement now would limit its options in structuring a sale transaction.

The Official Committee of Unsecured Creditors (the "Committee") agrees with the Debtor that it would be premature for the Debtor to be required to make a decision regarding assumption or rejection of the Agreement at this time. The Committee requests that the Motion be denied without prejudice.

In support of its Reply to the Debtor's Opposition, the Group submits a *Supplemental Declaration of Jeffrey Hendel, M.D.* (the "Supplemental Hendel Decl."). According to the Supplemental Hendel Decl., the Debtor is not paying patient expenses as required under the Agreement, and as a result, certain medical service providers are "refusing necessary and urgent medical care to patients." Supplemental Hendel Decl. at ¶9. Dr. Hendel asserts that the "consequences of the Debtor's non-compliance may be catastrophic." *Id.* at ¶8.

II. Findings and Conclusions

The Supplemental Hendel Decl. introduces evidence that was not submitted in support of the Motion. The Motion contained no argument or evidence in support of the Group's contention that the Debtor's alleged non-performance under the

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Agreement would pose serious health risks to patients treated by the Group's doctors. Instead, the Motion asserted that the Debtor's assumption/rejection deadline should be advanced to protect the Group from financial risk. The Group's contention that the Court should grant the Motion in order to protect the health of patients treated by the Group's doctors was first raised in the Group's reply papers.

Local Bankruptcy Rule ("LBR") 9013-1(g)(4) prohibits the introduction of new evidence or arguments in reply papers. LBR 9013-1(g)(4) is a codification of the Ninth Circuit's well-established "general rule that [litigants] cannot raise a new issue for the first time in their reply briefs." *Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996). Because the Supplemental Hendel Decl. introduces new evidence in violation of LBR 9013-1(g)(4) and controlling Ninth Circuit case law, the Court does not consider it.

The Motion is DENIED without prejudice. Pursuant to §365(d)(2), the Debtor may assume or reject an executory contract at any time prior to plan confirmation. However, the Court may order the Debtor, for cause, to "determine within a specified period of time whether to assume or reject" an executory contract. §365(d)(2). "In deciding whether to accelerate the debtor's decision, the court must balance the interests of the contracting party against the interests of the debtor and its estate." *In re Physician Health Corp.*, 262 B.R. 290, 292 (Bankr. D. Del. 2001).

Having weighed the evidence properly before it, the Court finds that Debtor's interest in maintaining flexibility with respect to the marketing of its assets outweighs the Group's interest in obtaining a rapid decision regarding whether the Agreement will be assumed or rejected. The Group asserts that it will suffer financial risk if the Debtor is not required to rapidly make a decision with respect to assumption or rejection. In the context of this case, whatever financial risk the Group may suffer is outweighed by the interest of preserving the Debtor's flexibility with respect to the marketing of its assets. Maintaining such flexibility benefits the Debtor as well as creditors. While the Court is sympathetic to the difficulties faced by the Group, those difficulties are outweighed by the prejudice that would inure to the Debtor and creditors were the Court to compel the Debtor to decide at this time whether to assume or reject the Agreement.

The Group's request that the Court require the Debtor to segregate Risk Pool Funds in a separate debtor-in-possession account is also denied. Such a requirement would impair the Debtor's ability to efficiently operate its business. In recognition of the necessity of allowing the Debtor to maintain the continuity of its business operations, the Court has previously entered an order allowing this Debtor, in

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conjunction with the sixteen other Debtors whose estates are being jointly administered, to maintain a cash management system which permits the seamless transfer of funds between the various Debtors who routinely conduct business with each other. Imposition of the protections sought by the Group would impair the operation of this cash management system.

Based upon the foregoing, the Motion is DENIED without prejudice. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20151 Verity Health System of California, Inc.

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#9.00 Hearing
RE: [334] Expedited Motion for Interim Order Authorizing Credit Card Program
with City National Bank

Docket 332

Tentative Ruling:

10/2/2018

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Motion.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 332]
 - a) Notice of Errata to Emergency Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 336]
 - b) Application for Order Setting Hearing on Shortened Notice [Doc. No. 334]
 - c) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 341]
 - d) Notice of Hearing on Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 343]
 - e) Declaration of Tania M. Moyron on Telephonic Notice Given of Hearing on Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 362]
- 2) No Opposition is on file

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California (“VHS”) and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

On September 28, 2018, the Court set an expedited hearing on the Debtor’s

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motion seeking authorization to open a revolving credit card account with City National Bank (the “Motion”). The proposed credit card facility will have a credit line of \$20,000. The Debtors will use the credit line to pay for immediate expenses arising in the course of delivering health care services, such as purchasing fuel for patient transportation vehicles and purchasing emergency supplies for the Debtors’ facilities. The Debtors state that since filing for bankruptcy, they have had no access to a credit card to use in everyday transactions.

To obtain the credit line, the Debtors will deposit \$20,000 with City National Bank. Ally Bank, the lender who has provided post-petition financing, has agreed to allow the Debtors to use its cash collateral to make the deposit with City National Bank. The Official Committee of Unsecured Creditors (the “Committee”) does not oppose the Motion.

II. Findings and Conclusions

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Motion on an interim basis. The Debtors require a credit facility in order to pay for everyday expenses. Absent the proposed credit facility, employees of the Debtors will continue to be required to use their personal credit cards to pay for emergency business expenses, and subsequently seek reimbursement from the Debtors—a cumbersome and unnecessary process.

Pursuant to §363(b)(1), the Court authorizes the Debtor to use property of the estate to fund the \$20,000 deposit with City National Bank. Pursuant to §364(d), the Debtors are authorized to incur the secured credit under the proposed facility.

The proposed facility is approved on an interim basis pursuant to Bankruptcy Rule 4001(c)(2), which permits the Court to approve post-petition financing on less than fourteen days’ notice pending a final hearing, to the extent necessary to avoid immediate and irreparable harm.

A final hearing on the Motion shall take place on **October 24, 2018, at 11:00 a.m.** Opposition to the granting of the Motion on a final basis must be submitted by no later than **October 12, 2018**. The Debtors’ Reply in support of the Motion, if any, is due by no later than **October 19, 2018**. Debtors shall provide notice of the final hearing, and shall file a proof of service so indicating, by no later than **October 5, 2018**.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

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Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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Tuesday, October 9, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18; 5-29-18; 7-30-18; 9-12-18

Docket 0

*** VACATED *** REASON: CONTINUED 10-30-18 AT 9:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

9:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#100.00 Hearing

RE: [70] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1804, 1806 & 1808 South Chapel Avenue, Alhambra, California 91801 with Proof of Service. (Yabes, Gilbert)

fr. 6-25-18; 8-27-18

Docket 70

*** VACATED *** REASON: WITHDRAWAL FILED 9-27-18

Tentative Ruling:

Amended after hearing in red.

The hearing on the Motion is CONTINUED to **October 9, 2018 at 10:00 a.m.**, pursuant to the terms of the "Stipulation to Continue Hearing on [the Motion]" between the Movant and the Trustee, which was filed on August 24, 2018 [Doc. No. 116].

~~No appearances required. For the reasons set forth below, the hearing is VACATED as moot.~~

~~On August 15, 2018 at 11:00 a.m., the Court held a hearing on the Trustee's "Amended Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back Up Bidder As Good Faith Purchaser Pursuant to 11 U.S.C. § 363(m); and (4) Authorizing Payment of Undisputed Liens, Real Estate Broker's Commissions and Other Ordinary Costs of Sale" (the "Sale Motion") [Doc. No. 104]. The Court adopted the tentative ruling as its final ruling [Doc. No. 114], which ruling granted the Sale Motion and authorized the sale of the property known as 1806 S. Chapel Avenue, Alhambra, CA 91801.~~

~~Thus, in light of the sale of the property that is the subject of the instant Motion for Relief From Stay, the Motion is moot.~~

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 7

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Francisco Aldana

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

2:18-19332 Genaro Zuniga, Jr.

Chapter 7

#101.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Toyota Highlander .

Docket 8

Tentative Ruling:

10/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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Tuesday, October 9, 2018

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10:00 AM

CONT... Genaro Zuniga, Jr.

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Genaro Zuniga Jr.

Represented By
Barry E Borowitz

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

2:18-20070 Melina Zojaji

Chapter 7

#102.00 Hearing
RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 HONDA CIVIC, VIN: 2HGF C2F7 XHH5 36870 .

Docket 7

***** VACATED *** REASON: APO entered 9/25/18 [Doc. No. 11]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Melina Zojaji

Represented By
Diane L Mancinelli

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

2:17-10897 Christopher Kim Kay

Chapter 7

#103.00 Hearing
RE: [149] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 MERCEDES BENZ GL; VIN NO. 4JGDF7EE6GA710517 with Exhibits and Proof of Service.
(Zahradka, Robert)

fr: 9-17-18

Docket 149

Tentative Ruling:

10/4/2018

Hearing required.

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

2:18-17548 Hyun Suk Ro

Chapter 7

#104.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 77 Koehler Crossing Buena Park, CA 90621 . (O'Connor, Barry)

Docket 18

Tentative Ruling:

10/4/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on June 18, 2018. The Movant filed an unlawful detainer action on July 11, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. *See In re Butler*, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, October 9, 2018

Hearing Room 1568

10:00 AM

CONT... Hyun Suk Ro

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Hyun Suk Ro

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 9, 2018

Hearing Room 1568

11:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#200.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate).
Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 2-21-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#1.00 Hearing re [162] Appearance and Examination re Enforcement of Judgment-Debtor **Ramin Emami** and to Produce Documents.

fr. 5-17-18; 8-9-18

Docket 0

Tentative Ruling:

10/9/2018

Hearing required.

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Pro Se

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#2.00 Hearing
RE: [56] Motion For Summary Judgment Notice Of Motion And Motion For
Partial Summary Judgment, Or, Alternatively, Summary Adjudication Of Issues;
Memorandum Of Points And Authorities (Fox, Steven)

FR. 9-5-18

Docket 56

***** VACATED *** REASON: PER ORDER ENTERED 10-5-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel
George E Schulman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

CONT... Timothy M Rosen

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#3.00 HearingRE: [339] Application for Compensation Third Interim Fee Application for Compensation for Accounting Services Rendered And Reimbursement of Expenses by Trojan And Company Accountancy Corporation; With Proof of Service for Trojan and Company Accountancy, Accountant, Period: 4/1/2018 to 8/31/2018, Fee: \$18,192.00, Expenses: \$0.00. (Bogard, Lane)

Docket 339

Tentative Ruling:

10/9/2018

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$18,192.00

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#3.10 HearingRE: [346] Application for Compensation Second Interim Application for Compensation and Reimbursement of Expenses by Armory Consulting Company as Financial Advisor to the Official Committee of Unsecured Creditors; Declaration of James Wong in Support Thereof (with Exhibits A, B, C, D and E) (with proof of service) for Armory Financial Consulting, Financial Advisor, Period: 4/1/2018 to 8/31/2018, Fee: \$15,345.00, Expenses: \$137.76.

Docket 346

Tentative Ruling:

10/9/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$15,345

Expenses: \$137.76

Debtor's right to object to final compensation is reserved.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#3.20 HearingRE: [345] Application for Compensation Third Interim Application of Levene, Neale, Bender, Yoo & Brill L.L.P., Counsel for Official Committee of Unsecured Creditors, for Approval of Fees and Reimbursement of Expenses; Declaration of Daniel H. Reiss in Support (with Exhibits A, B, C, D and E) (with proof of service) for Levene, Neale Bender Yoo & Brill, Creditor Comm. Aty, Period: 4/1/2018 to 8/31/2018, Fee: \$53,550.00, Expenses: \$1,414.99.

Docket 345

Tentative Ruling:

10/9/2018

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$53,550

Expenses: \$1,414.99

Debtor's right to object to final compensation is reserved.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#3.30 HearingRE: [343] Application for Compensation Of Interim Fees and Expenses; With Proof of Service for Haberbush & Associates, LLP, General Counsel, Period: 4/1/2018 to 9/15/2018, Fee: \$96,975.50, Expenses: \$2,209.74. (Haberbush, David)

Docket 343

Tentative Ruling:

10/9/2018

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$96,975.50

Expenses: \$2,209.74

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#3.40 HearingRE: [340] Application for Compensation Third Interim Fee Application for Compensation for Legal Serviced Rendered and Reimbursement of Expenses by Cox, Wootton, Lerner, Griffin, & Hansen, LLP; With Proof of Service for COX WOOTON LERNER GRIFFIN & HANSEN LLP, Special Counsel, Period: 4/1/2018 to 8/31/2018, Fee: \$170,020.50, Expenses: \$21,238.32. (Bogard, Lane)

Docket 340

Tentative Ruling:

10/9/2018

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$156,497.55

Expenses: \$21,238.20

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#4.00 Hearing

RE: [4] Debtor's Motion For An Order: (1) Authorizing Debtor Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (2) Granting Adequate Protection To Prepetition Senior CBT Pursuant To 11 U.S.C. §§ 361, 362, And 363, (3) Scheduling A Continued Hearing Pursuant To Bankruptcy Rule 4001; And (4) Granting Related Relief

FR. 7-17-18; 8-8-18

Docket 4

Tentative Ruling:

10/9/2018

For the reasons set forth below, the Debtor is authorized to continue to use CBT's cash collateral through and including November 10, 2018.

Pleadings Filed and Reviewed:

- 1) Interim Order Granting Debtor's Emergency Motion for an Interim Order: (1) Authorizing Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. §363; (2) Granting Adequate Protection to Prepetition Senior [Secured Creditor] CBT Pursuant to 11 U.S.C. §§361, 362, and 363; (3) Scheduling a Further Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief [Doc. No. 53] (the "First Interim Cash Collateral Order")
- 2) Interim Order (1) Approving Stipulation Between ZB, N.A. DBA California Bank & Trust and the Debtor for Authorization to Use Cash Collateral Pursuant to §363 on an Interim Basis; (2) Granting Adequate Protection to Prepetition Senior Lender Pursuant to 11 U.S.C. §§361, 362, and 363; (3) Scheduling a Further Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief [Doc. No. 91] (the "Second Interim Cash Collateral Order").
- 3) Debtor's Supplemental Brief in Support of Emergency Motion for an Interim Order: (1) Authorizing Debtor's Use of Cash Collateral Pursuant to 11 U.S.C. § 363; (2) Granting Adequate Protection to Prepetition Senior [Secured Creditor] CBT Pursuant to 11 U.S.C. §§361, 362, and 363; (3) Scheduling a Continued

**United States Bankruptcy Court
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

CONT... Sultan Financial Corporation

Chapter 11

Hearing Pursuant to Bankruptcy Rule 4001; and (4) Granting Related Relief [Doc. No. 128] (the "Supplemental Briefing")

a) Notice of Hearing on Debtor's Continued Use of Cash Collateral [Doc. No. 129]

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") commenced a voluntary Chapter 11 petition on July 13, 2018 (the "Petition Date"). As of the Petition Date, the Debtor operated sixteen Aaron's Sales & Lease Stores.

On July 19, 2018, the Court entered an interim order authorizing the Debtor to use the cash collateral of California Bank & Trust ("CBT"), and setting a continued hearing on the Debtor's motion to use cash collateral for August 8, 2018. *See* Doc. No. 53 (the "First Interim Cash Collateral Order"). On August 10, 2018, the Court entered a second interim order authorizing the Debtor's further interim use of cash collateral. *See* Doc. No. 91 (the "Second Interim Cash Collateral Order").

This is a further interim hearing on the Debtor's motion for authorization to continue to use CBT's cash collateral. In support of the continued use of cash collateral, the Debtor states that the Debtor, CBT, and Aaron's Inc. ("Aaron's") have reached an agreement in principle, subject to court approval, under which Aaron's will acquire substantially all of the Debtor's operating assets, free and clear of liens (the "Aaron's Transaction"). The Debtor expects that if the Aaron's Transaction is approved, it will close on or about November 9, 2018. The Debtor has supplied an updated budget (the "Budget") setting forth its projected expenditures and cash disbursements through November 10, 2018.

CBT supports the Debtor's continued use of cash collateral in accordance with the Budget through November 10, 2018, but reserves all rights with respect to the Debtor's use of cash collateral subsequent to November 10, 2018.

II. Findings and Conclusions

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may

**United States Bankruptcy Court
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

CONT... Sultan Financial Corporation

Chapter 11

not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

The Court notes that the Debtor's hearing on its request for approval of the Aaron's Transaction is set for October 24, 2018. CBT, the Debtor's senior secured lender, supports the Debtor's request for authorization to continue to use cash collateral. The Debtor is authorized to continue to use CBT's cash collateral, in accordance with the Budget, through and including November 10, 2018.

In the event that the Court does not approve the Aaron's Transaction, the Court will determine whether it is necessary to schedule a hearing regarding the further interim use of cash collateral, and will notify the parties.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

2:18-16301 Javier Valencia and Maria Irene Valencia

Chapter 7

#5.00 Hearing
RE: [10] Motion to Avoid Lien JUDICIAL LIEN with LA FINANCIAL CREDIT UNION with proof of service

fr. 9-18-18

Docket 10

Tentative Ruling:

10/9/2018

Tentative Ruling:

For the reasons set forth below, the Debtors' Lien Avoidance Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. §522(f) (Real Property) [Doc. No. 12]
 - a) Declaration of Appraiser Daryl Johnson [Doc. No. 12]
 - b) Notice of Hearing on Lien Avoidance Motion [Doc. No. 13]
- 2) Opposition to Debtors' Motion to Avoid the Lien of LA Financial Credit Union [Doc. No. 11]
- 3) LA Financial Credit Union's Withdrawal of Opposition to Debtors' Motion to Avoid the Lien of LA Financial Credit Union [Doc. No. 21]

I. Facts and Summary of Pleadings

Relevant Background Facts

On June 29, 2018, Javier Valencia and Maria Irene Valencia (the "Debtors") filed a motion to avoid a judicial lien encumbering their residential real property located at 37342 Lasker Avenue, Palmdale, CA 93550 (the "Property") held by LA Financial Credit Union ("LA Financial"), pursuant to §522(f) [Doc. No. 10] (the "Lien

**United States Bankruptcy Court
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Wednesday, October 10, 2018

Hearing Room 1568

10:00 AM

CONT... Javier Valencia and Maria Irene Valencia

Chapter 7

Avoidance Motion"). LA Financial timely opposed the Lien Avoidance Motion and requested a hearing [Doc. No. 11] (the "Opposition"). Debtors subsequently submitted additional evidence in support of the motion – an appraisal of the Property prepared by Daryl Johnson [Doc. No. 12] (the "Johnson Appraisal").

The Court issued a tentative ruling in advance of the September 18, 2018 hearing, available on the docket as entry 17, addressing Debtors' submission of new evidence in reply papers in contravention of Local Bankruptcy Rule ("LBR") 9013-1(g)(4) (the "Tentative Ruling"). As a result, the Tentative Ruling waived appearances, stated the Court's intent to continue the hearing to October 10, 2018, and set an October 3, 2018 deadline for LA Financial to file a response to the Johnson Appraisal. There were no appearances at the September 18, 2018 hearing, so the Court adopted the Tentative Ruling as its final ruling.

On October 3, 2018, LA Financial withdrew its Opposition [Doc. No. 21].

II. Findings and Conclusions

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and (4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

Based on the Court's review of the Johnson Appraisal, the Court finds that the Property was worth \$240,000 as of May 31, 2018, the date of the filing of the petition.

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CONT... Javier Valencia and Maria Irene Valencia

Chapter 7

Debtors claim an exemption of \$100,000 pursuant to Cal. CCP §704.730(a)(3). The sum of the LA Financial lien, all other liens, and the exemption is \$290,881.90. Subtracting the value of the Debtors' interest in the Property (\$240,000) shows that the LA Financial lien impairs the Debtors' exemption to the extent of \$50,881.90.

Based upon the foregoing, the Lien Avoidance Motion is GRANTED. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Javier Valencia

Represented By
Steven A Alpert

Joint Debtor(s):

Maria Irene Valencia

Represented By
Steven A Alpert

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, October 10, 2018

Hearing Room 1568

12:00 PM

2:13-32130 Ramin Emami

Chapter 7

Adv#: 2:13-02149 Great American Insurance Company v. Emami et al

#100.00 Hearing re [173] *Appearance and Examination re Enforcement of Judgment-Debtor Vicki Emami and to Produce Documents*

fr. 8-9-18

Docket 0

Tentative Ruling:

10/9/2018

Hearing required.

Party Information

Debtor(s):

Ramin Emami

Represented By
Baruch C Cohen

Defendant(s):

Ramin Emami

Represented By
Baruch C Cohen

Vicki Ann Emami

Pro Se

Plaintiff(s):

Great American Insurance Company

Represented By
Robert J Berens

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 15, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#1.00 Hearing

RE: [96] Motion to Convert Case From Chapter 7 to 11. LLC (Bauer, John)

Docket 96

***** VACATED *** REASON: DUPLICATE OF CALENDAR NO. 4.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
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Monday, October 15, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#2.00 Hearing

RE: [65] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2935 N. Mountain and 2936 N. Loma Avenue, San Bernardino, CA 92404 . (Yaspan, Robert)

fr. 9-4-18

Docket 65

***** VACATED *** REASON: PER ORDER ENTERED 10-9-18**

Tentative Ruling:

For the reasons set forth below, the hearing on the Motion is CONTINUED to **October 15, 2018 at 10:00 a.m.** The deadline for the parties to file any supplemental briefing is no later than 10-days before the continued hearing, *i.e.* **October 5, 2018.** Any supplemental briefing shall be limited to responding to the arguments raised in the Motion for Relief from Stay.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "Motion") [Doc. No. 65]
- 2) Debtor's Opposition to the Motion (the "Debtor Opposition") [Doc. No. 74]
 - a) Declaration of James H. Pike (the "Pike Decl.")
 - b) Declaration of Miguel Arreola (the "Arreola Decl.")
 - c) Declaration of John H. Bauer (the "Bauer Decl.")
- 3) Trustee's Opposition to the Motion (the "Trustee Opposition") [Doc. No. 76]
- 4) Debtor's Supplemental Opposition to the Motion (the "Supplemental Opposition") [Doc. No. 82]
- 5) Trustee's Response to the Supplemental Opposition [Doc. No. 83]
- 6) Creditor's Reply to the Oppositions (the "Reply") [Doc. No. 84]

I. Facts and Summary of Pleadings

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10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

M & A Enterprises, LLC (the "Debtor") filed a voluntary Chapter 7 petition on May 29, 2018 (the "Petition") [Doc. No. 1]. Rosendo Gonzalez was appointed as interim Chapter 7 trustee (the "Trustee").

Factual Background

The property at issue consists of two adjacent apartment buildings located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Property"). The Creditor is the holder of the second and third deeds of trust secured by the Property.

In 2015, the Property was sold to Neram Village, Inc. ("Neram"). "Declaration of Joseph G. McCarty" (the "McCarty Decl.") [Doc. No. 9] at ¶ 4. As part of the sale transaction, the Creditor received two notes and deeds of trust: (1) the second deed of trust, in the original principal amount of \$3,432,154.81, which was an All Inclusive Trust Deed ("AITD") wrapping around the first deed of trust from East West Bank; and (2) the third deed of trust in the original principal amount of \$1,123,845.18 (the indebtedness secured by such deeds of trust collectively, the "Loans"). *Id.* at ¶ 3. Subsequently, and without notifying the Creditor, Neram encumbered the Property with a fourth deed of trust and fifth deed of trust. *Id.* at ¶ 4. The Debtor was the beneficiary of the fifth deed of trust. *Id.* On April 12, 2016, after Neram had failed to make payments to the Creditor, the Creditor commenced a judicial foreclosure action in the California Superior Court (the "State Court"). *Id.* at ¶ 5. The State Court appointed Eloisa Fernandez as receiver (the "Original Receiver"). *Id.* The Original Receiver made certain necessary repairs to the Property and Creditor advanced funds to pay for the repairs and other expenses of the Property. *Id.* at ¶ 6.

On June 12, 2017, the Debtor commenced in the State Court a foreclosure action on its fifth deed of trust, and moved to remove the Original Receiver. *Id.* at ¶ 7. The Creditor opposed the Debtor's motion and proposed that Matthew Taylor take over as receiver. *Id.* On June 19, 2017, the State Court entered an order appointing Mr. Taylor as receiver (the "Receiver"). *Id.*; *see also id.*, Exhibit 1 (the State Court Order). Over the objection of the Debtor to the discharge of the Original Receiver and to the amount paid for repairs, the State Court discharged the Original Receiver. *Id.* at ¶ 8. The Debtor subsequently filed a cross-complaint which contests the advances for the repairs and the expenses of the Property. *Id.* at ¶ 9. The Debtor's cross-complaint

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CONT... M & A Enterprises, LLC
is still pending.

Chapter 7

On August 22, 2018, the Court held a hearing on, among other motions, the Debtor's "Motion to Convert Case under 11 U.S.C. § 706(a)" (the "Motion to Convert") [Doc. No. 17], and the "Motion for Entry of Order Pursuant to 11 U.S.C. § 543(d)(1) Maintaining Receiver Matthew Taylor as Custodian in Possession and Control of Real Estate of Debtor and Excusing Custodian from Compliance with 11 U.S.C. §§ 543(a) and (b)" (the "Receiver Motion") [Doc. No. 8]. After considering the Motion to Convert and the Receiver Motion, the related papers, and the arguments raised by counsel for the respective parties at the hearing, the Court denied both the Motion to Convert and the Receiver Motion. *See* Doc. No. 75 (the Court's final ruling after hearing); "Order Denying Motion to Convert" [Doc. No. 77]. Furthermore, the Court ordered the Receiver to turn over all property of the estate under the Receiver's control to the Trustee. Doc. No. 75.

The Motion

On August 13, 2018, Luis Munoz, and N. Loma and N. Mountain Ave. Properties, LLC, (collectively, the "Movant" or the "Creditor") filed the "Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362" (Real Property) (the "Motion") [Doc. No. 65]. The Motion seeks relief from the automatic stay under §§ 362(d)(1) and (d)(2) with respect to the Property.

The Movant contends that "cause" exists for relief from the stay under § 362(d)(1) because: (1) the Movant's interest in the Property is not adequately protected by an equity cushion; and (2) the bankruptcy case was filed in bad faith, based on the fact that the Movant is the only creditor, or one of very few creditors, listed or scheduled in the Debtor's case commencement documents; and (3) for other cause. Motion at ¶ 4(a). The Motion additionally requests relief from stay pursuant to § 362(d)(2) because, pursuant to § 362(d)(2)(A), the Debtor has no equity in the Property, and pursuant to § 362(d)(2)(B), the Property is not necessary to an effective reorganization. *Id.* at ¶ 4(b).

The Motion includes an appraisal of the Property by CBRE Valuation and Advisory Services dated August 6, 2018 (the "CBRE Appraisal") [Doc. No. 65, Ex. D]. According to the CBRE Appraisal, the fair market value of the Property is \$5,900,000.00. According to the Movant, the Property is encumbered by a First Deed

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CONT... M & A Enterprises, LLC

Chapter 7

of Trust in favor of East West Bank, a Second Deed of Trust in favor of the Movant, Luis Munoz, in the amount of \$4,422,564.00 (amount of Second Deed of Trust included as a wrap-around with the First Deed of Trust), a Third Deed of Trust in favor of the Movant, Luis Munoz, in the amount of \$1,386,488.00, and a Fourth Deed of Trust in favor of Hahn Tran in the amount of \$250,000.00. "Real Property Declaration of Luis Munoz" (the "Munoz Decl.") [Doc. No. 65] at ¶ 8. The Movant alleges that the total amount of its claim with respect to the Property is \$5,894,948.83. *Id.* at ¶ 8. In sum, the Movant alleges that the amount of the total debt against the Property is \$6,062,450.00. *Id.* at ¶ 11(e). Based on these amounts, the Movant contends that the Movant is not adequately protected by an equity cushion in the Property, and that there is no equity in the Property.

With respect to the Movant's argument that there is "cause" for relief from stay under § 362(d)(1) because the Petition was filed in bad faith, the Movant contends that the Debtor is attempting to abuse the bankruptcy process in order to further delay the Creditor's foreclosure on the Property, and that the Debtor's schedules are inaccurate and incomplete. The Movant argues that the Debtor's "Amended Schedule A/B" [Doc. No. 38] does not correct the deficiencies in the Debtor's original Schedules, and the addition of substantial assets that were not disclosed in the Petition suggest that the Amended Schedule A/B is not real, but rather another attempt to delay the pending foreclosure proceedings.

Lastly, the Motion requests that if the Court is inclined not to grant relief from stay, that the Court order the Debtor to make monthly adequate protection payments on the Movant's secured loans in the amount of \$17,281.85 on the Second Deed of Trust wrap-around, and \$6,020.00 on the Third Deed of Trust.

The Debtor's Opposition

On August 21, 2018, the Debtor filed the "Debtor's Opposition to the [Motion]" (the "Debtor Opposition") [Doc. No. 74]. The Opposition contends, among other things, that (1) the Movant's interest is protected by an adequate equity cushion, and that there is equity in the Property, and (2) the Petition was filed in good faith.

The Debtor submits an appraisal of the Property by Cushman & Wakefield Western, Inc., dated August 10, 2018 (the "Cushman Appraisal") [Doc. No. 74, Ex. A]. According to the Cushman Appraisal, the fair market value of the Property is

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CONT... M & A Enterprises, LLC

Chapter 7

\$6,850,000.00. The Opposition asserts that Movant inflates the total indebtedness against the Property. The Debtor contends that the total debt against the Property, some of which the Debtor disputes, is \$5,282,141.00. The Debtor contends that the Movant's claim includes inflated attorney's fees, and the Debtor additionally disputes the amounts the Movant claims that it spent to repair the Property. Thus, based on the Debtor's calculations there is gross equity in the Property in the amount of \$1,567,859.00. Based on the Debtor's figures regarding indebtedness and the Cushman Appraisal submitted by the Debtor, there is \$787,550.00 in gross equity. The Opposition further argues that the Movant inflates the balances for the First Deed of Trust and the Second Deed of Trust by failing to credit certain payments made on the First Deed of Trust, and based on the Loan Statements for the respective loans, *see* Debtor Opposition at Ex's. D and E. If the balances are adjusted accordingly, the amount of gross equity available is further increased.

The Debtor additionally argues that the Petition was not filed in bad faith, and that the Movant seeks to gain a cash windfall through Chapter 7. The Opposition further states that the Debtor has never had management control of the Property because the Property has been continuously managed by the respective receivers.

The Trustee's Opposition

On August 23, 2018, the Trustee filed the "Trustee's Opposition to the [Motion]" (the "Trustee Opposition") [Doc. No. 76]. The Trustee requests that the Motion be denied, or in the alternative, that the hearing on the Motion be continued for not less than 30 days to afford the Trustee an opportunity to determine whether there is any equity in the Property, and to evaluate the Movant's claim and lien against the Property. The Trustee explains that, in light of the Court's ruling denying the Motion to Convert on August 22, 2018, the Trustee has not had time to thoroughly review the Motion and the records of the Receiver and the Debtor, to determine whether there is any equity in the Property, or to evaluate the Movant's alleged secured claim and lien on the Property.

The Debtor's Supplemental Opposition

On August 27, 2018, the Debtor filed the "Supplemental Opposition to the Motion" (the "Supplemental Opposition") [Doc. No. 82]. The Supplemental Opposition contends: (1) the Debtor's Appraisal reveals that there is substantial equity

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CONT... M & A Enterprises, LLC

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in the Property, and that a Chapter 11 case is in prospect; (2) the Creditor opposes conversion to Chapter 11 in order to obtain a huge cash windfall through Chapter 7; (3) the Creditor's claimed loan balances are improperly inflated, and Chapter 11 is the most appropriate means to determine the loan balances; (4) the Chapter 7 Trustee does not oppose conversion to Chapter 11; and (5) the case is appropriate for immediate conversion to Chapter 11. The Supplemental Opposition includes evidence of a payoff statement provided to the Debtor by East West Bank for the First Deed of Trust, which conflicts with the payoff amount asserted by the Creditor.

To the extent the Supplemental Opposition raises arguments that are not relevant to the instant Motion, specifically those related to converting the case to Chapter 11, the Court will not consider such arguments in connection with the Motion at bar. To the extent the Supplemental Opposition raises arguments that are related to the Motion before the Court, the Court will consider such arguments at the continued hearing.

The Reply to the Oppositions

On August 28, 2018, the Creditor filed the "Reply to the Oppositions to [the Motion]" (the "Reply") [Doc. No. 84]. The Reply argues that cause exists for relief from stay and that the Appraisals confirm a lack of equity in the Property. Furthermore, the Reply contends that the Debtor's Opposition confirms that the Debtor is attempting to use this bankruptcy case to relitigate issues which have already been determined by the State Court. The Creditor states that the amounts listed in the Motion as being owed on the Creditor's loans are the correct amounts, and the Creditor submits spreadsheets in support of the amounts owing as Exhibits "1-3" attached to the "Declaration of Robert Yaspan" (the "Yaspan Decl.") [Doc. No. 84]. The Reply additionally argues that the Debtor's bankruptcy was filed in bad faith.

With respect to the request by the Trustee in the Trustee's Opposition, the Creditor contends that the Trustee has had adequate time to evaluate the Estate's assets, and that any further delay will prejudice the Creditor. The Creditor has continued to make payments on the First Deed of Trust to prevent foreclosure, and to maintain the status quo. Specifically, the Creditor has made monthly payments on the First Deed of Trust of \$17,281.86 in June, July, and August, with the September payment coming due on September 15, 2018. To the extent the Court is inclined to do anything other than

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CONT... M & A Enterprises, LLC

Chapter 7

grant relief from stay, the Creditor requests that the Court order that monthly adequate protection payments be made to the Creditor in the amount of payments due on the First, Second, and Third Deeds of Trust, which total \$23,301.85 per month, from the Petition Date until the case is closed or dismissed.

II. Findings and Conclusions

For the purposes of granting the Trustee's request for a continuance only, the court finds that there is equity in the subject property sufficient for the purpose of adequately protecting Creditor for the limited period of time until the continued hearing.

Based on the foregoing, the hearing on the Motion is CONTINUED to **October 15, 2018 at 10:00 a.m.** The deadline for the parties to file any supplemental briefing is no later than 10-days before the continued hearing, *i.e.* **October 5, 2018.** Any supplemental briefing shall be limited to responding to the arguments raised in the Motion for Relief from Stay.

The Trustee shall lodge a conforming order within seven (7) days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... M & A Enterprises, LLC

Chapter 7

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

**United States Bankruptcy Court
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Los Angeles
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10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#3.00 Hearing

RE: [117] Motion for Turnover of Property -Trustee's Notice of Motion and Motion for Turnover of: (1) Cash in Debtor's Bank Accounts, including \$2,090,431 listed on Schedule A/B; (2) Unauthorized Post-Petition Retainer of \$25,000; and (3) Books and Records of the Debtor; Memorandum of Points and Authorities, Declaration of Aaron E. de Leest, and Request for Judicial Notice in Support Thereof; proof of service (de Leest, Aaron)

Docket 117

***** VACATED *** REASON: PER ORDER ENTERED 10-9-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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Chapter 7

#4.00 Hearing
RE: [122] Motion to Convert Case From Chapter 7 to 11. Notice of MTN and
MTN Convert Case to Chapter 11; Demand for Return of Personal and Business
Cash LLC (Bauer, John)

Docket 122

***** VACATED *** REASON: PER ORDER ENTERED 10-9-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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#4.10 Hearing

RE: [161] Application for Compensation Accountant's First and Final Application for Approval of Compensation and Reimbursement of Costs for SLBIGGS, Accountant, Period: 8/24/2018 to 10/5/2018, Fee: \$16,596.50, Expenses: \$101.82.

Docket 161

Tentative Ruling:

10/12/18:

Subject to additional argument which may be presented in reply briefs (which are not yet due as of the issuance of this tentative ruling), the Court is prepared to (1) overrule the Debtor's objections to the Fee Applications and approve the Fee Applications in their entirety and (2) approve the final accounting submitted by the Receiver, exonerate the Receiver's surety bond, and grant the related relief requested by the Receiver.

Pleadings Filed and Reviewed:

- 1) Fee Applications:
 - a) Notice of Hearing on Final Applications for Compensation and Reimbursement of Expenses by Professionals [Doc. No. 173]
 - b) Accountant's First and Final Application for Approval of Compensation and Reimbursement of Costs from August 24, 2018 through October 5, 2018 [Doc. No. 161]
 - c) Application for Payment of: Final Fees and/or Expenses [filed by Chapter 7 Trustee's Counsel, Danning, Gill, Diamond & Kollitz, LLP] [Doc. No. 170]
 - d) Supplement in Support of Trustee's Final Application for Fees [Doc. No. 171]
 - e) Application for Payment of: Final Fees and/or Expenses [filed by Counsel for Receiver Matthew Taylor] [Doc. No. 164]
 - i) Notice of Application for Payment of Final Fees and/or Expenses [Doc. No. 165]
 - ii) Amended Notice of Hearing on Application for Payment of Final Fees and/or Expenses [Doc. No. 169]

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CONT... M & A Enterprises, LLC

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- 2) Debtor's Opposition to Fee Applications:
 - a) Debtor's Opposition to Final Application of Trustee, Rosendo Gonzalez, for Fees [Doc. No. 177]
 - b) Debtor's Opposition to Final Application of Arent Fox LLP for Legal Fees and Expenses [Doc. No. 178]
- 3) Trustee's Response to Debtor's Opposition to Trustee's Final Application for Fees [Doc. No. 179]
- 4) Notice of Motion and Motion Pursuant to 11 U.S.C. §§543(c) and 105(a) for Order (1) Approving the Receiver's Final Accounting; (2) Exonerating the Receiver's Surety Bond; (3) Barring any Further Action Against the Receivership Estate; (4) Discharging the Receiver from any Further Duty, Obligation, or Liability; and (5) Finding the Receiver's Fees and Expenses Were Reasonable and Necessary for the Management of the Receivership Estate and Authorizing the Payment of Any Unpaid Amounts [Doc. No. 167]
 - a) Notice of Application for Payment of Final Fees and Expenses [Doc. No. 165]

I. Facts and Summary of Pleadings

M&A Enterprises, LLC (the "Debtor") commenced a voluntary Chapter 7 petition on May 29, 2018. The Debtor owns two adjacent apartment buildings, located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "San Bernardino Properties").

On September 26, 2018, the Court conducted a hearing on shortened notice on the Debtor's motion for authorization to refinance the San Bernardino Properties (the "Refinancing Motion"). The material provisions of the Court's ruling on the Refinancing Motion—subsequently memorialized in the *Order: (1) Authorizing Release of Funds to Escrow and Refinance of Property; (2) Setting Hearing on Final Fee Applications; and (3) Setting Hearing on Court's Motion to Dismiss* [Doc. No. 174] (the "Refinancing Order")—may be summarized as follows:

- 1) The Debtor shall promptly turn over copies of all its books and records to the Chapter 7 Trustee (the "Trustee").
- 2) After the Trustee has had the opportunity to review to his satisfaction the books and records provided by the Debtor and determine, to the extent he is able, that the Debtor has identified all of its known unsecured creditors, the Trustee shall deposit \$2.3 million in estate cash from the Trustee's bank account into an escrow account for the refinancing of the San Bernardino Properties. The remaining estate funds—in the approximate amount of

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\$400,000—shall be retained by the Trustee.

- 3) The Debtor is authorized to refinance and encumber the San Bernardino Properties as requested in the Refinancing Motion. Title and escrow for the refinancing shall be handled by First American Title.
- 4) A hearing on the final fee applications (the “Fee Applications”) of the Trustee and the estate’s professionals shall take place on October 15, 2018. To reduce expenses incurred in the preparation of the Fee Applications, strict compliance with the requirements set forth in Local Bankruptcy Rule 2016-1 shall not be required. The Fee Applications shall contain the following information:
 - a) A listing of time spent by the professional on matters for which compensation is sought; and
 - b) A brief narrative statement of the services rendered and time expended.
- 5) A hearing on whether the case should be dismissed shall be held on October 29, 2018, at 10:00 a.m.
- 6) The following motions scheduled for hearing on October 15, 2018, at 10:00 a.m., are taken off calendar:
 - a) *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362* [filed by Luis Munoz] [Doc. No. 65];
 - b) *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362* [filed by SMN Lo, Inc.] [Doc. No. 85];
 - c) *Trustee’s Notice of Motion and Motion for Turnover of: (1) Cash in Debtor’s Bank Accounts, Including \$2,090,411 Listed on Schedule A/B; (2) Unauthorized Post-Petition Retainer of \$25,000; and (3) Books and Records of the Debtor* [Doc. No. 117]; and
 - d) *Debtor’s Notice of Motion and Emergency Motion to Convert Case to Chapter 11* [Doc. No. 122].

See Refinancing Order at ¶¶1–7.

The estate’s professionals have filed applications seeking compensation in the following amounts:

- 1) The Trustee seeks fees in the amount of \$100,000.
- 2) Danning, Gill, Diamond & Kollitz, LLP (“DGDK”), the Trustee’s general bankruptcy counsel, seeks fees in the amount of \$121,545 and expenses in the amount of \$1,730.18.
- 3) SLBiggs, A Division of SingerLewak (“SLBiggs”), the Trustee’s accounting firm, seeks fees in the amount of \$16,596.50 and expenses in the amount of \$101.82.

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- 4) Arent Fox LLP (“Arent Fox”), counsel for Receiver Matthew Taylor (the “Receiver”), seeks fees in the amount of \$32,324.50 and expenses in the amount of \$174.16.

The fees and expenses sought by DGDK and Arent Fox are estimates, as these professionals anticipate performing additional work prior to the hearing on Debtor’s motion for voluntary dismissal that is set for October 29, 2018.

Summary of Papers Filed in Connection with the Trustee’s Fee Application

In support of his request for fees of \$100,000, the Trustee acknowledges that “Section 326 of the Bankruptcy Code is not typically used in the determination of a trustee’s compensation in cases of a debtor’s voluntary dismissal.” Doc. No. 171 at 5. The Trustee asserts that he did everything possible to maximize the distribution to creditors and is therefore entitled to compensation. The Trustee maintains that he is entitled to compensation pursuant to *In re Woodworth*, 70 B.R. 361 (Bankr. N.D.N.Y. 1987), in which the court observed that where “a case is either converted or dismissed, courts have seen fit to compensate the trustee even where no money has been disbursed to creditors, upon a showing that the trustee has performed substantial services on the estate’s behalf.” The Trustee notes that in this case, approximately \$6.5 million will be distributed to creditors, which would entitle the Trustee to compensation of approximately \$218,250 under the §326 formula. The Trustee contends that his fee request of \$100,000 is reasonable under the circumstances.

In opposition to the Trustee’s Fee Application, the Debtor argues that the Trustee has performed minimal work in this case and that any funds distributed to creditors are the result of the Debtor’s efforts in obtaining court authorization to refinance the San Bernardino Property. The Debtor further argues that §326 does not apply, because the San Bernardino Property has not been sold to third parties and therefore has not been administered in a manner entitling the Trustee to compensation. The Debtor further notes that the Trustee’s Fee Application does not contain any billing records and was not filed timely.

In reply to the Debtor’s opposition, the Trustee states that he did not maintain time records because he is not required to do so in the typical Chapter 7 case. The Trustee asserts that he has performed significant work by personally responding “to a never-ending series of problems, inquiries, calls and issues,” a task which “was made more difficult, if not impossible,” by the inadequacy of the Debtor’s initial schedules. Doc. No. 179 at ¶R. Finally, the Trustee argues that the Debtor has only itself to blame for

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the accrual of the Trustee's fees, because it was the Debtor who chose to seek relief under Chapter 7 when relief should have been sought under Chapter 11.

Summary of Papers Filed in Connection with Arent Fox's Fee Application

Arent Fox, counsel for the Receiver, seeks fees in the estimated amount of \$32,324.50 and expenses in the estimated amount of \$174.16.

The Debtor argues that Arent Fox's fees should be reduced by \$5,777. According to the Debtor, Arent Fox double-billed by unnecessarily sent two attorneys to hearings scheduled on August 22, 2018. The Debtor further contends that Arent Fox overstaffed the matter in conducting administrative follow-up work.

Because this hearing has been set on shortened notice, Arent Fox's reply papers were not yet due as of the issuance of this tentative ruling.

Summary of Papers Filed in Connection with the Motion for Approval of the Receiver's Final Accounting

The Receiver moves for an order (1) approving the Receiver's final accounting; (2) exonerating the Receiver's surety bond; (3) barring any further action against the receivership estate; (4) discharging Matthew L. Taylor as the court receiver in the state court receivership action; and (5) finding that the Receiver's fees are reasonable. Doc. No. 167 (the "Receivership Motion"). The Receiver asserts that the relief that it is requesting is routinely granted and that, pursuant to §543, "Congress has ... authorized bankruptcy courts to review and conclude matters relating to a state court receivership." *In re Sundance Corp., Inc.*, 149 B.R. 641, 649-50 (Bankr. E.D. Wash 1993). No opposition to the Receivership Motion is on file.

II. Findings and Conclusions

A. The Debtor's Objections to Arent Fox's Fee Application are Overruled

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the

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completion of, a case under this title;
(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

In determining the amount of allowable fees under §330(a), courts within the Ninth Circuit rely upon the lodestar approach. Under the lodestar approach, the "initial estimate of a reasonable attorney's fee is properly calculated by multiplying the number of hours reasonably expended on the litigation times a reasonable hourly rate. Adjustments to that fee then may be made as necessary in the particular case." *Blum v. Stenson*, 465 U.S. 886, 888, 104 S. Ct. 1541, 1544, 79 L. Ed. 2d 891 (1984).

Having reviewed Arent Fox's detailed billing records, the Court does not agree with the Debtor's contention that Arent Fox overstaffed the case and double-billed the estate. It is true that two attorneys attended the hearing on August 22, 2018. However, both attorneys had performed substantive work on the case. The Court's review of Arent Fox's billing records indicates that Mr. Flahaut assumed primary responsibility for most matters that arose, but that Mr. Ordubegian also played a significant role. In fact, it was Mr. Ordubegian who made an oral presentation to the Court at the August 22 hearing. Under these circumstances, it was not unreasonable for both Mr. Flahaut and Mr. Ordubegian to attend the August 22 hearing.

The Court notes that the Receiver's counsel was required to advise the Receiver on multiple issues, often on a shortened time frame. Thus, the fact that the Receiver's counsel staffed the case with more than one senior attorney does not indicate that the Receiver was churning fees.

The Debtor's contention that Arent Fox double-billed for administrative work

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performed on August 28, 2018, is likewise without merit. On that date, Mr. Ordubegian billed \$345 for a “call with Trustee’s counsel re transition issues and form of order objections.” Mr. Flahaut billed \$672 for preparing a draft order, \$448 for a telephone conference with the Trustee’s counsel regarding the proposed order, and \$112 for exchanging emails with the Trustee’s counsel regarding the proposed order. The billing entries do not indicate, as the Debtor contends, that Mr. Ordubegian and Mr. Flahaut double-billed for the same work. Mr. Ordubegian billed for consulting with the Trustee’s counsel regarding transition issues and the form that the proposed order should take. Mr. Flahaut performed the entirely different tasks of then drafting the proposed order and following up with the Trustee’s counsel regarding the form of that order.

For the foregoing reasons, the Court awards Arent Fox, on a final basis, fees in the amount of \$32,324.50 and expenses in the amount of \$174.16. The exact amount of the fees and expenses awarded is subject to adjustment based on any additional work Arent Fox may perform in the litigation of its Fee Application or in connection with this case. By no later than **October 19, 2018**, Arent Fox shall submit a declaration, setting forth the exact amount of its final fee request. Any opposition to such declaration must be submitted by no later than **October 26, 2018**. As of **October 26, 2018**, the matter shall stand submitted and the Court will determine the exact amount of fees allowable to Arent Fox.

B. The Debtor’s Objections to the Trustee’s Fee Application are Overruled

The Court will consider the Trustee’s Fee Application, notwithstanding the fact that it was filed on Monday, October 8, 2018, rather than on Friday, October 5, 2018, as ordered by the Court. The Debtor has not been prejudiced by the slight delay in the filing of the Fee Application. Given the Trustee’s testimony that the untimely filing was the result of an inadvertent oversight, combined with the fact that the hearing on these Fee Applications was set on shortened notice, the untimely filing does not indicate a lack of diligence on the part of the Trustee.

Turning to the merits, §326(a) provides:

In a case under chapter 7 ..., the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee’s services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of \$1,000,000, and reasonable compensation not to exceed 3 percent of such

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moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Section 330(a)(7) provides:

In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

The Debtor contends that §326 is not applicable to this case because it has not been fully administered. The Debtor is mistaken.

There is no requirement within §326 that a case be fully administered, and that the Chapter 7 Trustee file a *Final Report* and *Final Account*, in order to receive compensation. To the contrary, the statute allows the Trustee to receive “reasonable compensation” for his services, “payable after the trustee renders such services ...” Courts have held that even where a Trustee does not disburse any funds to creditors, the Trustee may still be entitled to compensation. This line of authority is summarized in *In re Woodworth*, 70 B.R. 361, 362 (Bankr. N.D.N.Y. 1987):

Consequently, a Chapter 7 trustee who created an asset in a no-asset case by successfully blocking a debtor's discharge was awarded compensation on a *quantum meruit* basis when the debtor's conversion to Chapter 13 stymied distribution of monies to creditors. *Matter of Parameswaran*, 64 B.R. 341, 343 (Bankr.S.D.N.Y.1986). Additionally, where a Chapter 7 trustee has actually marshaled assets prior to the debtor's conversion to Chapter 13, the bankruptcy court approved compensation even in the absence of disbursement. *In re Schneider*, 15 B.R. 744, 745 (Bankr.D.Kan.1981). *Compare, In re Yale Mining Corp.*, 59 B.R. 302 (Bankr.W.D.Va.1986) (A strict interpretation of Code § 326(a) is not warranted absent complete administration, and thus fees paid to a Chapter 11 trustee prior to conversion are not considered when computing subsequent Chapter 7 trustee fees).

In contrast to the cases cited above, here the Trustee will distributed approximately \$6.5 million to creditors. If a Trustee is entitled to compensation even where no funds are distributed to creditors, the Trustee here is certainly entitled to compensation.

The Debtor argues that because it was responsible for orchestrating the refinancing

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transaction, the Trustee has not administered any funds in this case. The Debtor is again incorrect. The Court allowed the Debtor to play a significant role in the refinancing transaction because the transaction furthered the interests of the Debtor, the Trustee and his professionals, creditors, and the objectives of the Bankruptcy Code. Notwithstanding the Debtor's involvement, ultimately it is the Trustee who has administered funds in this case. Any actions taken by the Debtor to facilitate the refinancing transaction were done only in the Debtor's capacity as an agent working on behalf of the Trustee. It is immaterial that the Trustee initially opposed the refinancing transaction and did not cooperate in facilitating the transaction prior to the September 26 hearing. Until this case is dismissed, the Trustee remains the estate's fiduciary, charged with overseeing and liquidating the estate's property, pursuant to § 704(a)(1).

The Debtor cannot justifiably complain of this result, given that it is dictated by the Debtor's decision to seek bankruptcy protection under Chapter 7. The Debtor has previously represented that its decision to seek relief under Chapter 7, rather than Chapter 11, was a mistake resulting from poor legal advice. That reality does not permit the Debtor to escape the consequences of its actions. As a corporation, the Debtor "may appear in federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). The Debtor is bound by the actions of the counsel it selected. *See Link v. Wabash Railroad Co.*, 370 U.S. 626, 633–34 (1962) ("There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omissions of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have 'notice of all facts, notice of which can be charged upon the attorney.'").

The Ninth Circuit Bankruptcy Appellate Panel ("BAP") explains the proper application of §326(a) as follows:

Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. In our decision in *Salgado–Nava*, we analyzed the interaction between this maximum compensation formula and the provision of § 330(a)(7) that the bankruptcy court must "treat [a trustee's] compensation as a commission, based on section 326." *In re Salgado–Nava*, 473 B.R. at 915–22. We held that a trustee's

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request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. “[A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review.” *Id.* at 921. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to “determine whether there exists a rational relationship” between the compensation requested and the services rendered.

Fear v. United States Trustee (In re Ruiz), 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

Applying the formula set forth in §326(a), the Trustee would be entitled to compensation of approximately \$218,250. The Trustee has voluntarily reduced his requested compensation and seeks only \$100,000.

The Debtor’s position is that the Trustee should receive nothing. Essentially, the Debtor’s argument is that it was the Debtor who performed the work that lead to the refinancing transaction; that the Trustee’s professionals, rather than the Trustee, did most of the work in this case; and that accordingly, the Trustee is entitled to nothing. The Debtor’s argument misapprehends the system Congress has established for the compensation of Chapter 7 Trustees.

As the Ninth Circuit BAP has observed, in 90% of cases the Trustee can expect to receive at most a flat fee of \$60. *Hopkins v. Asset Acceptance LLC (In re Salgado-Nava)*, 473 B.R. 911, 921–22 (B.A.P. 9th Cir. 2012). Section 326(a) offsets the low flat fee Trustees receive in most cases by allowing them to obtain a substantial commission in the approximately 10% of cases in which assets are administered. *Id.* at 922 (explaining that the commission structure for assets cases “has a certain symmetry to it” given that Trustees will receive a flat fee in most cases).

The Trustee has already voluntarily reduced the fees to which he would be entitled under §326 by more than half. The Debtor has failed to show that “extraordinary circumstances” exist warranting any further reduction. Although it is true that it was primarily through the efforts of the Debtor that the refinancing transaction was facilitated, the Trustee still was required to perform significant work in this case—including communicating with his general bankruptcy counsel in connection with multiple hearings, seeking through his counsel the employment of a management company to operate the San Bernardino Property, overseeing the San Bernardino Property’s operations, and attending to various other administrative matters.

The Debtor objects to the Trustee’s Fee Application on the grounds that the Trustee has not submitted any billing records. The Debtor’s objection is overruled. In

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view of the commission structure under which the Trustee receives compensation, billing records would not be of material assistance to the Court in evaluating the Trustee's request for compensation. The Trustee has plausibly explained that he has not kept any billing records for this matter because in most Chapter 7 cases, he is not required to submit billing records to receive compensation.

C. The Fee Applications of DGDK and SLBiggs is Approved

No opposition to the Fee Applications submitted by DGDK and SLBiggs has been filed. Having reviewed both Fee Applications, the Court finds that the fees and expenses sought are reasonable and approves the applications.

DGDK is awarded, on a final basis, fees in the amount of \$121,545 and expenses in the amount of \$1,730.18. The exact amount of the fees and expenses awarded to DGDK is subject to adjustment based on any additional work DGDK may perform in the litigation of its Fee Application or in connection with this case. By no later than **November 5, 2018**, DGDK shall submit a declaration, setting forth the exact amount of its final fee request. Any opposition to such declaration must be submitted by no later than **November 12, 2018**. As of **November 12, 2018**, the matter shall stand submitted and the Court will determine the exact amount of fees allowable to DGDK.

SLBiggs is awarded, on a final basis, fees in the amount of \$16,596.50 and expenses in the amount of \$101.82. As it is not anticipated that SLBiggs will perform any additional work in this case, SLBiggs' fees are not subject to further adjustment.

D. The Receivership Motion is Granted in its Entirety

Section 543(c)(2) provides that the Court may "provide for payment of reasonable compensation for services rendered and costs and expenses incurred by" a professional such as the Receiver. As one court has explained:

[The Bankruptcy Court's] jurisdiction to review the actions and accounting of a state court receiver is found in § 543(c). Through § 543, Congress has apparently authorized bankruptcy courts to review and conclude matters relating to a state court receivership. Since receivership property becomes property of a bankruptcy estate upon the filing of a petition, control and decisions affecting the receivership assets which were formerly *in custodia legis* of the state court come under and become the domain of the bankruptcy court. Through § 543(c) and § 503(b)(3)(E) Congress gave the bankruptcy courts power to decide all issues concerning charges against that property.

In re Sundance Corp., Inc., 149 B.R. 641, 649–50 (Bankr. E.D. Wash. 1993).

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No opposition to the Receiver's request for approval of its final accounting, approval of its fees, exoneration of its surety bond, and entry of an order discharging the Receiver from any obligations or liability in the state court action in which he was initially appointed has been filed. The Court finds that the fees incurred by the Receiver are reasonable and approves the Receiver's final accounting. The remaining relief requested by the Receiver is appropriate and is also granted.

III. Conclusion

Subject to additional argument which may be presented in reply briefs (which are not yet due as of the issuance of this tentative ruling), the Court is prepared to (1) overrule the Debtor's objections to the Fee Applications submitted by the professionals and grant the Fee Applications in their entirety and (2) approve the final accounting submitted by the Receiver, exonerate the Receiver's surety bond, and grant the related relief requested by the Receiver.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:18-16133 M & A Enterprises, LLC

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#4.20 Hearing

RE: [85] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Claims for Declaratory Relief, Fraud, and Injunctive Relief .

\fr. 9-24-18

Docket 85

***** VACATED *** REASON: PER ORDER ENTERED 10-9-18**

Tentative Ruling:

9/20/2018

No appearances required. The matter is CONTINUED to **October 15, 2018 at 10:00 a.m.** to be heard concurrently with Debtor's Motion to Convert Case to Chapter 11 [Doc. No. 122]. The Court finds that considerations of judicial economy and convenience warrant deferring any determination on whether to grant relief from stay until after the Court determines whether the Trustee or the Debtor will take the lead in litigating the underlying state court action.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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#4.30 Hearing

RE: [167] Motion Pursuant To 11 U.S.C. §§ 543(C) And 105(A) For Order (1) Approving The Receiver's Final Accounting; (2) Exonerating The Receiver's Surety Bond (3) Barring Any Further Action Against The Receivership Estate; (4) Discharging The Receiver From Any Further Duty, Obligation, Or Liability; And (5) Finding The Receiver's Fees And Expenses Were Reasonable And Necessary For The Management Of The Receivership Estate And Authorizing The Payment Of Any Unpaid Amounts

Docket 167

Tentative Ruling:

See Cal. No. 4.10, above, incorporated in full by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:18-16133 M & A Enterprises, LLC

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#4.40 HearingRE: [164] Application for Compensation -- Application For Payment Of: Final Fees And/Or Expenses (11 U.S.C. § 330), With Proof Of Service for Arent Fox LLP, General Counsel, Period: 7/30/2018 to 10/4/2018, Fee: \$32,324.50, Expenses: \$174.16.

Docket 164

Tentative Ruling:

See Cal. No. 4.10, above, incorporated in full by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:18-16133 M & A Enterprises, LLC

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#4.50 HearingRE: [171] Application for Compensation Application For Payment Of: Final Fees And/Or Expenses (11 U.S.C. § 330) for Rosendo Gonzalez (TR), Trustee, Period: 5/29/2018 to 10/8/2018, Fee: \$100,000.00, Expenses: \$0.00. (Gonzalez (TR), Rosendo)

Docket 171

Tentative Ruling:

See Cal. No. 4.10, above, incorporated in full by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:18-16133 M & A Enterprises, LLC

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#4.60 HearingRE: [170] Application for Compensation Application For Payment Of: Final Fees And/Or Expenses (11 U.S.C. § 330), with Proof of Service for Danning, Gill, Diamond & Kollitz, LLP, General Counsel, Period: 6/5/2018 to 9/30/2018, Fee: \$121,545.00, Expenses: \$1,730.18.

Docket 170

Tentative Ruling:

See Cal. No. 4.10, above, incorporated in full by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

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2:17-25439 Eduardo Madrigal

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#5.00 HearingRE: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 11555 Davenrich Street, Santa Fe Springs, California 90670 with proof of service. (Yabes, Gilbert)

Docket 28

Tentative Ruling:

10/12/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence or argument to contest Movant's papers.

On the record before it, the Court concludes that cause exists to terminate the stay under 11 U.S.C. § 362(d)(1).

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order

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Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Eduardo Madrigal

Represented By
Nicholas W Gebelt

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:10-12736 Muscle Improvement Inc.

Chapter 7

#6.00 Hearing

RE: [1567] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 10 Club View Lane, Rolling Hills Estate, CA 90274 with proof of service. (Garan, Todd)

fr: 12-17-18

Docket 1567

***** VACATED *** REASON: PER ORDER ENTERED 10-2-18**

Tentative Ruling:

9/13/2018

This hearing is VACATED. This matter shall be continued to **October 15, 2018 at 10:00 a.m.** as a final hearing on relief from stay to consider further argument and evidence.

Movant is directed to file a supplemental declaration by October 1, 2018 with additional evidence regarding the current value of the Property and an accounting or ledger identifying Debtors' payment history. The deadline for Debtors to file a reply is October 8, 2018.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) (the "R/S Motion") [Doc. No. 1567]
2. Abram and Ruth Tavera's Opposition to Motion for Relief from the Automatic Stay (the "Opposition") [Doc. No. 1569]
3. Movant has not submitted a reply as of the preparation of this tentative ruling.

I. Facts and Summary of Pleadings

Motion

Abram and Ruth Tavera ("Debtors") filed a voluntary petition for relief under chapter 11 on January 26, 2010. On April 3, 2013, Debtors' confirmed their chapter 11 plan [Doc. Nos. 1255, 1299].

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CONT... Muscle Improvement Inc.

Chapter 7

On August 16, 2018, Wilmington Savings Fund Society, FSB, d/b/a Christiana Trust, not individually but as Trustee for Hilldale Trust ("Movant") filed a "Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" (the "R/S Motion") [Doc. No. 1567] seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to the Debtors' real property located 10 Club View Lane Rolling Hills Estate, California 90274 (the "Property").

Movant asserts that cause exists to grant relief under § 362(d)(1) and (d)(2) because (i) Debtors have failed to make no less than six post confirmation payments, amounting to \$51,264.72 in arrears; and (ii) the Debtors do not have any equity in the Property. In support, Movant states that the total debt owed on the Property is \$1,463,212.86, which is comprised of its \$1,213,212.86 claim as of July 10, 2018 and a second deed of trust in favor of Citi Mortgage Inc scheduled at \$250,000. Movant states that the total debt exceeds the Property's fair market value of \$1,100,000, which Movant supports by attaching Debtors' Schedule A as Exhibit 4.

Movant also contends that cause exists to grant relief from stay because the Debtors have failed to make payments in accordance with their confirmed chapter 11 plan. *See In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Opposition

On August 31, 2018, the Debtors filed their "Opposition to Motion for Relief from the Automatic Stay" [Doc. No. 1567] (the "Opposition"). Debtors request that the Court deny the R/S Motion because they intend to cure any arrears by the time of the hearing. Debtors state that they have been making monthly payments in good faith and were not aware that they were in default. Debtor also contend that Movant has failed to carry its burden of proof with respect to Debtors' equity in the Property, because Movant's reliance on Debtors' Schedule A (filed over eight years ago) is not an accurate representation of the present value of the Property. Debtors also state that Citi Mortgage's second deed of trust was stripped from the Property when Debtors' plan was confirmed.

Reply

As of the preparation of this ruling, Movant has not filed a reply.

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CONT... Muscle Improvement Inc.

Chapter 7

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief from the stay "for cause, including the lack of adequate protection of an interest in property of such party in interest."

Movant contends that cause exists to grant relief from stay because its interest in the Property is not protected by an adequate equity cushion. In the Ninth Circuit, "[a] 20% [equity] cushion has been held to be an adequate protection for a secured creditor." *In re Mellor*, 734 F.2d 1396, 1401 (9th Cir. 1984). Pursuant to section 362(g)(1), Movant has the burden of proof on the issue of the Debtors' equity in the property. 11 U.S.C. § 362(g)(1).

The Court finds that Movant has failed to carry its burden of proof at the preliminary relief from stay stage because the only evidence submitted in support of the Property's current value was Debtors' eight-year-old schedules. The Court does not find this evidence to be a reliable measure of the Property's current value or an adequate basis to determine Movant's equity cushion. *See Collier on Bankruptcy* ¶ 362.07 (16th 2018) (Recognizing timing of valuation for purposes of adequate protection is not settled law, but concluding that determining value as of the date protection is sought will often be most consistent with the Code scheme). This evidence would also be relevant as to section 362(d)(2).

Therefore, this matter shall be set for a final hearing October 15, 2018 at 10:00 a.m. to consider further argument and evidence. Movant is directed to file a supplemental declaration by October 1, 2018 with additional evidence regarding the current value of the Property and an accounting identifying Debtors' payment history. The deadline for Debtors to file a reply is October 8, 2018.

Movant also contends that cause exists to grant relief from stay because the Debtors have failed to make payments pursuant to their confirmed plan. In support, Movant relies on *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985), in which the Ninth Circuit Bankruptcy Appellate Panel found that a creditor could seek relief from stay even after confirmation of the debtor's plan. However, *Ellis* involved a chapter 13 debtor and the Panel noted that the analysis might be different if the terms of the debtor's plan had resulted in the property at issue re-vesting in the debtor upon

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confirmation of the plan.

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Movant did not attach the Debtors' confirmed plan or provide any discussion concerning whether the Property re-vested in the Debtors following confirmation of their plan. Therefore, the Court finds that Movant's reliance on *Ellis* is not particularly useful to this Court determining whether it is appropriate to grant Movant relief from the stay.

Party Information

Debtor(s):

Muscle Improvement Inc.

Represented By
Robert M Yaspan

Trustee(s):

Peter J Mastan (TR)

Represented By
Lei Lei Wang Ekvall

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10:00 AM

2:18-19660 Christine McCarns

Chapter 7

#7.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Ford Focus .

Docket 8

Tentative Ruling:

10/12/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Christine McCarns

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Christine McCarns

Represented By
Heather J Canning

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:18-17298 Roy Noe Brave Viera and Jhoseline Brave Rivera

Chapter 7

#8.00 HearingRE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 JEEP CHEROKEE with Proof of Service. (Zahradka, Robert)

Docket 18

Tentative Ruling:

10/12/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Roy Noe Brave Viera and Jhoseline Brave Rivera Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Roy Noe Brave Viera

Represented By
Kelly L Casado

Joint Debtor(s):

Jhoseline Brave Rivera

Represented By
Kelly L Casado

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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2:18-21828 F.A.S.S.T. LLC

Chapter 11

#9.00 Hearing
RE: [7] Debtor's Emergency Motion For Authority To: (A) Use Cash Collateral On An Interim Basis Pending A Final Hearing; (B) Grant Replacement Liens; And (C) Set Final Hearing

Docket 7

Tentative Ruling:

10/14/2018:

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Cash Collateral and Finance Motions on an INTERIM BASIS on the terms set forth below.

Pleadings Filed and Reviewed

1. Emergency Motion for Authority to: (A) Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Grant Replacement Liens; and (C) Set Final Hearing [Doc. No. 7] (the "Cash Collateral Motion")
 - a) Declaration of Charles DeBus In Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - b) Amended Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Declaration of Tatyana Mencachian re Service of Emergency Motions and Order Setting Hearing on First Day Motions [Doc. No. 25]
2. Emergency Motion of Debtor for Interim and Final Orders to Borrow Money and to Grant Administrative Priority to Lender as Described Herein [Doc. No. 11] (the "Finance Motion")

I. Facts and Summary of Pleadings

A. Background

F.A.S.S.T., LLC (the "Debtor" or "FASST") owns and operates a training facility/gymnasium that is open to the public doing business as Velocity Sports Club. The Debtor was established in 2010 as a franchisee of Velocity Sports Performance

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CONT... F.A.S.S.T. LLC

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("VSP"). The Debtor subsequently became an affiliate of VSP and pays for the use of the name and a listing on the VSP website.

Prior to November 2016, VSP heavily marketed for its franchisees and affiliates. In November 2016, the VSP franchisor changed ownership and, unbeknownst to the Debtor, stopped providing the same level of marketing. The diminished marketing efforts resulted in a decline in membership which, in turn, caused a 25% drop in the Debtor's receivables.

By the time the Debtor learned of the reduced marketing efforts, it had already fallen behind on its monthly rent obligations and was forced to obtain loans from predatory lenders with high interest rates and to incur sizeable credit card obligations. The Debtor has taken steps to create its own website and establish a greater social media presence and, as a result, has seen an increase in membership and profitability. Nevertheless, the Debtor now seeks bankruptcy protection to restructure its debt load, restore profitability, and preserve the value of its assets.

B. The Cash Collateral Motion

The Debtor seeks authorization to use cash collateral to pay the ordinary expenses of operating its business. According to the Debtor, the present amount of total allegedly secured debt is \$190,000; however, the Debtor is still investigating the validity of the security interests asserted by various creditors and has been unable to definitively ascertain the amount and priority of secured indebtedness. The Debtor states that it is aware of the following potential secured creditors:

- 1) Cash Capital, a factor who asserts an ownership interest in 12% of the Debtor's receivables, based upon a loan.
- 2) WebBank/Can Capital Asset Servicing, Inc. ("WebBank"), which asserts secured indebtedness of approximately \$140,000.
- 3) Three unspecified creditors who have recorded UCC-1 financing statements. The Debtor contests the validity of the asserted security interests based upon the fact that the financing statements were filed under the name of Corporation Servicing Company as "representative" of the creditors.
- 4) Cryo Center, which has also recorded a UCC-1 financing statement. The Debtor contends that it has paid off Cryo Center's indebtedness.

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Chapter 11

The Debtor requests authorization to use cash collateral through February 6, 2019, without making any adequate protection payments. The Debtor's position is that it should not be required to make adequate protection payments until it has had additional time to investigate the amount, priority, and validity of the security interests asserted by creditors. The Debtor argues that even if the claims asserted by its lenders are secured, the lenders' security interest is limited to the Debtor's accounts receivable, which the Debtor states are virtually non-existent because its members pay monthly fees via electronic funds transfer. The Debtor's managing member, Charles DeBus, submits a declaration stating that after the Debtor has rebuilt its business, it will generate yearly gross revenues in excess of \$1,154,000.

The Debtor asserts that any secured creditors are adequately protected by (1) the continued operation of the Debtor's business and by (2) replacement liens to be granted to any secured creditors.

C. The Finance Motion

The Debtor makes the following arguments and representations in support of the Finance Motion:

The Debtor seeks authorization to borrow up to the sum of \$35,000 on a revolving basis from Robert Renae (the "Lender") to supplement the Debtor's ongoing cash flow needs during the pendency of this bankruptcy case. The terms of the proposed loan ("Loan") are as follows:

- i. **Amount to be Borrowed:** \$35,000, on a revolving basis, as needed.
- ii. **Interest Rate:** 6% per annum, payable, and paid, at the end of each month on outstanding balances.
- iii. **Due Date:** Variable, i.e., as funds are available. However, the Loan will become completely due and payable on the occurrence of any of the following events: (a) the conversion of this Chapter 11 proceeding to a proceeding under Chapter 7 of the Bankruptcy Code; (b) the dismissal of the case; or (c) the appointment of a Chapter 11 Trustee.
- iv. **Security:** None.
- v. **Priority of repayment:** The Loan shall be granted an administrative priority equal to all other "priority one chapter 11 expenses of administration,"

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provided however, that Lender's claim will be subject to a "carve out" for (i.e., a priority position subordinate to), the following: (a) aggregate unpaid and allowed fees and costs payable under sections 330 and 331 of the Bankruptcy Code to professionals retained by Debtor, including those incurred by General Counsel to Debtor (the Law Offices of Robert M. Yaspan); and (b) the unpaid fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. section 1930(a).

The Debtor states that it sought such financing from banking institutions on both a secured and unsecured basis, but its attempts have been unavailing. The Debtor further states that without the Loan, it is concerned that it will not be able to pay its expenses after October 20, 2018.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the declarations regarding service show compliance and attempted compliance with the Court's order setting this matter on shortened notice. Given the exigencies of first day motions, the Court finds that notice of the hearing was adequate.

A. Cash Collateral

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions of 11 U.S.C. § 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

For purposes of this emergency hearing only, the Court assumes that Cash Capital,

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WebBank, and the three unspecified creditors who have recorded UCC-1 financing statements hold valid security interests in the Debtor's revenue. Accordingly, the Debtor's revenue constitutes the cash collateral of such creditors, and the Debtor is authorized to use its revenue only if the creditor's interest in such cash collateral is adequately protected.

Only for purposes of authorizing the interim use of cash collateral, the Court is prepared to find that the secured creditors' interest in cash collateral is adequately protected by (1) the proposed replacement liens and by (2) the replacement income generated by the continued operation of the Debtor's business. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]").

The Court finds that the Debtor will suffer irreparable harm absent the interim use of cash collateral. Absent the use of cash collateral, the Debtor's ability to pay the expenses necessary to maintain business operations will be severely circumscribed.

A further interim hearing on the continued use of cash collateral shall take place on **Monday, November 19, 2018, at 10:00 a.m.** The Debtor shall provide notice of the further interim hearing, and shall file a proof of service so indicating, by no later than **October 17, 2018**. The Debtor shall submit additional evidence in support of the continued use of cash collateral by no later than **November 5, 2018**. Such additional evidence shall include, at a minimum, an updated budget and updated financial projections. The Debtor is advised that the evidentiary showing it has made in connection with this hearing will not likely be sufficient to support the continued use of cash collateral beyond November 19. In particular, notwithstanding the fact that under §363(p) it is creditors who have the burden of proof regarding the validity, priority, and extent of a security interest, the minimal and conclusory evidence supplied by the Debtor in support of its challenge to the validity of the security interests at issue here is not sufficient to excuse the Debtor from complying with its adequate protection obligations. With respect to those adequate protection obligations, it is of substantial concern to the Court that the Debtor has failed to supply meaningful evidence (1) regarding the value of its business or (2) regarding the contention that its

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Chapter 11

business is not declining in value.

Any opposition to the use of cash collateral beyond November 19 shall be submitted by no later than **November 12, 2018**. The Debtor's reply, if any, shall be submitted by no later than **November 15, 2018**.

B. DIP Financing

Section 364 provides in relevant part:

- (b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

11 U.S.C. § 364(b).

Having reviewed the declaration submitted by Charles DeBus, the Debtor's managing member (the "DeBus Decl."), the Court finds that the terms of the proposed Loan are reasonable and that the Debtor was unable to obtain financing on more favorable terms than those proposed by the Lender. DeBus Decl., ¶ 49. The Court further finds that the Debtor requires the use of the \$35,000 Loan, on an interim basis, in order to avoid irreparable harm to the continued operation of its business. Therefore, the Debtor is authorized to obtain the proposed Loan.

A final hearing on the Financing Motion shall take place on **November 19, 2018, at 10:00 a.m.**, concurrently with the further interim hearing on the Cash Collateral Motion. The Debtor shall provide notice of the final hearing, and shall file a proof of service so indicating, by no later than **October 17, 2018**. Opposition to the Financing Motion shall be submitted by no later than **November 5, 2018**. The Debtor's reply in support of the Financing Motion shall be submitted by no later than **November 12, 2018**.

The Debtor must lodge a conforming proposed order within 7 days of the hearing.

Party Information

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Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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2:18-21828 F.A.S.S.T. LLC

Chapter 11

#10.00 Hearing
RE: [13] Emergency Motion For Order Allowing Debtor To Honor Prepetition
Customer Obligations And Certain Additional Normal Business Practices

Docket 13

Tentative Ruling:

10/14/2018:

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Prepetition Customer Obligations Motion on the terms set forth below.

Pleadings Filed and Reviewed

1. Emergency Motion for Order Allowing Debtor to Honor Prepetition Customer Obligations and Certain Additional Normal Business Practices [Doc. No. 13] (the "Prepetition Customer Obligations Motion" or "Motion")
 - a) Declaration of Charles DeBus In Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - b) Amended Order Setting Hearing on First Day Motions [Doc. No. 18]
 - c) Declaration of Tatyana Mencachian re Service of Emergency Motions and Order Setting Hearing on First Day Motions [Doc. No. 25]

I. Facts and Summary of Pleadings

A. Background

F.A.S.S.T., LLC (the "Debtor" or "FASST") owns and operates a training facility/gymnasium that is open to the public doing business as Velocity Sports Club. The Debtor was established in 2010 as a franchisee of Velocity Sports Performance ("VSP"). The Debtor subsequently became an affiliate of VSP and pays for the use of the name and a listing on the VSP website.

Prior to November 2016, VSP heavily marketed for its franchisees and affiliates.

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CONT... F.A.S.S.T. LLC

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In November 2016, the VSP franchisor changed ownership and, unbeknownst to the Debtor, stopped providing the same level of marketing. The diminished marketing efforts resulted in a decline in membership which, in turn, caused a 25% drop in the Debtor's receivables.

By the time the Debtor learned of the reduced marketing efforts, it had already fallen behind on its monthly rent obligations and was forced to obtain loans from predatory lenders with high interest rates and to incur sizeable credit card obligations. The Debtor has taken steps to create its own website and establish a greater social media presence and, as a result, has seen an increase in membership and profitability. Nevertheless, the Debtor now seeks bankruptcy protection to restructure its debt load, restore profitability, and preserve the value of its assets.

B. Motion for Order Allowing Debtor To Honor Prepetition Customer Obligations and Certain Additional Normal Business Practices

The Debtor states that it has the following customer and customer-based programs and features in place and/or outstanding obligations to customers (collectively, the "Customer Obligations"):

- i. The Debtor sells monthly memberships for \$99/month. Accordingly, most of the Debtor's members pre-paid dues for post-petition periods.
- ii. Independent trainers bring their clients into the gym and pay rent for the use of the gym for a thirty-day period. All of the independent trainers' clients pay their trainers directly, but each of their clients must become a member of the Debtor's gym.
- iii. The Debtor sells its own pre-paid personal training packages that do not expire. The Debtor estimates that it had approximately \$15,000 in pre-paid personal training services as of the petition date.
- iv. The Debtor is required by California law to refund new memberships in full if requested within five days following signing up.

The Debtor states that continued compliance with California law and the ability to honor and maintain its Customer Obligations is critical to its continued operation and success in this chapter 11 case.

II. Findings of Fact and Conclusions of Law

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CONT... F.A.S.S.T. LLC

Chapter 11

As a preliminary matter, the Court notes that the declarations regarding service show compliance and attempted compliance with the Court's order setting this matter on shortened notice. Given the exigencies of first day motions, the Court finds that notice of the hearing was adequate.

Section 507(a)(7) provides for a priority claim with respect to deposits, as follows:

[A]llowed unsecured claims of individuals, to the extent of \$2,775 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

11 U.S.C. § 507(a)(7).

Here, the Court finds that many, if not all, of the Customer Obligations identified above constitute consumer deposits entitled to priority pursuant to § 507(a)(7).

Additionally, the Customer Obligations appear to be transactions in the ordinary course of business for which Court approval is not required. Nevertheless, to the extent any of the transactions could be construed as being outside of the ordinary course, the Court finds that section 363(b) provides authority for the Debtor to pay pre-petition customer claims, if any, in excess of the \$2,775 priority limit and those customer claims which are not the equivalent of a return of deposits. *See e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (S.D.N.Y. 1989) ("Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances. However, the debtor must articulate some business justification, other than mere appeasement of major creditors, for using . . . property out of the ordinary course of business . . ."). As set forth in the DeBus declaration, compliance with California law, the continued loyalty of the Debtor's existing members, and the Debtor's ability to attract new members is critical to its continued ability to operate and to successfully reorganize. DeBus Decl., ¶ 73. If the Debtor is not permitted to honor the Customer Obligations, then members will lose confidence in the Debtor's gym and likely take their memberships to competitors. *Id.*

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10:00 AM

CONT... F.A.S.S.T. LLC

Chapter 11

The Debtor has established that there is a strong likelihood that it would suffer irreparable harm if it is not able to honor its prepetition Customer Obligations. The viability of any reorganization depends upon the Debtor being able to maintain existing members and attract new members. Accordingly, the Court finds that allowing the Debtor to honor its prepetition Customer Obligations is in the best interest of Debtor's creditors.

Based upon the foregoing, the Prepetition Customer Obligations Motion is GRANTED on the terms set forth above.

The Debtor must lodge a conforming proposed order within 7 days of the hearing.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 15, 2018

Hearing Room 1568

10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#11.00 Hearing
RE: [11] Emergency Motion Of Debtor For Interim And Final Orders To Borrow Money And To Grant Administrative Priority To Lender; And Order Setting A Final Hearing

Docket 11

Tentative Ruling:

See Cal. No. 9, incorporated in full by reference.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 15, 2018

Hearing Room 1568

10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#12.00 Hearing
RE: [9] Emergency Motion For Order Authorizing (1) Payment Of Prefiling Payroll; And (2) Payment Of Independent Contractor Obligations

Docket 9

Tentative Ruling:

10/14/2018:

Subject to any opposition which may be presented at the hearing, the Court is prepared to GRANT the Prepetition Wages Motion on the terms set forth below.

Pleadings Filed and Reviewed

1. Emergency Motion for Order Authorizing (1) Payment of Prefiling Payroll; and (2) Payment of Independent Contractor Obligations [Doc. No. 9] (the "Prepetition Wages Motion" or "Motion")
 - a) Declaration of Charles DeBus In Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - b) Amended Order Setting Hearing on First Day Motions [Doc. No. 18]

I. Facts and Summary of Pleadings

A. Background

F.A.S.S.T., LLC (the "Debtor" or "FASST") owns and operates a training facility/gymnasium that is open to the public doing business as Velocity Sports Club. The Debtor was established in 2010 as a franchisee of Velocity Sports Performance ("VSP"). The Debtor subsequently became an affiliate of VSP and pays for the use of the name and a listing on the VSP website.

Prior to November 2016, VSP heavily marketed for its franchisees and affiliates. In November 2016, the VSP franchisor changed ownership and, unbeknownst to the Debtor, stopped providing the same level of marketing. The diminished marketing efforts resulted in a decline in membership which, in turn, caused a 25% drop in the

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CONT... F.A.S.S.T. LLC

Chapter 11

Debtor's receivables.

By the time the Debtor learned of the reduced marketing efforts, it had already fallen behind on its monthly rent obligations and was forced to obtain loans from predatory lenders with high interest rates and to incur sizeable credit card obligations. The Debtor has taken steps to create its own website and establish a greater social media presence and, as a result, has seen an increase in membership and profitability. Nevertheless, the Debtor now seeks bankruptcy protection to restructure its debt load, restore profitability, and preserve the value of its assets.

B. Motion for Order Authorizing (1) Payment of Prefiling Payroll; and (2) Payment of Independent Contractor Obligations

The Employees

The Debtor states that aside from insiders of the Debtor, it currently employs four employees (the "Employees") that are necessary for its continued operation and successful reorganization. The Debtor also employs one insider-employee, Cathy DeBus, who is a trainer at the gym (the "Insider Trainer") and vital to the Debtor's continued operations.

The Debtor seeks authorization to pay the Employees \$4,598 and the Insider Trainer \$2,802 on October 15, 2018 for prepetition wages. **[Note 1]** These wages represent payment for services provided from September 16, 2018 to September 30, 2018. The Debtor also seeks authorization to pay the Employees \$2,349 and the Insider Trainer \$1,401 on November 1, 2018 for prepetition wages. These wages represent payment for services provided from October 1, 2018 to October 8, 2018.

Finally, the Debtor seeks authorization to pay accrued prepetition vacation pay to the Employees and Insider Trainer in the regular course of business.

The Debtor submits that the total pre-petition payroll, including accrued vacation benefits, is less than the \$12,850 limit imposed by section 507.

The Independent Contractors

The Debtor states that its business operations also rely on the services of eleven

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CONT... F.A.S.S.T. LLC

Chapter 11

independent contractor trainers who are paid based on the number of personal training sessions that they handle on the Debtor's behalf (the "Independent Contractors"). The Debtor states that absent payment, the Independent Contractors will likely leave the gym and take members with them. The Debtor does not believe it would be able to find replacement trainers quickly enough to avoid irreparable damage to its business operations.

The Independent Contractors are paid on the same pay schedule as the Employees. Accordingly, the Debtor seeks authorization to pay the Independent Contractors \$9,200 on October 15, 2018 for the September 16, 2018 to September 30, 2018 prepetition period and approximately \$5,000 on November 1, 2018 for the October 1, 2018 to October 8, 2018 prepetition period.

Paychex

The Debtor also seeks authority to pay its payroll servicer, Paychex, Inc., no more than \$500 so that it will continue doing service with the Debtor and handle the Debtor's payroll.

II. Findings of Fact and Conclusions of Law

Section 507(a)(4) designates "wages, salaries, or commissions, including vacation, severance, and sick leave pay" that are earned by an individual "within 180 days before the date of the filing of the petition" as a fourth-priority claim. Additionally, § 507(a)(4) imposes a limit of \$12,850.00 for each individual employee for priority status. A leading national bankruptcy treatise explains:

[B]ecause wages are priority claims, courts have often permitted debtors to pay prepetition wage claims in the ordinary course in response to a motion filed by a debtor in possession at the commencement of a chapter 11 case. The ability to ensure that the employees receive their unpaid prepetition salary and do not miss a paycheck is critical to obtaining the stability necessary for the transition to operating as a debtor in possession. If wage claims were not entitled to priority, it would be difficult to justify 'first day' orders approving payments of prepetition wages. There is no clear statutory authority for such first day orders, although a court with some

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CONT...

F.A.S.S.T. LLC

Chapter 11

confidence in the debtor's ability to satisfy claims through the third priority could justify the order under section 105.

COLLIER ON BANKRUPTCY ¶ 507.06[2] (16th ed. 2017).

Local Bankruptcy Rule 2081-1(a) provides that a motion to pay prepetition payroll must be supported by evidence that establishes the following: "(A) The employees are still employed; (B) The necessity for payment; (C) The benefit of the procedures; (D) The prospect of reorganization; (E) Whether the employees are insiders; (F) Whether the employees' claims are within the limits established by 11 U.S.C. § 507; and that (G) The payment will not render the estate administratively insolvent."

Having reviewed the declaration of Charles DeBus, the Court finds that the Debtor has established the necessity of paying the Employees the prepetition wages as requested in the Prepetition Wages Motion. The Employees that are the subject of the Motion remain employed by the Debtor and are critical to the Debtor's continued operations. The aggregate amount of wages to be paid to all four Employees is \$6,950. Therefore, the wages to be paid fall well below the §507(a)(4) priority claim limit of \$12,850. None of the Employees who will receive payment are insiders. The Debtor states that the payments will not render the estate administratively insolvent. Finally, the Debtor has made a sufficient showing that it has a reasonable prospect of reorganization. Accordingly, the Debtor is authorized to pay the Employees as set forth in the Motion.

For the same reasons, the Court finds it appropriate to authorize Debtor to pay the prepetition wages of the Insider Trainer. However, the Debtor is not authorized to pay the Insider Trainer any amounts owing for prepetition services until the applicable deadlines set forth in Local Bankruptcy Rule 2014-1(a) have passed.

As for the Independent Contractors' claims, the Court will authorize the Debtor to pay prepetition compensation under the necessity of payment doctrine. To justify paying critical vendors' prepetition claims under § 363(b)(1), the debtor-in-possession must establish that: (1) those critical vendors are indeed critical and have refused to do business with a debtor absent payment; and (2) only if the court finds that the disfavored creditors will be at least as well off as a result of the court's granting critical vendor status to the select vendors. *Id.*; see also *In re Kmart Corp.*, 359 F.3d

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CONT... F.A.S.S.T. LLC

Chapter 11

866, 873 (7th Cir. 2004) (discussing a requirement, for any critical vendor order, that there be evidence of a "prospect of benefit to the other creditors").

While some courts use their equitable powers to grant "critical" vendors payment under the necessity of payment doctrine, other courts have been unwilling to do so. *Compare In re Jeans.com, Inc.*, 502 B.R. 250, 254 (Bankr. D. P.R. 2013) (discussing the history and collection of cases dealing with the doctrine), *with In re B & W Enters., Inc.*, 713 F.2d 534, 537 (9th Cir. 1983) (stating that "absent compelling reasons" it is "unwise to tamper with the statutory priority scheme"). At least one court in the Ninth Circuit has held that the "Code does not expressly authorize courts to allow preferential payment of prepetition obligations in contravention of its claims priority scheme or outside of a confirmed plan of reorganization." *In re Berry Good, LLC*, 400 B.R. 741, 746 (Bankr. D. Ariz. 2008) (citing *In re B & W Enters., Inc.*, 713 F.2d at 537). Other courts, however, recognize § 363(b) as a source of authority to make critical vendor payments. *In re Tropical Sportswear Int'l Corp.*, 320 B.R. 15, 20 (Bankr. M.D. Fla. 2005) (holding that a debtor-in-possession may, after a noticed hearing, use property of the estate to pay a prepetition debt in order to keep "critical" supplies flowing "in the ordinary course of business").

The Court notes that in dicta, the Supreme Court has recently noted that Bankruptcy Courts have approved "'critical vendor' orders that allow payment of an essential suppliers' prepetition invoices." *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985, 197 L. Ed. 2d 398 (2017). The Supreme Court's statement in *Jevic* obviously was not a holding upon the validity of a critical vendor order; nonetheless, the Supreme Court's acknowledgment that Bankruptcy Courts have reasoned that critical vendor orders are necessary to "enable a successful reorganization and make even the disfavored creditors better off" is significant. *Id.* at 985.

More on point, in the context of a cross-collateralization clause, the Ninth Circuit has recognized that "[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts." *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987). The Ninth Circuit's recognition of the necessity of paying prepetition debts to "providers of unique and irreplaceable supplies" is particularly

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CONT... F.A.S.S.T. LLC

Chapter 11

salient; that relief is most analogous to the relief sought by the instant Motion.

In this case, the Court is persuaded that the Independent Contractors are critical vendors. [Note 2] Mr. DeBus states that the Independent Contractors are necessary to continue the operations of the Debtor's business and will likely stop work and take members with them if they do not receive payment. DeBus Decl., ¶ 36. In this regard, Debtor's creditors will be better off if the Independent Contractors are paid because the Debtor will be able to continue to operate and generate income. The same reasoning applies to the Debtor's request to pay Paychex.

Based upon the foregoing, the Prepetition Wages Motion is GRANTED on the terms set forth above.

The Debtor must lodge a conforming proposed order within 7 days of the hearing.

Note 1: Debtor states that it is serving a Request for Insider Compensation upon the creditor body with respect to the *post-filing compensation* to be earned by Cathy DeBus during the Chapter 11. Motion, p. 5: 13-16. Debtor further states that the *post-filing portion* of the insider payments will not be paid until the requisite time has passed with respect to the Insider Compensation Request. Motion, p. 5:16-18; DeBus Declaration, ¶ 32. However, the Debtor is not authorized to make any payments to Ms. DeBus for *pre-filing compensation* until the deadlines set forth in Local Bankruptcy Rule 2014-1(a) expire.

Note 2: However, in so holding, the Court notes that for the purpose of authorizing prepetition wages to be paid to independent contractors who are critical to the Debtor's business operations such as in this case, the Independent Contractors may be more appropriately classified as quasi-employees. To the extent that such Independent Contractors do qualify as quasi-employees, their entitlement to a priority claim under § 507(a)(4) furnishes an additional basis for the Court's ruling.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:08-10666 Lars Erik Hanson

Chapter 7

Adv#: 2:08-01391 Blue Cross and Blue Sheild of Alabama et al v. Hanson et al

#1.00 Status Hearing: [1] Adversary case 2:08-ap-01391. Complaint by Blue Cross and Blue Sheild of Alabama et al against Lars Erik Hanson. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Shemano, David) ---

fr. 6-19-08; 7-17-08; fr. 12-18-08; 6-18-09; 2-17-2010; 6-17-10; 12-9-10;
6-22-11, 12-15-11, 1-5-12, 7-5-12; 2-7-13; 8-15-13; 9-5-13; 3-20-14; 9-25-14;
10-2-14; 4-14-15; 10-13-15; 4-12-16; 10-11-16; 4-11-17; 10-17-17; 4-17-18

Docket 1

***** VACATED *** REASON: CONTINUED 4-16-19 AT 10:00 A.M.**

Tentative Ruling:

12/16/2009

Hearing continued per stipulation.

Party Information

Debtor(s):

Lars Erik Hanson

Represented By
Sam X J Wu

Defendant(s):

Lars Erik Hanson

Pro Se

JAMES L BROWN

Pro Se

Sam X J Wu

Pro Se

Plaintiff(s):

Blue Cross and Blue Sheild of

Represented By
David B Shemano
Marvin Wexler

**United States Bankruptcy Court
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10:00 AM

CONT... Lars Erik Hanson

Chapter 7

Trustee(s):

James L Brown

Pro Se

U.S. Trustee(s):

United States Trustee (LA)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01086 Goodrich v. Noble U, a California corporation

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01086. Complaint by David M. Goodrich against Noble U, a California corporation. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

Docket 1

Tentative Ruling:

10/15/2018

This hearing is vacated and no appearances are required. The Court has approved a settlement of this action. Pursuant to the settlement, Defendant commenced making payments to the Chapter 7 Trustee (the "Trustee") on October 1, 2017, and will continue making payments through and including September 1, 2019. Having reviewed the Status Report submitted by the Trustee, the Court finds that the Defendant is performing under the settlement.

A status conference to monitor consummation of the settlement will be held on **April 16, 2019, at 10:00 a.m.** The Court will prepare and enter an order setting the continued status conference.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Noble U, a California corporation

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By

**United States Bankruptcy Court
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Los Angeles
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Tuesday, October 16, 2018

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10:00 AM

CONT... Shasa USA LLC

Chapter 7

Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18

Docket 1

Tentative Ruling:

10/15/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **December 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 34] entered on June 19, 2018, shall remain unchanged.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Pobeda Services, Inc.

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18

Docket 1

Tentative Ruling:

10/15/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **December 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 37] entered on June 19, 2018, shall remain unchanged. The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, October 16, 2018

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10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 10-16-18

fr. 12-12-17; 3-7-18; 5-8-18

Docket 1

Tentative Ruling:

10/15/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **December 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018, shall remain unchanged. The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
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10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#6.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18; 7-10-18

Docket 1

Tentative Ruling:

10/15/2018

Pursuant to the parties' request, a continued Status Conference shall be conducted on **December 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing. The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 34] entered on June 19, 2018, shall remain unchanged. The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Represented By Kelly F Ryan
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Henry A. Hakopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#7.00 Status Hearing

RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) filed by Plaintiff Brad D. Krasnoff, Chapter 7 Trustee). (Lomeli, Lydia R.)

Docket 48

***** VACATED *** REASON: CONTINUED 10-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

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10:00 AM

CONT... Timothy M Rosen

Chapter 7

Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#8.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18; 5-15-18; 8-14-18

Docket 1

Tentative Ruling:

10/15/2018

On November 16, 2017, the Court entered an order staying this adversary proceeding pending the completion of Defendant's appeal of the State Court Judgment giving rise to the indebtedness alleged to be non-dischargeable. On April 16, 2018, the California Court of Appeal reversed and remanded to the trial court the portion of the State Court Judgment awarding attorneys' fees. On August 15, 2018, the trial court set the amount of attorneys' fees.

Plaintiff's position is that the issue of dischargeability can now be adjudicated by way of a motion for summary judgment. The Court agrees that a motion for summary judgment would be the most expeditious way to resolve this litigation. By no later than **November 13, 2018**, Plaintiff shall file and set for hearing a motion for summary judgment. In the event that summary judgment does not resolve the action, the Court will set pretrial conference and trial dates.

A continued status conference shall be held on **December 11, 2018, at 10:00 a.m.** A Joint Status Report must be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will

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CONT... John Martin Kennedy

Chapter 7

determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:18-10616 Manuel Macias

Chapter 7

Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#9.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

Docket 1

***** VACATED *** REASON: CONTINUED 10-17-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

#10.00 Status HearingRE: [1] Adversary case 2:18-ap-01234. Complaint by Maground, GmbH against Roberto Kai Hegeler. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Barsness, Christopher)

Docket 1

Tentative Ruling:

10/15/2018

On March 1, 2018, Plaintiff commenced a complaint against the Debtor/Defendant in the United States District Court for the Central District of California (the "District Court"), asserting claims for breach of contract, unfair competition and false advertising, trademark dilution, and trademark infringement (the "District Court Action"). Debtor/Defendant filed a voluntary Chapter 7 petition on April 23, 2018. On May 4, 2018, the District Court stayed the District Court Action pending resolution of Debtor/Defendant's bankruptcy proceeding.

By separate order, the Court will require Plaintiff and Debtor/Defendant to show cause why the Court should not *sua sponte* lift the automatic stay to allow the District Court Action to proceed. In the Court's view, the most efficient way to resolve this action is for Plaintiff to prosecute the District Court Action to final judgment. In the event Plaintiff obtains a final judgment in its favor, Plaintiff may then return to this Court for a determination as to whether the indebtedness established by that judgment is dischargeable.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Roberto Kai Hegeler

Chapter 7

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Pro Se

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-15865 Fatemeh V. Mahdavi

Chapter 7

Adv#: 2:18-01266 De Arruda v. Mahdavi et al

#11.00 Status Hearing re [1] Adversary case 2:18-ap-01266. Notice of Removal of State Court Action Pursuant to 28 U.S.C. Sections 1334 and 1452(a) and FRBP 9027 by James De Arruda. Fee Amount \$350 Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))

Docket 0

Tentative Ruling:

10/15/2018

On January 5, 2018, Plaintiff filed an action in the Los Angeles Superior Court (the "State Court") seeking a judgment confirming Plaintiff's title to and interest in property located at 2160 Century Park East, #812, Los Angeles, CA 90067 (the "Condo"). On May 22, 2018, Debtor/Defendant Fatemeh V. Mahdavi, who asserts an interest in the Condo, filed a voluntary Chapter 7 petition. The State Court Action also named as defendants the Debtor's spouse, Ali Rez Mahdavi, and Daria Asya Selivanova.

On August 20, 2018, Plaintiff removed the State Court Action to the Bankruptcy Court. Plaintiff asserts that removal is appropriate because the action seeks a determination as to whether the Condo is property of the estate. On October 4, 2018, Plaintiff dismissed its claims against Selivanova.

Plaintiff's counsel has advised counsel to the Chapter 7 Trustee (the "Trustee") that Plaintiff intends to file an amended complaint which names the Trustee as a defendant. The Trustee is willing to stipulate to an amended complaint, provided that the Trustee is provided the opportunity to assert an answer and counterclaims.

In view of the estate's potential interest in the Condo, the Court believes that an amended complaint would be appropriate. Plaintiff shall file and serve an amended complaint by no later than **October 30, 2018**. The Trustee shall be permitted to file an answer and counterclaims to the amended complaint. Upon the filing of the amended complaint, the Court will issue a new Scheduling Order setting forth the dates that shall govern this action.

The Court will prepare and enter an appropriate order.

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CONT... Fatemeh V. Mahdavi

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fatemeh V. Mahdavi

Represented By
David R Hagen

Defendant(s):

Ali Reza Mahdavi

Pro Se

Fatemeh V. Mahdavi

Pro Se

Daria Asya Selivanova

Pro Se

DOES 1 through 10, inclusive

Pro Se

Plaintiff(s):

James De Arruda

Represented By
Peter W Lianides
Joseph Angelo
J. Michael Echevarria

Trustee(s):

Carolyn A Dye (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:14-25758 Wesley Brian Ferris

Chapter 11

#12.00 Post-Confirmation Status Conference re Confirmation of Debtor's Chapter 11 Plan

fr. 7-6-16; 10-4-16; 11-9-16; 4-11-17; 7-11-17; 12-19-17; 5-16-18

Docket 109

Tentative Ruling:

10/15/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Reorganized Debtor's Fourth Post-Confirmation Status Report [Doc. No. 226], the Court CONTINUES the status conference to March 13, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

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Central District of California
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Tuesday, October 16, 2018

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#13.00 Hearing

RE: [40] Motion to Use Cash Collateral NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING FURTHER INTERIM USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT REGARDING CASH COLLATERAL; DECLARATION OF GEORGE HSU; DECLARATION OF FRANK AVINA; DECLARATION OF TONY HWANG (Lo, Michael)

fr. 8-9-18; 8-16-18

Docket 40

***** VACATED *** REASON: CONTINUED 12-12-18 AT 10:00 A.M.**

Tentative Ruling:

8/15/2018

Hearing required.

8/16/2018

Revised Tentative below:

Amended after hearing. Amendments to the tentative ruling appear in red.

For the reasons set forth below, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further interim use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is

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10:00 AM

**CONT... Fu Kong Inc.
December 19, 2018.**

Chapter 11

Pleadings Filed and Reviewed:

- 1) Motion for Order Authorizing Further Interim Use of Cash Collateral (the "Renewed Cash Collateral Motion") [Doc. No. 40]
 - a) Declaration of George Hsu (the "Hsu Declaration")
 - b) Declaration of Tony Hwang (the "Hwang Declaration")
- 2) Further Opposition of Creditor, Cathay Bank to the Renewed Cash Collateral Motion (the "Opposition") [Doc. No. 46]
 - a) Supplemental Declaration of David B. Bloom (the "Supplemental Bloom Declaration")
- 3) Reply to the Opposition (the "Reply") [Doc. No. 48]
- 4) Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral (the "Evidentiary Objections") [Doc. No. 49]

I. Facts and Summary of Pleadings

Fu Kong Inc. (the "Debtor"), filed a voluntary Chapter 11 petition on June 26, 2018 (the "Petition") [Doc. No. 1]. The Debtor is an importer, wholesaler, and designer of women's apparel under the brands "Lu Lu" and "Shu Shu." The Debtor has 29 years of experience in the industry and has created designs and sold women's apparel under various labels to high end retailers such as Nordstrom, Saks, Lord & Taylor, Dillard's, Macy's, and Stein Mart. Lillian Yu-Li Hsu is the Debtor's president, sole shareholder, and sole director; George Hsu was, until his termination on August 1, 2018, the Debtor's secretary.

The Petition was precipitated by the Debtor's recent cash flow problems due to a slowdown in business in the last three to six months, and a delayed shipment due to production issues in China which delay resulted in a number of the Debtor's customers to cancel orders. The Debtor's ability to generate income was also interfered with for a few weeks due to the father of George Hsu having an emergency health issue.

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CONT... Fu Kong Inc.

Chapter 11

On June 1, 2018, the Debtor's secured lender, Cathay Bank (the "Secured Lender"), filed a lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC070342 (the "State Court Action"), for failing to make payments on a business loan, seeking possession of the Debtor's assets and appointment of a receiver, foreclosure of the commercial warehouse leased by the Debtor, and foreclosure of Lillian and George Hsu's principal residence. Other of the Debtor's creditors have also recently began attempting to collect debts.

On July 9, 2018, the Debtor filed the "Motion for Order: (1) Authorizing Debtor to Use Cash Collateral; (2) Granting Adequate Protection to Secured Creditors" (the "Emergency Cash Collateral Motion") [Doc. No. 11]. The Debtor submitted the "Original Budget" [Doc. No. 11, Ex. 1] in connection with the Emergency Cash Collateral Motion. On July 13, 2018, the Court held a hearing on the Emergency Cash Collateral Motion, and on July 16, 2018, the Court entered the "Order (1) Authorizing Debtor to Use Cash Collateral On An Interim Basis Through and Including August 9, 2018, (2) Granting Adequate Protection to Cathay Bank, and (3) Setting Continued Hearing on the Further Interim Use of Cash Collateral" (the "Interim Order") [Doc. No. 21]. Pursuant to the Interim Order, on July 16, 2018, the Debtor made an adequate protection payment in the amount of \$6,780.32 to Cathay Bank. "Declaration of George Hsu" (the "Hsu Declaration") [Doc. No. 40] at ¶ 13¹ [Note 1].

The Renewed Cash Collateral Motion

On July 26, 2018, the Debtor filed the "Motion for Order Authorizing Further Interim Use of Cash Collateral" (the "Renewed Cash Collateral Motion") [Doc. No. 40].

The Secured Lender is the holder of a promissory note in the total current amount of \$1,574,163.00 (the "Loan"), secured by the Debtor's assets including inventory and accounts receivable. The Secured Lender's Loan is also secured by two real properties: (1) the Loan is secured by a second deed of trust on the Debtor's principals' residence located at 1324 N. Vosburg Dr., Azusa, CA 91702 (the "Vosburg Property"), which was appraised at \$1.225 million on September 20, 2017, with approximately \$975,000.00 in equity to satisfy the Loan; and (2) the Loan is secured by a second deed of trust on the industrial warehouse leased by the Debtor located at

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CONT... Fu Kong Inc.

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2455 Lee Avenue, S. El Monte, CA 91733 (the "El Monte Property"), which was appraised at \$2.0 million as of July 22, 2018, *see* "Declaration of Tony Hwang" (the "Hwang Declaration") [Doc. No. 40], Ex. 3, with approximately \$941,919.35 in equity. Based on these figures, the Secured Lender is protected by equity in the approximate amount of \$1,916,919.35 on the \$1,574,163.00 principal balance of the Loan.

The Debtor has four additional working capital lenders that each have UCC-1 security interests in the Debtor's assets and accounts receivable: (1) Funding Metrics, LLC; (2) Landing Club Corp; (3) Wide Merchant Investment Inc.; and (4) Yellowstone Capital West, LLC (collectively, the "Capital Secured Creditors").

As of July 26, 2018, the Debtor has \$11,761.91 in cash, and the Debtor anticipates that as of August 10, 2018, the Debtor will have approximately \$18,949.91 in cash. Renewed Cash Collateral Motion at 7. The Debtor seeks authorization to continue to use the cash collateral in accordance with the "Amended Budget", *see* Hsu Declaration, Ex. 1, for the period of August 10, 2018 through and including December 31, 2018. Beginning in September or October 2018, the Debtor projects up to \$100,000.00 to \$200,000.00 in monthly gross revenue at a 15% to 20% profit margin through selling custom fabrics. The Debtor additionally submits further documentation to support the income projections in the Amended Budget. *See* Renewed Cash Collateral Motion, Ex. 5 ("Purchase Orders and Documentation Supporting Income Projections"). These documents purport to show that the Debtor has received \$438,952.40 in purchase orders, with an additional \$53,400.00 in pending purchase orders; however, the Amended Budget projects \$850,000.00 in income for the period of August through December 2018 "because Debtor believes it will be able to generate such income." Renewed Cash Collateral Motion at 12; Hsu Declaration at ¶ 34. Just over half of the purchase orders, which total \$438,952.40, consist of certain unsigned purchase orders by Pacico, Inc., dated July 26, 2018, which orders collectively total \$298,200.00. *See* Renewed Cash Collateral Motion, Ex. 5. The Debtor further states that its belief in this regard is based on the Debtor anticipating large purchase orders from Intex Usa, Inc., and Casual Express Apparel, Inc. *Id.*

The Amended Budget represents the Debtor's best estimate of the necessary business expenses; however, because the needs of the business may fluctuate, the Debtor requests authority to deviate from the total expenses contained in the Amended

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CONT... Fu Kong Inc.

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Budget by no more than 20% and to deviate by expense category without the need for further court order. The Amended Budget reflects certain changes in response to the Court's Interim Cash Collateral Order. Among these changes, the Amended Budget: (1) provides for payment of rent on the El Monte Property in the amount of \$5,000.00 per month, reduced from \$10,000.00 per month in the Original Budget; (2) does not include a line item for payment of property tax on the El Monte Property, because the lessors are responsible for payment of such taxes; (3) the line item for "Auto Expense" is reduced to \$500 per month, which the Debtor explains is a car allowance paid by the Debtor to Lillian Hsu for the business use of her personal car, *see* Renewed Cash Collateral Motion at 9; (4) includes a line item for "Commission" in varying amounts for each of the months August through December 2018, which expense is necessary to pay the Debtor's "road representatives" who travel to various stores around the country to promote and sell the Debtor's products, *see id.* at 10; and (5) includes a line item for "Wages" in the amount of \$26,000.00, which expense is necessary to pay the Debtor's Principals, and which will only be paid after the expiration of the 15-day period required for insider compensation, *see id.* at 11 (on July 25, 2018 the Debtor filed the "Notice of Setting/Increasing Insider Compensation" for each of the Debtor's Principals, *see* Doc. Nos. 35, 36).

The Debtor contends that the use of cash collateral is necessary to continue business operations. The Debtor states that, based on the figures set forth above, the Secured Lender is adequately protected by the Debtor's inventory (which, according to the Debtor, has an approximate value of \$1.4 million), the equity in the Vosburg Property and the El Monte Property, and has an equity cushion of approximately 21.77%. The Debtor disputes the appraisal figures relied on by the Secured Lender in its Opposition to the Emergency Cash Collateral Motion [Doc. No. 18], wherein the Secured Lender contends that its loan is not fully secured. The Debtor contends that the Secured Lender's respective appraisals of the Vosberg Property and the El Monte Property, which were based on exterior viewings, are less reliable than the Debtor's respective appraisals, which were based on full inspections. *Compare* "Declaration of Glenn W. Lee" (the "Lee Declaration") [Doc. No. 18] at ¶ 4, *and* "Declaration of Thomas C. Anderson" (the "Anderson Declaration") [Doc. No. 18] at ¶ 4 (Secured Lender's appraisals), *with* "Declaration of Frank Avina" [Doc. No. 40] at ¶ 2 & Ex. 2, *and* Hwang Declaration, Ex. 3 (Debtor's appraisal of the El Monte Property as of July 22, 2018). Based on its appraisal figures, the Debtor further contends that it should not be required to make any further adequate protection payments to the Secured Lender. Additionally, the Debtor states that the Secured Lender and the Capital

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Secured Creditors are adequately protected by the Debtor's continued business operations because the Debtor will continue to generate revenue and preserve the business.

The Renewed Opposition

On August 2, 2018, the Secured Lender filed the "Further Opposition of Creditor, Cathay Bank to [the Renewed Cash Collateral Motion]" (the "Renewed Opposition") [Doc. No. 46]. The Secured Lender opposes further use of the cash collateral by the Debtor. According to the Renewed Opposition, as of June 29, 2018, the total owing on the Loan is \$1,589,689.04. Both the Vosburg Property and the El Monte Property are owned by Lillian and George Hsu. Renewed Opposition at 4. In addition to the Loan to the Debtor, the Secured Lender has made two additional loans to the Hsus, personally: a home equity line of credit secured by a first deed of trust on the Vosburg Property, and a commercial real estate loan secured by a first deed of trust on the El Monte Property. The Debtor defaulted on the Loan after failing to make the payment due on February 18, 2018. The Loan matured on June 18, 2018.

On June 1, 2018, the Secured Lender commenced the State Court Action, and on June 5, 2018, the State Court entered a temporary restraining order and an order to show cause re: appointment of receiver. During the period from the issuance of the TRO on June 5, 2018, through June 26, 2018, the Secured Lender experienced significant difficulties in its attempts to get the Debtor's compliance with the TRO. Such difficulties included, among other things, multiple delays by the Debtor's principals of the field examination of the Debtor's records, and the Debtor's failure to produce certain documents requested by the Secured Lender. The hearing on the State Court OSC was set for June 27, 2018, and on June 26, 2018, the State Court entered its tentative ruling granting the receivership and related relief. The Debtor filed the Petition shortly thereafter.

The Secured Lender points out the following discrepancies with respect to the Renewed Cash Collateral Motion, the Debtor's Schedules, and certain past representations made to the Secured Lender:

- (1) Schedule A/B, ¶ 11, lists the amount of accounts receivable as \$3,250.00; however, in written financial statements provided by the Debtor to the Secured Lender pre-petition, the Debtor represented that as of December 31, 2017, it

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Fu Kong Inc.

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had \$1,200,370.78 in accounts receivable. The Secured Lender argues that the Debtor has failed to explain this discrepancy. Furthermore, at the 341(a) meeting of creditors on August 1, 2018, Ms. Hsu testified that the December 31, 2017 financial statements were inaccurate. Supplemental Bloom Declaration at ¶ 4(a).

- (2) The Debtor's Statement of Financial Affairs, Part 1, states that the gross sales of the Debtor in 2017 totaled "\$1,200,00.00" [*sic*]; however, in the 2017 Financial Statements provided to the Secured Lender, the gross sales of the Debtor were stated as \$6,250,267.00. Renewed Opposition at 5. The Secured Lender argues that based on the Debtor's failure to explain this discrepancy, it continues to appear that either the 2017 signed financial statement given by the Debtor to the Secured Lender, or the Debtor's Schedules, are fraudulent. *Id.*

The Renewed Opposition further contends that, notwithstanding the changes to the Amended Budget as compared to the Original Budget, the Amended Budget is unrealistic based on the disparity between the Amended Budget's projections and the Debtor's past performance. The Debtor's 2016 tax return shows that the Debtor had gross sales in the amount of \$6,167,200.00, and reported cost of goods sold of \$4,783,280.00 (77.6% cost of goods). The Debtor's unaudited 2017 Financial statements show that the Debtor had gross sales in the amount of \$6,250,267.00, and reported cost of goods sold of \$4,898,057.00 (78.4% cost of goods). In contrast, the Amended Budget projects gross sales of \$850,000.00, with a projected cost of goods sold of 60.06% of the projected gross sales. The Renewed Opposition raises additional issues regarding the assumption in the Budget that the Debtor will be able to obtain new credit, as well as significant discrepancies between the Debtor's net profit before taxes in 2016 and 2017 (.9% and 1.7% of gross sales, respectively), and the projected net profit before taxes of 30.7% of gross sales in the Budget. Furthermore, the Opposition contends that the Amended Budget is not supported by sufficient documentation or business records. Specifically, the Secured Lender argues that the newly provided "purchase orders" from Pacico, Inc., are not signed, and fail to set forth material provisions such as payment terms, delivery terms, and cancellation terms. Furthermore, the Pacico purchase orders only account for part of the \$855,000.00 in projected sales, without any documentation to support the remaining projections. Previously, the Secured Lender discovered that the Debtor "maintained no general ledger and that no accounts receivable ageings were available, no inventory ageings were available, and the Debtor's accounts payable ageings appear[ed] to be

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highly inaccurate" "Declaration of Margaret Waye" ("Waye Declaration") [Doc. No. 18] at ¶¶ 16, 20, 21, 22. The Renewed Opposition also contends that the Debtor still has not provided sufficient information with respect to the lease of the El Monte Property

Lastly, the Renewed Opposition contends that the Secured Lender's interest in the collateral is not adequately protected. The Secured Lender disputes the Debtor's valuation of the Vosburg Property and El Monte Property. First, the Secured Lender points out that the Court previously rejected the Debtor's appraisal of the Vosburg Property, yet the Debtor submits the same appraisal in support of the Renewed Cash Collateral Motion. Thus, the Secured Lender contends that based on the its appraisal of the Vosburg Property on May 7, 2018, the Vosburg Property has a value of \$978,000.00, leaving gross equity in the amount of \$696,258.71 (including a reduction for delinquent property taxes). Regarding the El Monte Property, the Secured Lender argues that the Debtor's appraisal inflates the value of the El Monte Property by simply adding \$200,000.00 to \$250,000.00 in adjustments to the comparable sales. Additionally, the Secured Lender discovered that there is an additional third deed of trust in the amount of over \$1 million recorded against the El Monte Property, which means that the encumbrances greatly exceed the amount of any appraisal.

The Reply

The Debtor filed the Reply to the Renewed Opposition on August 6, 2018 (the "Reply") [Doc. No. 48]. At the outset, the Debtor admits the misconduct of its now-former secretary, George Hsu, who provided false financial information to the Secured Lender pre-petition. The Debtor states that George Hsu has been removed, and that the Debtor is committed to maintaining accurate business records moving forward. Lillian Hsu disclaims having any knowledge of the actions taken by George Hsu regarding the financial statement provided to the Secured Lender pre-petition. The Reply submits additional evidence in support of the Renewed Cash Collateral Motion including, among other evidence: the Declaration of Lillian Hsu (the "L. Hsu Declaration"); signed purchase orders from Pacico, Inc., *see* L. Hsu Declaration, Exhibit 1; and further documentation to substantiate the list of received purchase orders and projected sales, *see id.*, Exhibit 2. The Debtor explains that it anticipates large purchase orders being made by Intex USA, Inc. ("Intex") and Casual Express Apparel Inc. ("Casual Express") in the near future, which orders will account for the

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difference between the total amount of the received purchase orders and the Debtor's projection of gross income. The Reply contends that the Secured Lender's interest in the cash collateral is adequately protected by the equity in the Vosburg Property and the El Monte Property, the Debtor's business operations, and the approximately \$1.4 million in inventory. The Debtor argues that the Debtor's appraisals of each of the Properties are superior to those submitted by the Secured Lender, and that calculation of equity for the purpose of determining adequate protection should be based on the Debtor's appraisals.

The Evidentiary Objections

On August 8, 2018, the Secured Lender filed the "Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral" (the "Evidentiary Objections") [Doc. No. 49]. The Secured Lender objects (on various grounds) to the Declaration of Lillian Hsu and the Declaration of George Hsu, submitted in support of the Reply.

II. Findings of Fact and Conclusions of Law

The Evidentiary Objections

For the reasons set forth below, the Secured Lender's Evidentiary Objections to the Declaration of Lillian Hsu and the Declaration of George Hsu are **OVERRULED**. To the extent the Secured Lender objects based on the respective declarations containing numerous statements that end with "to the best of my knowledge," "to the best of my knowledge, information, and belief," or any similar variation, the Court finds the objections lack merit. Additionally, the Court finds that as officers of the Debtor (in the case of George Hsu, a former officer of the Debtor), the Hsu's have the requisite personal knowledge to testify to the Debtor's operations, and the events and circumstances that arose in the ordinary course of business. *See, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position).

The Court further notes that to the extent that declaration testimony purports to characterize the contents of evidence set forth in the record, the Court does not rely upon such testimony. Instead the Court has independently reviewed the evidence in

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the record, and draws its own conclusions as to whether the proffered evidence corroborates the position advanced by its proponent.

The Renewed Cash Collateral Motion

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

Here, the Court finds that the Secured Lender is not adequately protected by the equity in the Vosburg Property and the El Monte Property; therefore, the Court finds that the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

First, in connection with the Emergency Cash Collateral Motion the Court accepted the Secured Lender's appraisal of the Vosburg Property; nevertheless, the Debtor still attempts to rely on its appraisal of the Vosburg Property, which the Court previously rejected. The Debtor has failed to show that the Court should reconsider its previous rejection of the appraisal. Based on the Secured Lender's Appraisal, there is only \$627,678.71 of equity in the Vosburg Property.

Secondly, with respect to the El Monte Property, the Court finds that the Secured Lender's Appraisal is the most reliable valuation, particularly because of the ambiguity identified by the Secured Lender with respect to whether the Debtor's appraisal is in fact an appraisal, or just an evaluation. Therefore, the Court finds that

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the value of the El Monte Property is \$1,630,000.00.

In sum, the Secured Lender's Loan is secured by property with available equity of \$1,111,798.06, while the principal balance on the Loan is \$1,589,689.04, leaving \$477,890.98 unsecured by real property. The Debtor argues that the Secured Lender has recourse to the Debtor's inventory, which the Debtor claims has a value of \$1.4 million; however, given the lack of documentary evidence to support the claimed value of the collateral, the Court cannot accept the Debtor's valuation of the inventory for the purposes of determining whether the Secured Lender's interest in the cash collateral is adequately protected. As discussed, there is not sufficient equity in the Vosburg and El Monte Properties to provide adequate protection. Therefore, the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

With respect to the arguments raised by counsel for the Secured Lender at the hearing regarding the viability of the Debtor's business, such arguments are not relevant to the Court's determination of whether to authorize the Debtor to use cash collateral. Rather, in the absence of affirmative express consent by the creditor, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). The Secured Lender has not shown that its interest in the cash collateral is not adequately protected by the combination of the equity in the Vosburg and El Monte Properties, the Debtor's inventory, the monthly adequate protection payments ordered by the Court, and the deadline set by the Court for the Debtor to obtain approval of a Chapter 11 disclosure statement.

With respect to the evidence submitted in support of the Renewed Cash Collateral Motion and the Amended Budget, and having considered the Renewed Opposition filed by the Secured Lender, the Court finds that the documentation submitted with the Reply, coupled with the statements of Ms. Hsu regarding the anticipated purchase orders from Intex and Casual Express, *see* L. Hsu Declaration at ¶¶ 11–12, is sufficient to support the further interim use of cash collateral. The evidence submitted as Exhibit 1 to the Lillian Hsu Declaration (the signed Pacico purchase orders) is sufficient to rebut the argument of the Secured Lender with respect to the authenticity of the Pacico purchase orders. Additionally, the documentation submitted as Exhibit 2 to the Lillian Hsu Declaration is sufficient to support the Renewed Cash Collateral

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Motion with respect to the total amount of purchase orders received by the Debtor. While there remains a sizeable difference in the total amount of the purchase orders received (\$492,352.40), and the projected gross sales (\$855,000.00), the Court finds that Ms. Hsu provided sufficient information detailing the status of the Debtor's negotiations with Intex and Casual Express to support the projected gross sales.

The Secured Lender additionally argues that there are significant disparities between the Amended Budget projections and the past performance of the Debtor, however, the Court finds that the Reply offers a sufficient explanation of these discrepancies. Importantly, the Debtor explains that the disparity between the cost of goods in the past and the cost which is set forth in the Amended Budget is attributable to the inclusion of \$30,000.00 per month in projected sales of existing inventory in the Amended Budget, and the Debtor maintains that it will be able to afford the cost of purchasing new goods without third party financing based on its new business model. The Debtor's new business model includes an invoicing system whereby the Debtor's customers are invoiced with 30 days for repayment, while the Debtor's suppliers invoice the Debtor with 60 to 90 days for repayment. This model allows the Debtor to collect payments from its customers before the Debtor it pays its suppliers. Thus, the Debtor has submitted sufficient documentary evidence in connection with the Reply to support the further use of cash collateral on an interim basis.

The Court notes that the Debtor has acknowledged the past misrepresentations made by its former secretary, George Hsu. The Debtor fired George Hsu on August 1, 2018, and the Court expects all future representations to be accurate. **The Court takes the statements of Lillian Hsu at the 341(a) meeting of creditors, as well as in her declaration in support of the Reply that George Hsu was fired as Secretary of the Debtor on August 1, 2018, to mean that George Hsu will not play any role whatsoever in the Debtor's business operations moving forward. And to be clear, the Court expects that George Hsu will not participate in any capacity in the Debtor's ongoing business operations.**

III. Conclusion

In ordering the deadlines set forth below, the Court understands there is a hearing on the Secured Lender's Motion to Appoint a Trustee or Examiner [Doc. No. 28] scheduled for August 21, 2018 at 10:00 a.m. That Motion is not before the Court, and the Court's ruling on the instant motion is unrelated to the merits of the pending

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Motion to Appoint a Trustee or Examiner.

Based on the foregoing, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is **December 19, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

Adv#: 2:18-01225 Sultan Financial Corporation v. Aaron's, Inc.

#14.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01225. Complaint by Sultan Financial Corporation against Aaron's, Inc.. (Charge To Estate). (Attachments: # 1 Summons and Notice of Status Conference # 2 Adversary Proceeding Cover Sheet) Nature of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))), (91 (Declaratory judgment)), (72 (Injunctive relief - other)) (Brown, Jeffrey)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-15-18**

Tentative Ruling:

10/15/2018

Matter has settled. This hearing is VACATED.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield

Defendant(s):

Aaron's, Inc.

Pro Se

Plaintiff(s):

Sultan Financial Corporation

Represented By
Richard G Reinis
Jeffrey N Brown
Julian Brew

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2:17-18213 Pac Anchor Transportation Consisting of the Merger Chapter 11

Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#15.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01244. Complaint by Pac Anchor Transportation, Inc., consisting of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. against People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California. (Charge To Estate). Nature of Suit: (71 (Injunctive relief - reinstatement of stay)) (Haberbush, David)

Docket 1

***** VACATED *** REASON: RESCHEDULED 10-17-18 AT 10:00 A.M.**

Tentative Ruling:

10/15/2018

Matter continued by order of court entered October 15, 2018.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

Defendant(s):

People of the State of California ex

Pro Se

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By

David R Haberbush

Vanessa M Haberbush

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2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#100.00 PRETRIAL

RE: [21] Amended Complaint Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In The Alternative, For Sale Of Real Property Pursuant To 11 U.S.C. § 363(h); (3) For Turnover; (4) For Violation Of Automatic Stay; And (5) For Dissolution Of Limited Liability Company with Proof of Service by Zev Shechtman on behalf of Brad D. Krasnoff, Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)), (91 (Declaratory judgment)), (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) filed by Plaintiff Brad D. Krasnoff, Chapter 7 Trustee). (Shechtman, Zev)

Docket 21

***** VACATED *** REASON: DISMISSED 10-3-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Represented By
Yoon O Ham

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CONT... Anne Lan Peterson

Chapter 7

Maitreya, LLC, a Nevada limited

Represented By
Yoon O Ham

Maitreya, LLC, an Arizona limited

Represented By
Yoon O Ham

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:16-15536 Hahn Jake Kim

Chapter 7

Adv#: 2:16-01339 Nobel Textile, Inc., a California corporation v. Kim

#101.00 Pre-trial Conference RE: [1] Adversary case 2:16-ap-01339. Complaint by Nobel Textile, Inc., a California corporation against Hahn Jake Kim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-27-16,12-6-16,1-24-17,4-25-17,5-2-17,5-9-17, 8-15-17
10-24-17; 9-11-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-19-18**

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

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Hahn Jake Kim

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- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will not require the Plaintiff to submit an order referring this matter to the Mediation Panel, but the Court expects that the parties will complete a second day of mediation before Mr. Nassif as the parties have stated they intend to do in the most recent Status Report.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hahn Jake Kim

Represented By
Sanaz S Bereliani

Defendant(s):

Hahn Jake Kim

Pro Se

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CONT... Hahn Jake Kim

Chapter 7

Plaintiff(s):

Nobel Textile, Inc., a California

Represented By
Nico N Tabibi

Trustee(s):

David A Gill (TR)

Pro Se

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11:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#102.00 Pretrial

RE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott)

fr. 2-21-18; 9-11-18

Docket 1

***** VACATED *** REASON: CONTINUED 11-13-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joven C Cabasag

Represented By
David S Hagen

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

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CONT... Joven C Cabasag

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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11:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

Adv#: 2:18-01027 Gonzalez v. Cazares, as Trustee of the 2016 Rafael Cazares Tor

#103.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01027. Complaint by Rosendo Gonzalez against Ricardo Cazares, as Trustee of the 2016 Rafael Cazares Torres Family Irrevocable Trust Dated February 19, 2016. (Charge To Estate). Trustee's Complaint: (1) To Avoid and Recover Fraudulent Transfer; and (2) For Turnover Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Shechtman, Zev)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 4-9
-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Defendant(s):

Ricardo Cazares, as Trustee of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Zev Shechtman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

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11:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)), (11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

FR. 3-13-18; 7-17-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-15-18**

Tentative Ruling:

10/15/2018

Hearing VACATED. Matter settled.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Pro Se

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CONT... Liberty Asset Management Corporation

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Benjamin Kirk Pro Se

Lucy Gao Seh Pro Se

Sunshine Valley, LLC Pro Se

California International Bank, N.A. Pro Se

All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

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11:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#105.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01028. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center against The Irving I. Moskowitz Foundation. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

***** VACATED *** REASON: DISMISSED ON 5-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

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2:17-18213 Pac Anchor Transportation Consisting of the Merger Chapter 11

Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#106.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01244. Complaint by Pac Anchor Transportation, Inc., consisting of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. against People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California. (Charge To Estate). Nature of Suit: (71 (Injunctive relief - reinstatement of stay)) (Haberbush, David)

Docket 1

***** VACATED *** REASON: WILL BE HEARD AT 10:00 A.M.. TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

Defendant(s):

People of the State of California ex

Pro Se

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By
David R Haberbush
Vanessa M Haberbush

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2:17-16360 Michael McNulty

Chapter 11

#107.00 HearingRE: [140] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 140

Tentative Ruling:

10/15/2018

For the reasons set forth below, the UST Motion to Convert or Dismiss is GRANTED and the case is CONVERTED to a case under chapter 7.

Pleadings Filed and Reviewed

1. Order Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed or Converted [Doc. No. 137] (the "OSC")
 - a. Emergency Motion to Continue Order Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed or Converted [Doc. No. 144]
 - b. Order on Emergency Motion to Continue Order Requiring Debtor to Appear and Show Cause Why This Case Should Not be Dismissed or Converted [Doc. No. 146] (the "Order Continuing Hearing on OSC")
 - c. Response to Order to Show Cause Why Case Should Not Be Converted or Dismissed [Doc. No. 143] ("Debtor's Response to OSC")
 - d. Reply of the United States to Debtor's Response to the Order to Show Cause Why This Case Should Not Be Dismissed or Converted to Chapter 7 And Joinder to Trustee's Motion Under § 1112 to Convert or Dismiss [Doc. No. 149] (the "IRS Reply" or "IRS Joinder")
2. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 140] (the "UST Motion to Convert or Dismiss")
 - a. IRS Joinder [Doc. No. 149]
 - b. Debtor's Response to U.S. Trustee's Motion to Convert or Dismiss Case With an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 150] ("Debtor's Reply")

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CONT... Michael McNulty

Chapter 11

I. Facts and Summary of Pleadings

Relevant Background facts

Debtor Michael McNulty filed a voluntary chapter 11 petition on May 23, 2017. Debtor's primary asset is a rental property located at 1110 E. Acacia Avenue, El Segundo, CA 90245 (the "Rental Property"). The Rental Property is encumbered by two deeds of trust securing indebtedness of approximately \$630,727.99, and a tax lien in favor of the Internal Revenue Service (the "IRS") in the amount of \$20,355.66. *See* Doc. No. 102, p. 4.

On December 12, 2017, Debtor filed a Disclosure Statement and Chapter 11 Plan of Reorganization [Doc. Nos. 73, 74]. Following a hearing on January 24, 2018, the Court entered an order denying Debtor's motion for approval of the Disclosure Statement based on a lack of adequate information [Doc. No. 89]. The order directed Debtor to file an Amended Disclosure Statement by April 24, 2018 and set a continued hearing for May 22, 2018. *Id.* On April 25, 2018, Debtor filed a First Amended Disclosure Statement and Chapter 11 Plan [Doc. Nos. 96, 97].

On May 3, 2018, the Debtor filed a motion to sell the Rental Property free and clear of all encumbrances under section 363(f) for \$1,175,000 [Doc. No. 102] (the "Sale Motion"). As set forth in the Sale Motion, Debtor anticipated the sale would generate funds sufficient to pay all claims in full. At a hearing on June 8, 2018, the Court orally granted the Sale Motion, ordered Debtor's First Amended Disclosure Statement and Chapter 11 Plan withdrawn, and set a chapter 11 status conference for September 18, 2018 [Doc. No. 116]. The Court entered an order granting the Sale Motion on June 15, 2018 [Doc. No. 118] (the "Sale Order").

On July 24, 2018, the Debtor filed a Motion to Amend the Sale Order to provide for a reduced sale price of \$1,100,000 due to the condition of the Rental Property [Doc. No. 129] (the "Amended Sale Motion"). As set forth in the Amended Sale Motion, the Debtor expected escrow to close on or about August 9, 2018, and then anticipated paying all creditors in full and moving to close this case. *Id.* The Court entered an order approving the Amended Sale Motion on August 13, 2018 [Doc. No. 132] (the "Amended Sale Order").

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Order to Show Cause Why This Case Should Not Be Converted or Dismissed

In advance of the September 18, 2018 chapter 11 status conference, the Court issued a tentative ruling directing the Debtor to appear and provide an update on the status of escrow, whether all claims have been paid in full, and when the debtor anticipates moving for dismissal of the case. The Debtor failed to appear at the status conference. Accordingly, the Court issued an *Order Requiring the Debtor To Appear and Show Cause Why This Case Should Not Be Dismissed or Converted* for failure to appear in proper prosecution of this case pursuant to 11 U.S.C. § 1112(e) [Doc. No. 137] (the "OSC"). At the request of Debtor's counsel, the Court continued the hearing on the OSC from October 3, 2018 to October 16, 2018 [Doc. Nos. 144, 146].

Debtor filed a response to the OSC stating as follows: (i) Debtor's counsel miscalendared the chapter 11 status conference and apologizes for failing to appear; (ii) following the hearing on the Sale Motion, "debtor had some issues with title due to his partners passing and had to start a probate case," and "debtor is currently in probate and has not been able to close escrow" [Doc. No. 143] ("Debtor's Response to OSC").

The IRS filed a reply to Debtor's Response to OSC [Doc. No. 149] ("IRS Reply"). The IRS contends that cause exists to either convert or dismiss this case pursuant to 11 U.S.C. § 1112(b) for the following reasons:

(i) The case has been pending for seventeen months and Debtor has not obtained approval of a disclosure statement or confirmed a plan. Debtor's First Amended Disclosure Statement was ordered withdrawn and Debtor has not filed an amended disclosure statement. Debtor has not made any meaningful or substantive progress toward confirming a plan or demonstrated the ability to do so in the near future.

(ii) Debtor did not disclose any potential issues with title and ownership of the Rental Property in his schedules, the Sale Motion, or Amended Sale Motion. Furthermore, it appears Debtor's wife passed away in 2008, and Debtor fails to adequately explain why probate is necessary or why he did not take the necessary steps to obtain clean title prior to filing the Sale Motion. Debtor has also failed to provide adequate information regarding when escrow will close.

(iii) Debtor acted in bad faith by failing to disclose his late wife's purported ownership interest in the Rental Property at any point during the pendency of this case

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and for waiting so long to take any steps towards obtaining clean title. Additionally, the fact that this is Debtor's second chapter 11 bankruptcy case in less than three years supports a finding that the Debtor is using bankruptcy to delay and prejudice creditors.

The IRS requests that the Court either convert this case to a case under chapter 7 or dismiss this case with a 180-day refiling bar.

UST Motion to Convert or Dismiss

Shortly after the Court issued its OSC, the Unites States Trustee ("UST") filed a separate *Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee With an Order Directing Payment of Quarterly Fees and Judgment Thereon* [Doc. No. 140] (the "UST Motion to Convert or Dismiss"). The UST recommends that the case be converted to a case under chapter 7 based on the following (i) the Debtor's disclosure statement was withdrawn on June 8, 2018; (ii) Debtor has failed to pay quarterly fees for the second quarter of 2018; (iii) Debtor has failed to provide adequate information regarding the status of escrow on the Rental Property; and (iv) this is Debtor's second chapter 11 case and the first chapter 11 case was filed on August 18, 2015 and dismissed on March 28, 2017 (see Case No. 2:15-bk-22962-ER).

On October 9, 2018, the Debtor filed a Reply to the UST Motion to Convert or Dismiss ("Debtor's Reply") [Doc. No. 150]. Debtor states that he filed this bankruptcy case to reorganize the debts associated with the Rental Property, intends to move forward with escrow and is currently in a probate case with the Los Angeles Superior Court. Debtor also states that he will be filing a Disclosure Statement and Plan after escrow has closed. Finally, Debtor states that he has cured the delinquent UST quarterly fee. Therefore, Debtor requests that the Court deny the motion or, alternatively, issue a continuing compliance order requiring the debtor to remain current with the UST requirements.

II. Findings of Fact and Conclusions of Law

In light of the overlap between the OSC and UST Motion to Convert or Dismiss, the Court finds it appropriate to consolidate its rulings as set forth below.

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7

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upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(E) failure to comply with an order of the court;" "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

The Court finds that "cause" exists to convert this case to a case under chapter 7. First, the Court finds it troubling to learn that the Debtor has been unable to close escrow, presumably because title to the Rental Property is in both the Debtor's late wife's and Debtor's name. Either Debtor has not been entirely truthful in his schedules and relevant pleadings regarding the Rental Property, or his counsel's and his conduct has been negligent in reviewing necessary documents to determine the true nature of ownership. The Court is further troubled by the Debtor's lack of candor relating to the probate case. For example, the Debtor does not explain what the issue was that prevented consummation of the sale, what steps Debtor is taking to remedy that issue, how long the probate proceedings are expected to take, or whether the buyer is willing to wait for those issues to be resolved and move forward with the sale. Instead, the Court and creditors are left to guess about these issues.

Next, the Debtor concedes that the sole asset with any value in this case is the Debtor's Rental Property. However, in the seventeen months since this case was filed, the Debtor has been unable to obtain approval of a disclosure statement, confirm a plan, or administer the Rental Property. These failings are exacerbated by the fact that the Debtor has essentially had the benefit of the automatic stay for over three years. *See* Case No. 2:15-bk-22962-ER. Meanwhile, the Debtor continues to accrue administrative fees that reduce the potential payout to creditors.

For all of these reasons, the Court finds that it is no longer in the best interest of creditors to allow the Debtor to remain a debtor in possession. A trustee should be appointed in order to determine if there is value in the Rental Property sufficient to

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warrant administration.

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III. Conclusion

For the reasons set forth above, the UST Motion to Convert or Dismiss is GRANTED and the case is CONVERTED to chapter 7. Debtor's counsel is directed to file a fee application in accordance with § 330 within thirty days of entry of the order converting this case.

The UST is directed to upload a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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2:17-16360 Michael McNulty

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#108.00 Show Cause Hearing re [102] Debtor's Motion for Order Approving Sale of Real Property Free and Clear of Designated Liens, Providing for Overbids, and for Ancillary Relief

FR. 10-3-18

Docket 0

Tentative Ruling:

10/15/2018

See Cal. No. 107, above, incorporated in full by reference.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

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:
Misc#: 2:18-00104

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#1.00 Hearing

RE: [3] Judgment Creditor Tannor Partners Credit Fund, LP's motion for order assigning judgment debtor's rights to payment and restraining judgment debtor

Docket 3

Tentative Ruling:

10/16/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Judgment Creditor Tannor Partners Credit Fund, LP's Motion for Order Assigning Judgment Debtor's Rights to Payment and Restraining Judgment Debtor [Doc. No. 3] ("Motion")
 - a. Notice of Motion for Judgment Creditor Tannor Partners Credit Fund, LP's Motion for Order Assigning Judgment Debtor's Rights to Payment and Restraining Judgment Debtor [Doc. No. 2]
 - b. Request for Judicial Notice in Support of Motion [Doc. No. 4] ("RJN")
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Tannor Partners Credit Fund, LP ("Judgment Creditor") moves, pursuant to Civil Rule 69(a)(1) and California Code of Civil Procedure ("CCP") section 708.510 et seq., for an order: (1) assigning Tomisho SDN BHD's ("Judgment Debtor") right to payment due or to become due from Coaster Company of America, LP ("Coaster" or "Obligor"), to the extent necessary to satisfy Judgment Creditor's judgment against Judgment Debtor, and (2) restraining Judgment Debtor from assigning or otherwise disposing of such right to payment.

On December 21, 2016, the United States Bankruptcy Court for the Eastern District of Virginia (the "Virginia Bankruptcy Court") entered a money judgment in

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the amount of \$168,663.50 plus \$293 in costs and post-judgment interest as allowed by law (the "Judgment") against the Judgment Debtor and in favor of chapter 7 trustee Lynn L. Tavenner (*Tavenner v. Tomisho SDN BHD*, Case No. 13-ap-03286-KLP). RJN, Ex. 2. Pursuant to an order entered by the Virginia Bankruptcy Court on August 28, 2017, Judgment Creditor purchased the estate's interest in the Judgment. RJN, Ex. 3.

Judgment Creditor states that it registered the Judgment in the Central District of California pursuant to 28 U.S.C. § 1963 on September 13, 2018. RJN, Ex. 4. As of that date, the Judgment totaled \$171,560.19. No amount has been paid on the Judgment.

As of the preparation of this tentative ruling, Judgment Debtor has not filed an opposition.

II. Findings of Fact and Conclusions of Law

Service of the Motion is Adequate

Judgment Creditor's proof of service reflects service of the Motion on the Judgment Debtor via the following methods: (i) two e-mail addresses; and (ii) U.S. first class mail and Federal Express on two Malaysian addresses associated with the Judgment Debtor. In support of the Motion, Judgment Creditor submitted an order, issued by the Virginia Bankruptcy Court on August 22, 2016, granting Judgment Creditor's request to serve the summons and complaint in that action on the Judgment Debtor pursuant to Civil Rule 4(f)(3). RJN, Ex. 1.

Pursuant to Civil Rule 4(f), made applicable in this proceeding by Bankruptcy Rules 7004 and 9014(b), service on a foreign entity must be made in accordance with subsections (f)(1) or (f)(2), unless the court orders service may be made "by other means not prohibited by international agreement." Fed. R. Civ. P. 4(f)(1) – (3). Pursuant to CCP § 708.510(b), the motion need only be served on the Judgment Debtor. Cal. Code Civ. P. § 708.510(b); *see also Greenbaum v. Islamic Republic of Iran*, 782 F.Supp.2d 893, 897 (C.D. Cal. 2008) ("motion for an assignment of rights need only be served on the judgment debtor and *not on the obligor*") (emphasis in original).

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Judgment Creditor did not file a separate request with this Court for authority to serve this Motion on the Judgment Debtor pursuant to Civil Rule 4(f)(3). Nevertheless, the Court finds it appropriate to deem the Motion as such a request, grant that request, and find that service on the Judgment Debtor is proper.

Applicable Law

The execution of final judgments is governed by Civil Rule 69(a)(1), made applicable to this proceeding by Bankruptcy Rules 7069 and 9014(c), which provides: "A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution [of a money judgment] – and in proceedings supplementary to and in aid of judgment or execution – must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies." Fed. R. Civ. P. 69(a)(1).

Assignment Order

Judgment Creditor submits that CCP § 708.510 is the applicable state law governing assignment of rights to a money judgment. Section 708.510 states, in relevant part:

[U]pon application of the judgment creditor on noticed motion, the court may order the judgment debtor to assign to the judgment creditor ... all or part of a right to payment due or to become due, whether or not the right is conditioned on future developments

Cal. Code Civ. P. § 708.510(a).

"Under the statute, which contains a non-exhaustive list of relevant factors for consideration, the court has broad discretion from determining whether to order an assignment." *Greenbaum*, 782 F.Supp.2d at 895. "While a motion for an assignment order does not demand '[d]etailed evidentiary support,' a judgment creditor must describe the source of the right to payment with 'some degree of concreteness.'" *Nat'l Grange of Order of Patrons of Husbandry v. California Guild*, 2017 WL 953792, at *1 (E.D. Cal. Mar. 9 2017) (internal citations omitted).

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Here, Judgment Creditor states that Judgment Debtor has not yet paid any part of the Judgment and, to the best of its knowledge, does not have any assets in the United States available to satisfy the Judgment, other than monies owed by Coaster. Judgment Creditor further states that Coaster, whose principal office is in Santa Fe Springs, California, imports furniture manufactured by Judgment Debtor in Malaysia into the United States for distribution and then sends payment to Judgment Debtor.

The Court finds this is a sufficiently concrete source of payment and sufficient grounds exist to grant Judgment Creditor's motion to the extent necessary to satisfy the Judgment.

Restraining Order

"When an application is made pursuant to § 708.510 or thereafter, the judgment creditor may apply to the court for an order restraining the judgment debtor from assigning or otherwise disposing of the right to payment that is sought to be assigned The court may issue an order pursuant to this section upon a showing of need for the order." Cal. Code. Civ. P. § 708.520. "Courts have issued restraining orders 'so that [the assigned rights to payment] might be available for satisfaction of the judgment.'" *UMG Recordings, Inc. v. BCD Music Grp., Inc.*, 2009 WL 2213678, at *3 (C.D. Cal. July 9, 2009), *amended in part on other grounds*, 2011 WL 798901 (C.D. Cal. Feb. 25, 2011), *aff'd* 509 F.App'x 661 (9th Cir. 2013) (internal citation omitted).

Here, the fact that the Judgment Debtor is a foreign corporation with little to no assets in the United States and has not paid any part of the Judgment to date demonstrate a need to protect the assigned right to payment from transfer or disposition by the Judgment Debtor. Accordingly, Judgment Creditor's request for a restraining order is granted.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED. Judgment Creditor is directed to lodge a proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel

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at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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2:16-13575 Liberty Asset Management Corporation

Chapter 11

#2.00 Status Hearing
RE: [1] Postconfirmation Status Conference

Docket 1

Tentative Ruling:

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Tentative Ruling:

Having reviewed the *First Post-Confirmation Status Report*, the Court finds that the Plan Administrator is making sufficient progress toward effectuating the Plan. A continued Status Conference shall take place on **January 15, 2019, at 10:00 a.m.** The Plan Administrator shall submit a Status Report by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

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2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#3.00 Hearing
RE: [25] Motion for Preliminary Injunction

Docket 25

Tentative Ruling:

10/16/2018

For the reasons set forth below, the Motion is GRANTED. Prosecution of the Enforcement Action is stayed until the earlier of either denial of the Rule 9019 Motion or denial of the motion to confirm the Plan.

Pleadings Filed and Reviewed:

- 1) Motion for Preliminary Injunction [Doc. No. 25] (the "Motion")
 - a) Declarations of Alfredo Barajas, Davis R. Haberbush, and Neil S. Lerner in Support of Motion for Preliminary Injunction [Doc. No. 26]
 - b) Request for Judicial Notice in Support of Motion for Temporary Restraining Order and Preliminary Injunction [Doc. No. 27]
- 2) Opposition to Motion for Preliminary Injunction [Doc. No. 31] (the "Opposition")
 - a) Evidentiary Objections to Declarations of Alfredo Barajas and Davis R. Haberbush [Doc. No. 32]
- 3) Reply to California's Opposition to Motion for Preliminary Injunction [Doc. No. 34] (the "Reply")

I. Facts and Summary of Pleadings

Pac Anchor Transportation, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on July 6, 2017. On July 7, 2017, the Debtor removed to the Bankruptcy Court an action that had been pending in the Los Angeles Superior Court, *People of the State of California ex rel. Kamala D. Harris v. Pac Anchor Transportation, Inc.* (the "Enforcement Action"). On that same date, the Debtor removed to the Bankruptcy Court another action pending in the Los Angeles Superior Court, *Carlos Mosquera and Juan Francisco Rodriguez on Behalf of Themselves and All Others Similarly Situated v. Pac Anchor Transportation* (the "Class Action").

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The Enforcement Action

The State of California (the "State") commenced the Enforcement Action against the Debtor and its principal, Alfredo Barajas, on September 5, 2008. The Enforcement Action alleges that the Debtor misclassifies its driver employees as independent contractors, and thus commits "unfair competition" within the meaning of California Business and Professions Code §17200, by failing to pay the minimum wage, secure workers' compensation insurance, and report and remit payroll taxes. The State seeks an injunction, civil penalties, and restitution of unpaid wages.

In August 2009, the Debtor and Mr. Barajas filed a motion for judgment on the pleadings in the Los Angeles Superior Court (the "State Court"), arguing that the State's claims against them were pre-empted by the Federal Aviation Administration Authorization Act. On September 22, 2009, the Superior Court granted the motion and entered judgment in favor of the Debtor and Mr. Barajas. On December 7, 2009, the State appealed the judgment. The Enforcement Action was stayed during the appeal, which lasted from December 7, 2009 to April 8, 2015. The Superior Court's judgment in favor of the Debtor and Mr. Barajas was ultimately reversed and litigation began anew in the Superior Court in April 2015.

On February 18, 2016, the State filed a supplemental complaint (the "Supplemental Complaint"), adding the Debtor's sister company, Green Anchor Lines, Inc. ("Green Anchor") as a defendant. The State alleges that Green Anchor supplied the Debtor's drivers from 2009 through at least December 2016. The Supplemental Complaint makes the same allegations and seeks the same relief as the original complaint.

The Class Action

On June 14, 2017, Carlos Mosquera and Juan Francisco Rodriguez commenced an action against the Debtor in the Superior Court (the "Class Action"). The Class Action seeks restitution and damages from the Debtor due to the Debtor's employment practices for all drivers, statutory penalties under the California Labor Code, and an injunction. The Class Action is brought under the Private Attorneys General Act ("PAGA").

Remand of the Enforcement Action

On September 15, 2017, upon a motion brought by the State of California, the Court remanded the Enforcement Action to the State Court. The Court found that it

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was required to remand the Enforcement Action pursuant to 28 U.S.C. §1452, which bars the removal of civil actions “by a government unit to enforce such governmental unit’s police or regulatory power.” The Court explained:

To determine whether an action is exempt from removal under the police and regulatory power exception, the Court determines whether the action meets either the “pecuniary purpose” test or the “public policy” test. *Universal Life Church, Inc. v. United States (In re Universal Life Church, Inc.)*, 128 F.3d 1294, 1297 (9th Cir. 1997), *as amended on denial of reh’g* (Dec. 30, 1997).

An action is not removable if either test is satisfied. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1108 (9th Cir. 2005). The pecuniary purpose and public policy tests that are applied to assess the permissibility of removal are the same tests that are applied to determine whether an action is exempt from the automatic stay pursuant to §362(b)(4)....

As the Ninth Circuit has explained:

Under the pecuniary purpose test, the court determines whether the government action relates primarily to the protection of the government’s pecuniary interest in the debtor’s property or to matters of public safety and welfare. If the government action is pursued solely to advance a pecuniary interest of the governmental unit, the stay will be imposed.

The public policy test “distinguishes between government actions that effectuate public policy and those that adjudicate private rights.” *Universal Life Church*, 128 F.3d at 1297 (internal citations omitted)....

The Debtor concedes that the State’s claims for injunctive relief and civil penalties fall within the police and regulatory power exception and are therefore ineligible for removal under 28 U.S.C. §1452. The Court finds that the only remaining claim, for restitution of unpaid wages, also falls within the police and regulatory power exception. The Enforcement Action alleges that by misclassifying its truck driver employees as independent contractors, the Debtor lowered its cost of doing business by failing to pay payroll taxes, by failing to pay the minimum wages, and by failing to secure workers’ compensation insurance for its employees. The Enforcement Action seeks an order requiring the Debtor to make restitution of the unpaid minimum wages.

The Enforcement Action satisfies the public policy test since its primary purpose is to vindicate California labor law. The police and regulatory nature

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Pac Anchor Transportation Consisting of the Merger

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of the action is underscored by the fact that if employers could circumvent labor laws without fear of prosecution, all employers would have an incentive to ignore such laws to save money and gain a competitive advantage. This would result in a race to the bottom in which even employers without a predilection to violate the law would face pressure to do so simply to remain competitive. Thus, although the Debtor's employees, who were allegedly underpaid, may incidentally benefit from the Enforcement Action, the overriding purpose of the action is to effectuate public policy, not to adjudicate private rights. The purpose of the restitution provisions contained in California's Business and Professions Code is "to deter future violations ... and to foreclose retention by the violator of its ill-gotten gains." *Fletcher v. Sec. Pac. Nat'l Bank*, 23 Cal. 3d 442, 449, 591 P.2d 51 (1979). While requiring violators to make restitution of ill-gotten gains inevitably benefits their victims, the primary impact of the restitution requirement is to uphold respect for the law; if violators could retain illegal gains, the public would have less incentive to comply with the law.

The Enforcement Action also satisfies the pecuniary purpose test. The Debtor asserts that the pecuniary purpose test is not met because the Enforcement Action seeks to recover unpaid payroll taxes. The Debtor mischaracterizes the Enforcement Action. There is no claim for unpaid payroll taxes in the prayer for relief, and as the Attorney General points out, he does not represent the Employment Development Department, which is the agency responsible for collecting unpaid taxes.

It is true that the State seeks civil penalties in an amount of no less than \$4.16 million. However, as discussed above, the primary purpose of the action is to enforce California labor law. The collection of civil penalties is a necessary component of this public purpose, and does not cause the Enforcement Action to fail the pecuniary purpose test. The collection of civil penalties is one of the key mechanisms by which governments vindicate their police and regulatory authority. If the presence of civil penalties disqualified an action under the pecuniary purpose test, then almost no governmental actions could satisfy the test. *See, e.g., Berg v. Good Samaritan Hospital (In re Berg)*, 230 F.3d 1165, 1168 (9th Cir. 2000) (holding that the imposition of sanctions qualified as an action to protect public safety and welfare, on the ground that "although private parties may benefit financially from sanctions, the deterrent effect of monetary penalties can be essential for the government

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to protect its regulatory interests”).

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Final Ruling Granting Remand Motion [Doc. No. 19, Adv. No. 2:17-ap-01345-ER] at 21–23.

Remand of the Class Action

On September 5, 2017, the Court entered an order requiring the Debtor to show cause why the Class Action should not also be remanded. Doc. No. 6, Case No. 2:17-ap-01346-ER (the “Order to Show Cause”). In Preliminary Findings set forth in the Order to Show Cause, the Court found that equitable grounds supported remand of the Class Action. Applying the factors set forth in *Citigroup, Inc. v. Pacific Investment Management Co., LLC (In re Enron Corp.)*, 296 B.R. 505, 509 n. 2 (C.D. Cal. 2003), the Court reasoned:

Multiple *Enron* factors support remand. With respect to factor two, the action involves only issues of state law that are within the expertise of the Superior Court to determine. With respect to factor one, remand will not impair the efficient administration of the estate. The Superior Court can determine the Debtor/Defendant’s liability, if any; if and when a final, non-appealable judgment against the Debtor/Defendant has been entered, the Bankruptcy Court can then make whatever determinations are necessary with respect to that judgment in the Chapter 11 context. (These reasons also support remand pursuant to factor eight.) With respect to factor eleven, the Plaintiffs have demanded a jury trial, which the Bankruptcy Court cannot provide absent the consent of the parties. Factor eleven, comity, supports remand because the action asserts only claims arising under California employment law; courts of the State of California are in the best position to adjudicate such claims.

Finally, remand will conserve judicial resources. The Court has recently determined that it was required to remand the action *People of the State of California ex rel. Kamala D. Harris v. Pac Anchor Transportation, Inc.* (the “Enforcement Action”). The Court found that the Enforcement Action was not properly removed because it qualified as a “civil action by a governmental unit to enforce such governmental unit’s police or regulatory power” pursuant to 28 U.S.C. §1452. *See generally* Ruling Granting Motion for Remand [Doc. No. 19, Adv. No. 2:17-ap-01345-ER]. The Enforcement Action is based upon the same set of operative facts as this action. Remand will enable the Defendant to

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seek to consolidate this action with the Enforcement Action.

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Order to Show Cause at 2.

On October 4, 2017, the Court approved a stipulation remanding the Class Action. *See* Doc. No. 12, Adv. No. 2:17-ap-01346-ER.

The Debtor's Plan of Reorganization and Settlement of the Class Action

On July 30, 2018, the Debtor filed a motion seeking approval of a settlement (the "Settlement Agreement") of the Class Action. *See* Doc. No. 286, Case No. 2:17-bk-18213-ER (the "Rule 9019 Motion"). The Settlement Agreement requires that the proposed settlement be approved by both the State Court and the Bankruptcy Court. A hearing on the Rule 9019 Motion is set for November 6, 2018. Settlement of the Class Action is supported by the Official Committee of Unsecured Creditors (the "Committee").

The Settlement Agreement does not become effective unless the Debtor's Plan of Reorganization (the "Plan") is approved. A hearing on confirmation of the Plan is set for December 5, 2018. The Plan provides for a total payout to general unsecured creditors (including creditors in the Class Action) of \$4.5 million. An initial payment of \$750,000 will be made on the effective date of the Plan, with subsequent payments in the amount of \$187,500 to be made quarterly, such payments to commence on April 1, 2019 and end on January 1, 2024.

The Section 105 Action

On July 30, 2018, the Debtor commenced a *Complaint for an Injunction Pursuant to 11 U.S.C. §105(a)* (the "Section 105 Action") against the State of California (the "State"). The Section 105 Action seeks an injunction, under §105(a) of the Bankruptcy Code, staying the State's prosecution of the Enforcement Action. The Debtor asserts that being required to defend against the Enforcement Action imposes substantial burden and expense upon the estate. The Debtor further contends that the proposed settlement of the Class Action resolves all claims for restitution and injunctive relief sought by the State in the Enforcement Action, such that no practical or legal purpose remains for the State's continued prosecution of the Enforcement Action.

Summary of the Debtor's Motion for a Preliminary Injunction in the Section 105 Action

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In the Section 105 Action, the Debtor moves for imposition of a preliminary injunction staying continued prosecution of the Enforcement Action. The proposed injunction would remain in effect until the earlier of denial of the Rule 9019 Motion or denial of the motion to confirm the Plan. The Debtor makes the following arguments and representations in support of its motion for an injunction:

The proposed settlement of the Class Action will vindicate all the interests pursued by the State by way of the Enforcement Action. Pursuant to the terms of the Settlement Agreement resolving the Class Action, the Debtor has agreed to the same injunctive relief sought by the State in the Enforcement Action and has agreed to pay \$4.5 million in restitution to drivers that the Debtor formerly treated as independent contractors rather than as employees.

The State's continued prosecution of the Enforcement Action will impose a severe burden upon the estate and will likely prevent the Debtor from confirming and performing under the Plan. Between November 1, 2017 and March 31, 2018, the Debtor incurred \$209,431.66 in attorneys' fees defending against the Enforcement Action. Trial in the Enforcement Action is currently scheduled for November 6, 2018. If the Debtor is required to proceed to trial, it will be required to spend an additional \$90,000 in attorneys' fees. These additional attorneys' fees, combined with the possibility of a duplicated judgment in the Enforcement Action, may make reorganization impossible. In addition, if the Plan is not confirmed prior to 2018, the Debtor will accrue an additional \$300,000 in tax liability. The payment of such liability will leave the Debtor with insufficient capital to both continue operations and perform under the Plan.

If the Settlement Agreement resolving the Class Action is approved prior to trial of the Enforcement Action, principles of *res judicata* may prevent the State from continuing to prosecute the Enforcement Action. *See California v. IntelliGender, LLC*, 771 F.3d 1169, 1179 (9th Cir. 2014) (holding that the State was precluded from prosecuting an action seeking restitution on behalf of members of a certified class, where those class members had previously obtained restitution in a private class action). An injunction against the State is therefore appropriate to prevent the State from obtaining a double recovery in the Enforcement Action.

The only relief sought in the Enforcement Action that is not resolved through settlement of the Class Action is the State's claim for penalties. However, the Debtor does not object to the dollar amount of the penalties claimed by the State in Proof of Claim No. 13 ("Claim 13"). Claim 13 seeks penalties of \$15 million, based upon the

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Enforcement Action. Although the Debtor has filed an objection to Claim 13, the Debtor objects only to the priority status of the penalties sought by the State—not to the dollar amount of those penalties. Because the Debtor does not object to the dollar amount of the penalties, no purpose would be served in litigating the amount of those penalties by way of the Enforcement Action.

"Section 105(a) gives the bankruptcy courts the power to stay actions that are not subject to the 11 U.S.C. § 362(a) automatic stay but 'threaten the integrity of a bankrupt's estate.'"

Indivos Corp. v. Excel Innovations, Inc., Ned Hoffman (In re Excel Innovations, Inc.), 502 F.3d 1086, 1093 (9th Cir. 2007). The usual preliminary injunction standard applies to injunctions issued under §105(a), except that instead of considering the probability that the Debtor will succeed on the merits of the litigation, the Court must consider the probability of a successful reorganization. *Excel*, 502 F.3d at 1096.

The Debtor satisfies the requirements necessary to obtain a §105(a) injunction. First, the Plan proposed by the Debtor can be confirmed provided that the Settlement Agreement resolving the Class Action is approved. Second, the Debtor will suffer irreparable harm if the Enforcement Action is not stayed. Absent a stay, the Debtor will continue to incur significant attorneys' fees. Those additional fees will deplete the Debtor's cash flow such that the Debtor will not be able to make the payments required under the Plan. Third, the balance of the hardships tips sharply in favor of the Debtor. The State will suffer no harm if the Enforcement Action is stayed because the settlement of the Class Action will vindicate all the interests pursued by the State in the Enforcement Action. The Debtor, by contrast, will suffer significant harm if it is unable to confirm or perform under the Plan. Finally, a stay of the Enforcement Action is in the public interest. Such a stay will enable the Debtor to confirm a Plan and preserve jobs through the continued operation of its business. Further, the public interest is served because, as discussed, the settlement of the Class Action furthers all the policy objectives pursued by the State in the Enforcement Action.

Summary of the State's Opposition to the Debtor's Motion for a Preliminary Injunction

The State makes the following arguments and representations in support of its opposition to the Debtor's Motion:

The Debtor seeks to hold the State to a flawed private settlement through application of *res judicata*. The Debtor has failed to satisfy the standards for

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injunctive relief.

First, the Debtor has not shown that it has a reasonable likelihood of confirming its Plan. The Plan contains a provision limiting to \$100,000 the amount that may be recovered against Alfredo Barajas (the Debtor's sole shareholder) and his wife, if either of them seek bankruptcy protection. That provision is tantamount to a third-party release, which is barred by §524(e).

Second, the Debtor has failed to show that it will suffer irreparable harm absent an injunction. Being required to proceed towards trial does not constitute "a clear case of hardship or inequity." *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005). The \$90,000 in attorneys' fees that the Debtor will pay in connection with trial of the Enforcement Action will not interfere with the Debtor's ability to implement or perform under the Plan. The Debtor's August monthly operating report shows that it has \$2.5 million in cash available. Even after making \$1.25 million in effective date payments, the Debtor will still have more than \$1 million of cash on hand. The Debtor has failed to show that it needs more than \$1 million in order to sustain operations; to the contrary, the Debtor's own projections show that at times it is expected to have only \$900,000 in cash on hand.

In addition, the Debtor's claim that it may be required to pay an extra \$300,000 in tax liability if the Plan is not confirmed prior to 2018 is not correct. The Debtor is a sub-chapter S-corporation, meaning that Alfredo Barajas, the Debtor's sole shareholder, is personally liable for the Debtor's taxes. Any tax liability resulting from a delay in confirmation will not fall upon the estate.

The Debtor's contention that the claims in the Class Action and Enforcement Action are duplicative is without merit. The underlying conduct giving rise to the Class Action and Enforcement Action is the same. However, the Enforcement Action claims differ from the Class Action claims, because the State suffered a different harm than the drivers. The harm suffered by the State is the Debtor's violation of the law, which is different from the economic harm suffered by the drivers.

Third, the balance of the hardships favors the State. Staying the Enforcement Action would deprive the State of the opportunity to obtain a judgment prior to approval of the deeply-flawed settlement of the Class Action. This sequence of events would favor private enforcement over public enforcement and would deprive the State of the opportunity to obtain a judgment with a deterrent effect.

Fourth, an injunction is not in the public interest. The Court's determination that the Enforcement Action was subject to remand under the "police or regulatory power" exception to removal establishes that prosecution of the Enforcement Action is in the

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public interest. The Debtor should be precluded from now contesting the Court's prior determination that prosecution of the Enforcement Action is in the public interest.

Summary of the Debtor's Reply in Support of the Motion

The Debtor makes the following arguments and representations in reply to the State's opposition:

The State has failed to show how the relief provided through the settlement of the Class Action does not protect the public interests pursued by the State through the Enforcement Action. The State makes only conclusory statements that the proposed settlement is "deeply flawed," Opposition at 14, will cause "ongoing harm to employees and law-abiding employers," *id.* at 13, and will "prejudice California's ability to enforce a duly enacted statute," *id.* at 13.

An injunction is appropriate because the State has failed to show that the claims in the Enforcement Action are not duplicative of the claims in the Class Action. The State has failed to inform the Court that the State Court has already continued the Enforcement Action, having concluded that trial of both actions would result in a duplication of effort and would be unnecessary.

There is no merit to the State's contention that the Debtor is collaterally estopped from seeking a §105 injunction as a result of the Court's decision to remand the Enforcement Action. The injunctive relief the Debtor seeks now is different from the issues raised by the decision to remand.

The State's contention that the Debtor's ability to reorganize will not be impaired by accrual of attorneys' fees defending the Enforcement Action is without merit. The State assumes that all the Debtor's funds can be used to make Plan payments and that the Debtor has no operating capital needs. As demonstrated by the declaration of Alfredo Barajas filed in support of this Reply, the Debtor requires minimum capital of \$1.5 million to sustain operations. Although the plan projections show that during certain periods the Debtor will be required to sustain operations using capital of less than \$1.5 million, operations with such a thin capital cushion are risky and threaten the feasibility of the Plan.

The State disputes the Debtor's liability for additional income taxes if the Plan is not confirmed prior to 2018. Notwithstanding the fact that the Debtor is an S-corporation and that its sole shareholder is responsible for its tax liabilities, the Debtor is required under California law to indemnify shareholders for the Debtor's tax liability. Therefore, any pass-through tax is an administrative expense for which the

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estate is liable.

Finally, contrary to the State's contention, the Debtor is not requesting a stay of the Enforcement Action as to non-debtor Alfredo Barajas. The Motion seeks injunctive relief only as to the Debtor. If the injunction is granted, the State Court will be required to determine whether the Debtor is a necessary party to the Enforcement Action and whether to stay the Enforcement Action in its entirety or to proceed with the action only as to Mr. Barajas.

II. Findings and Conclusions

For the reasons set forth in Section III, below, the State's evidentiary objections to the declarations of Alfredo Barajas and David Haberbush, submitted in support of the Motion, are overruled.

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008). "[I]f a plaintiff can only show that there are 'serious questions going to the merits'—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the 'balance of hardships tips *sharply* in the plaintiff's favor,' and the other two *Winter* factors are satisfied." *Shell Offshore, Inc. v. Greenpeace, Inc.*, 709 F.3d 1281, 1291 (9th Cir. 2013). Plaintiff must demonstrate, "by a clear showing," that he is entitled to a preliminary injunction. *Mazurek v. Armstrong*, 520 U.S. 968, 972, 117 S. Ct. 1865, 1867, 138 L. Ed. 2d 162 (1997).

Where a preliminary injunction is sought in the bankruptcy context, a debtor "must show a reasonable likelihood of a successful reorganization" in lieu of showing a likelihood of success on the merits. *Indivos Corp. v. Excel Innovations, Inc., Ned Hoffman (In re Excel Innovations, Inc.)*, 502 F.3d 1086, 1095 (9th Cir. 2007).

As discussed below, the Debtor has shown that it is entitled to a stay of the Enforcement Action, which stay shall remain in effect until the earlier of denial of the Rule 9019 Motion or denial of the motion to confirm the Plan.

A. The Debtor Has Demonstrated a Reasonable Likelihood of a Successful Reorganization

The Debtor has demonstrated a reasonable likelihood that it will be able to successfully reorganize. On October 1, 2018, the Court approved the Disclosure

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Statement describing the Plan. Doc. No. 358, Case. No. 2:17-bk-18213-ER. A confirmation hearing is set for December 5, 2018.

The Plan is supported by the Committee and is supported by the Class Action claimants with whom the Debtor has settled. It is true that the State has asserted multiple objections to confirmation of the Plan. While the Court does not make any final determination as to the validity of the State's objections in connection with this hearing, the State has not identified any Plan issues that would be fatal to confirmation. Given the support for the Plan by large creditor constituencies, the Court finds that there is a reasonable likelihood that the Debtor will be able to successfully confirm the Plan.

B. The Debtor is Likely to Suffer Irreparable Harm in the Absence of Preliminary Relief

The Debtor is likely to suffer irreparable harm in the absence of preliminary relief. Absent an injunction, the Debtor will be required to spend at least \$90,000 defending against the Enforcement Action. If prosecution of the Enforcement Action delays confirmation of the Plan beyond 2018, the Debtor will accrue additional tax liability of approximately \$300,000. Although such tax liability is the initial responsibility of the Debtor's principal, Alfredo Barajas, the Debtor will likely be ultimately responsible for the liability because it is required to indemnify Mr. Barajas.

The State maintains that the Debtor can afford to pay the attorneys' fees and still perform under the Plan. Having reviewed the Debtor's financial projections, the Court finds that there is a very significant risk that the additional burdens imposed by the attorneys' fees could leave the Debtor with too thin a capital cushion to successfully reorganize. The possibility that the Debtor might be able to scrape through cannot be conclusively ruled out. However, the chances that the additional fee burden will impair the Debtor's ability to reorganize are high enough to satisfy the "likelihood of irreparable harm" standard.

C. Balance of the Hardships

The balance of the hardships tips in the Debtor's favor. Declining to stay the Enforcement Action will substantially impair the Debtor's ability to reorganize.

With respect to the hardship suffered by the State, the Court expresses no view as to whether approval of the Settlement Agreement would preclude the State from prosecuting the Enforcement Action pursuant to *California v. IntelliGender, LLC*, 771 F.3d 1169, 1179 (9th Cir. 2014). However, even if the stay ultimately does result in

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the State being precluded from prosecuting the Enforcement Action, the Court still would find that the balance of the hardships tips in the Debtor's favor. Any court finding that issue preclusion was appropriate would be required to conclude that the Class Action settlement addressed the same issues and involved the same parties as the Enforcement Action. A court would also be required to find that the State's due process rights were protected. While a finding of preclusion would interfere with the State's litigation strategy, under the circumstances the Court does not believe that the hardship to the State from such a finding would be greater than the hardship to the Debtor if its ability to reorganize is impaired.

Further, as discussed below, even if the State were precluded from prosecuting the Enforcement Action, the State has failed to plausibly explain how its interests are not vindicated by the Settlement Agreement resolving the Class Action.

D. An Injunction is in the Public Interest

The Debtor has shown that the Settlement Agreement resolving the Class Action will vindicate the same public policy objectives pursued by the State through the Enforcement Action. Thus, briefly staying the Enforcement Action for the purpose of greatly increasing the chances that the Debtor will be able to successfully reorganize is in the public interest. *See Bohm v. Howard (In re Howard)*, 422 B.R. 593, 605 (Bankr. W.D. Pa. 2010) *aff'd*, No. 2:10CV962, 2011 WL 578777 (W.D. Pa. Feb. 9, 2011) (holding that "preservation of a debtor's assets for the purpose of paying creditors" is in the public interest).

The State asserts that the settlement is flawed and does not vindicate the policies it seeks to pursue through the Enforcement Action, but fails to identify any specific defects with the Settlement Agreement in support of its contentions. Under the Settlement Agreement, the Debtor will consent to entry of the same injunctive relief sought in the Enforcement Action. Under the Settlement Agreement, the Debtor will pay its drivers restitution for unpaid wages and expenses pursuant to the California Labor Code. The Enforcement Action seeks restitution for the same set of drivers.

The only relief sought in the Enforcement Action not resolved through the Settlement Agreement is the State's claim for penalties. However, in its objection to Claim 13 (which claim is based upon the Enforcement Action), the Debtor does not object to the dollar amount of the penalties. The Debtor objects only to the priority status of those penalties. The Court agrees with the Debtor that no purpose would be served in litigating the amount of the penalties in the Enforcement Action.

The State disputes the Debtor's claim that the Class Action vindicates the same

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interests as the Enforcement Action. According to the State, the Enforcement Action vindicates the State's interest in assuring that the laws are enforced and respected. The State maintains that the Class Action, having been brought by private parties, cannot vindicate its interest in enforcing the laws on behalf of the public.

The State's argument ignores the fact that the Class Action was brought under the Private Attorneys' General Act—a statute which contemplates that private actors will assist the State in enforcing public laws by suing entities who violate those laws, essentially as agents of the State. Therefore, the monetary and injunctive provisions of the Class Action settlement do vindicate the State's interest in enforcing the law.

Although not binding upon this Court, the findings made by the State Court at a hearing conducted on August 14, 2018, are highly persuasive. The State Court concluded that trying the Enforcement Action prior to resolution of the Class Action would likely result in a "duplication of effort." Doc. No. 26-4 at 1:1–4. Responding to the State's argument that the Class Action and Enforcement Action should proceed along parallel tracks, the State Court said: "So you want me to litigate how much is owed when that has already been settled? That makes no sense." *Id.* at 9:26–28. The State Court rejected the State's argument that it was essential for trial of the Enforcement Action to take place prior to a hearing on approval of the Class Action.

The gravamen of the relief sought by the Debtor is that the Class Action be resolved prior to trial of the Enforcement Action. The manner in which the issue arose before the State Court is not identical to the manner in which the issue arises before this Court. Nonetheless, it is significant that the State Court essentially agreed with the Debtor's position that resolution of the Class Action prior to trial of the Enforcement Action was the appropriate. The State Court's reasoning bolsters the Court's conclusion to briefly stay the Enforcement Action pending resolution of the Class Action.

III. The State's Evidentiary Objections are Overruled

The State objects to the declaration of Alfredo Barajas, submitted in support of the Motion, on the grounds that Mr. Barajas lacks personal knowledge, that the declaration contains improper expert opinion by a lay witness, that the declaration lacks foundation, and that the testimony is conclusory and speculative. The State's evidentiary objections are overruled.

Mr. Barajas states that his testimony is based upon his experience as the owner and president of the Debtor. Mr. Barajas has established a proper foundation for his testimony.

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The State's objections based upon lack of personal knowledge are overruled. As owner and president of the Debtor, Mr. Barajas has personal knowledge and may testify regarding the Debtor's business operations, assets, liabilities, and operations, and may testify concerning the effect that certain costs will have upon the Debtor's operations. Such testimony does not constitute improper expert opinion by a lay witness.

The State asserts similar evidentiary objections to the declaration of David Haberbusch, the Debtor's attorney. Those objections are likewise without merit. As the Debtor's attorney, Mr. Haberbusch has personal knowledge of the Debtor's plan, and is qualified to offer opinions regarding the likely consequences the Debtor will face if the Plan is not confirmed.

IV. Conclusion

Based upon the foregoing, the Motion is GRANTED. Prosecution of the Enforcement Action is stayed until the earlier of denial of the Rule 9019 Motion or denial of the motion to confirm the Plan.

Because confirmation of the Plan will moot the Section 105 Action, the Court VACATES the litigation deadlines previously set in this litigation. If the Plan is not confirmed, the Court will set a Status Conference to determine the future course of the Section 105 Action.

The Debtor shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbusch
Lane K Bogard

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Defendant(s):

People of the State of California ex

Represented By
Timothy J Kolesnikow

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By
David R Haberbush
Vanessa M Haberbush

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Adv#: 2:18-01244 Pac Anchor Transportation, Inc., consisting of Pac v. People of the State of

#3.10 Status Hearing

RE: [1] Adversary case 2:18-ap-01244. Complaint by Pac Anchor Transportation, Inc., consisting of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. against People of the State of California ex rel. Xavier Becerra, Attorney General of the State of California. (Charge To Estate). Nature of Suit: (71 (Injunctive relief - reinstatement of stay)) (Haberbush, David)

fr. 10-16-18

Docket 1

Tentative Ruling:

10/16/2018

See Cal. No. 3, above, incorporated in full by reference.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

Defendant(s):

People of the State of California ex

Pro Se

Plaintiff(s):

Pac Anchor Transportation, Inc.,

Represented By

David R Haberbush

Vanessa M Haberbush

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2:17-18394 Marco Antonio Cueto

Chapter 11

#4.00 Post Confirmation status conference re [103]

Docket 1

Tentative Ruling:

10/16/2018

Amended Tentative Ruling. This vacates the prior tentative ruling posted at 10/16/2018 at 1:07:06 PM.

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Reorganized Debtor's Post-Confirmation Status Report [Doc. No. 117], the Court CONTINUES the status conference to February 12, 2019 at 11:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [254] Motion Debtors' Notice of Motion and Motion to Reject Health System Management Agreement with Integrity Healthcare, LLC; Memorandum of Points and Authorities; Declaration of Richard G. Adcock

Docket 254

***** VACATED *** REASON: CONTNUED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 HearingRE: [249] Motion to Reject Lease or Executory Contract Debtors' Notice of Motion and Motion to Reject, Pursuant to 11 U.S.C. Section 365(A), Professional Services Agreement and Development Agreement with Hunt Spine Institute, Inc. Nunc Pro Tunc to the Petition Date; Memorandum of Points and Authorities; Declaration of Stephen Campbell, M.D. (Moyron, Tania)

Docket 249

Tentative Ruling:

10/16/2018

The Court has entered an order approving a stipulated resolution of this matter. This hearing is VACATED and no appearances are required.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01115 Goodrich v. Shanghai Jingtong International Trading Co.

#100.00 HearingRE: [50] Motion for Default Judgment /Motion for Default Judgment Under LBR 7055-1 [with Proof of Service] Default Judgment Motion due by 09/28/2018. (Werth, Steven)

Docket 50

Tentative Ruling:

10/16/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion for Default Judgment Under LBR 7055-1 [Adv. Doc. No. 50] (the "Motion")
 - a. Notice of Motion for Default Judgment [Adv. Doc. No. 51]
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Shasa USA LLC (the "Debtor") commenced a voluntary Chapter 7 petition on February 4, 2015 (the "Petition Date"). Prior to the Petition Date, the Debtor was a retailer in the women's "fast fashion" clothing industry, and competed with other fashion retailers such as Forever 21, H&M, Wet Seal, and Deb Shops. The Debtor updated the clothing and fashion accessories for sale at its retail stores on a monthly basis. The clothing and accessories sold by the Debtor were intended to be used a few times and then thrown away because the clothing was no longer fashionable. Consumers would return to the Debtor's stores to buy the current monthly fashion. Clothing and accessories sold by the Debtor were priced in the typical range of \$5.00 to \$15.00.

In the 90-day period prior to the Petition Date, the Debtor did not have sufficient funds to pay all of its debts, and fell behind on its payments to creditors. During this time period, many of the Debtor's creditors contacted the Debtor and demanded that

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CONT... Shasa USA LLC
their bills be paid.

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On January 31, 2017, the Chapter 7 Trustee (the "Trustee") commenced this preference action against Shanghai Jingtong International Trading Co. (the "Defendant"), seeking to avoid transfers in the total amount of \$783,304.50 that the Debtor made to the Defendant during the ninety-day period prior to the Petition Date. The Clerk of the Court entered Defendant's default on July 24, 2018 [Adv. Doc. No. 48]. The Trustee seeks entry of default judgment against the Defendant.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Once default has been entered, the well-pleaded factual allegations of the complaint are taken as true. *Cripps v. Life Ins. Co. of North America*, 980 F.2d 1261, 1267 (9th Cir.1992). Based upon the Complaint's allegations [**Note 1**], and the evidence submitted in support of the Motion, the Court makes the following findings:

The Trustee is Entitled to Avoid \$783,304.50 in Preferential Transfers Pursuant to § 547

Section 547(b) permits the Trustee to avoid "any transfer of an interest of the debtor in property" if the transfer was:

- 1) to or for the benefit of a creditor;
- 2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- 3) made while the debtor was insolvent;
- 4) made—
 - a) on or within 90 days before the date of the filing of the petition; or
 - b) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
- 5) that enables such creditor to receive more than such creditor would receive if—
 - a) the case were a case under chapter 7 of this title;
 - b) the transfer had not been made; and

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- c) such creditor received payment of such debt to the extent provided by the provisions of this title.

11 U.S.C. § 547(b)

For purposes of § 547(b), a "transfer" means:

- a) the creation of a lien;
- b) the retention of title as a security interest;
- c) the foreclosure of a debtor's equity of redemption; or
- d) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—
 - i) property; or
 - ii) an interest in property.

11 U.S.C. § 101(54).

It is the Trustee's burden to establish all the elements of § 547(b) by a preponderance of the evidence. 11 U.S.C. § 547(g); *Hall-Mark Electronics Corp. v. Sims (In re Lee)*, 179 B.R. 149, 155 (B.A.P. 9th Cir. 1995) *aff'd*, 108 F.3d 239 (9th Cir. 1997). Section 547(c) sets forth certain defenses to transfer liability. The Defendant has the burden of establishing that the § 547(c) defenses apply, again under the preponderance of the evidence standard. 11 U.S.C. § 547(g).

The Trustee has alleged facts sufficient to establish that the Defendant received transfers avoidable under § 547(b). The declarations attached to the Motion support the Trustee's entitlement to the damages requested against the Defendant. The Trustee engaged the services of an accountant and forensic data firm to reconstruct the Debtor's business records. The Trustee has submitted invoices and/or reconstructed business records of the Debtor showing that the Defendant received preferential payments, in the amount of \$783,304.50, during the 90-day period prior to the Petition Date.

The Trustee is Entitled to Recover the Transfers Pursuant to 11 U.S.C. § 550(a)

Pursuant to 11 U.S.C. § 550(a), the Trustee is entitled to recover an avoided

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transfer from the transferee. Accordingly, the Trustee is entitled to a judgment against Defendant in the amount of the transfers.

The Trustee is Entitled to Preserve the Transfers for the Benefit of the Estate Pursuant to § 551

Pursuant to § 551, "any transfer avoided under section ... 547 ... is preserved for the benefit of the estate but only with respect to property of the estate." Accordingly, the Trustee is entitled to a judgment against Defendant preserving the avoided transfer for the benefit of the estate.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED. The Trustee is entitled to a default judgment in his favor pursuant to 11 U.S.C. §§ 547, 550, and 551.

The Trustee is directed to submit a proposed order and conforming judgment within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Motion appears to seek relief under 11 U.S.C. §§ 548 and 502(d)(2). Motion, pp. 5:26, 6:4-7. However, since the Complaint does not assert claims for relief under sections 548 or 502(d)(2), any request for relief under those sections is denied.

Party Information

Debtor(s):

Shasa USA LLC

Represented By

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CONT... Shasa USA LLC

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Rowena Santos

Defendant(s):

Shanghai Jingtong International

Pro Se

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

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2:18-10616 Manuel Macias

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Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#101.00 HearingRE: [16] Motion to set aside RE: DEFAULT POINTS AND AUTHORITIES

Docket 16

Tentative Ruling:

10/16/2018

For the reasons set forth below, the Motion to Set Aside Default is GRANTED.

Pleadings Filed and Reviewed

1. Complaint to Determine Nondischargeability of Debt (11 U.S.C. § 523(a)(2)(A), § 523(a)(2)(B), § 523(a)(6)) [Adv. Doc. No. 1]
2. Notice That Clerk Has Entered Default Against Defendant(s) Manuel Macias [Adv. Doc. No. 13]
3. Defendant's Motion to Set Aside Default [Adv. Doc. No. 16]
4. As of the preparation of this tentative ruling, Plaintiff has not filed an opposition.

I. Facts and Summary of Pleadings

On July 12, 2018, Merchants Acquisition Group LLC ("Plaintiff") filed a *Complaint to Determine Nondischargeability of Debt (11 U.S.C. § 523(a)(2)(A), § 523(a)(2)(B), § 523(a)(6))* [Adv. Doc. No. 1] ("Complaint") against debtor Manuel Macias ("Defendant"). The deadline for Defendant to file a response or answer to the Complaint was August 15, 2018. Defendant did not timely respond. The Clerk of the Court entered Defendant's default on August 22, 2018 [Adv. Doc. No. 13].

On September 21, 2018, Defendant filed the instant *Motion to Set Aside Default* [Adv. Doc. No. 16]. Defendant asserts that relief from default is appropriate based on the following: (1) Defendant's failure to timely respond is excusable because he was out of the country at the time the Summons and Complaint were served; (2) Defendant has a meritorious defense to the claims asserted in the Complaint; and (3) Plaintiff will not be prejudiced by the short delay that has resulted from Defendant's failure to timely respond to the Complaint.

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As of the preparation of this tentative ruling, Plaintiff has not filed an opposition.

II. Findings of Fact and Conclusions of Law

Civil Rule 55(c) provides that "[t]he court may set aside a default for good cause." Fed. R. Civ. P. 55(c). "To determine 'good cause,' a court must 'consider [] three factors: (1) whether [the party seeking to set aside the default] engaged in culpable conduct that led to the default; (2) whether [it] had [no] meritorious defense; or (3) whether reopening the default judgment would prejudice' the other party." *U.S. v. Signed Personal Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010). "This standard, which is the same as is used to determine whether a default judgment should be set aside under Rule 60(b), is disjunctive, such that a finding that any one of these factors is true is sufficient reason for the district court to refuse to set aside the default." *Id.* "Crucially, however, judgment by default is a drastic step appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits." *Id.* (internal citations omitted). "The Court's discretion is especially broad where ... it is entry of default that is being set aside, rather than a default judgment." *O'Connor v. State of Nev.*, 27 F.3d 357, 364 (9th Cir. 1994).

In this case, there is nothing in the record to suggest that Defendant engaged in culpable conduct that led to the default. Rather, Defendant has offered a reasonable excuse for why he did not timely respond to the Complaint. In addition, Defendant contends that he has a meritorious defense to Plaintiff's claims based on a purported lack of fraudulent intent. Finally, this Court does not believe Plaintiff will be prejudiced by vacating the default and Plaintiff has not presented any argument for this Court to find otherwise.

For the reasons stated above, the Court finds "good cause" to set aside the default. The Motion to Set Aside Default is GRANTED. Defendant is directed to file his answer or response to the Complaint no later than 7 days after entry of the order granting this motion.

Defendant is directed to lodge a proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

Defendant(s):

Manuel Macias

Represented By
Andrew Edward Smyth

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:18-10616 Manuel Macias

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Adv#: 2:18-01223 MERCHANTS ACQUISITION GROUP LLC v. Macias

#101.10 Status Hearing

RE: [1] Adversary case 2:18-ap-01223. Complaint by MERCHANTS ACQUISITION GROUP LLC against Manuel Macias. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Snyder, Richard)

fr. 10-16-18

Docket 1

Tentative Ruling:

10/16/2018

For the reasons set forth in Cal. No. 101, above, the Court is prepared to set aside the default and allow the Defendant to Answer the Complaint. Having reviewed the Joint Status Report filed by the parties, the Court HEREBY ORDERS as follows:

- 1) Defendant shall file an Answer or otherwise respond to the Complaint by no later than seven days after entry of the order granting Defendant's *Motion to Set Aside Default*.
- 2) The following litigation deadlines shall apply:
 - a) The last day to amend pleadings and/or join other parties is **12/13/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **3/26/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **4/25/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **5/14/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert

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- discovery motions is the next closest date which is available for self-calendaring.)
- e) The last day for dispositive motions to be heard is **5/21/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **5/25/2019**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **6/11/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or

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boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(i)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(i)(ii).
 - i) Trial is set for the week of **6/24/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Manuel Macias

Represented By
Jennifer Ann Aragon

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Defendant(s):

Manuel Macias

Pro Se

Plaintiff(s):

MERCHANTS ACQUISITION

Represented By
Richard W Snyder

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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2:10-62208 EPD Investment Co., LLC

Chapter 7

#102.00 Hearing

RE: [1278] Motion of Trustee for Order Authorizing Abandonment and Dismissal with Prejudice of Second, Third, Fourth, Fifth and Sixth Claims for Relief to Avoid and Recover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding; Memorandum of Points and Authorities; Declaration of Jason M. Rund; and Request for Judicial Notice (Weber, Corey)

Docket 1278

***** VACATED *** REASON: CONTINEUD 11-13-18 AT 10:00 A.M.**

Tentative Ruling:

10/16/2018

Hearing continued per order of the court.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#103.00 HearingRE: [33] Motion to Approve Compromise Under Rule 9019 Trustees Notice Of Motion And Motion To Approve Compromise With Lancaster Baptist Church with proof of service (Singh, Sonia)

Docket 33

Tentative Ruling:

10/16/2018

For the reasons set forth below, the Settlement Agreement is APPROVED and the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion to Approve Compromise with Lancaster Baptist Church [Doc. No. 33] (the "Settlement Motion")
 - a. Notice of Motion to Approve Compromise with Lancaster Baptist Church [Doc. No. 34]
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Timothy and Victoria Rosen (the "Debtors") filed this voluntary joint chapter 7 case on November 7, 2016 (the "Petition Date"). On October 3, 2017, the Chapter 7 Trustee ("Trustee") filed a *Complaint for Avoidance and Recovery of Transfers* against Lancaster Baptist Church ("Lancaster Baptist") asserting claims for relief under 11 U.S.C. §§ 544, 548, 550 and California Civil Code §§ 3439.04, 3439.05 and 3439.07 (the "Complaint") (Adv. Case No. 2:17-ap-01491-ER).

On June 26, 2018, the Trustee obtained an order of the Court granting him leave to amend the Complaint [Adv. Doc. No. 47] and filed his *First Amended Complaint for Avoidance and Recovery of Transfers* [Adv. Doc. No. 48] (the "Amended Complaint"). The Amended Complaint alleges that the Debtors made avoidable transfers to Lancaster Baptist within ten years of the Petition Date in the aggregate

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amount of \$375,820.08 (the "Subject Transfers"). Lancaster Baptist filed an answer denying the material allegations in the Amended Complaint and asserting certain affirmative defenses [Adv. Doc. No. 55].

On July 9, 2018, Lancaster Baptist filed a *Motion for Partial Summary Adjudication, or, Alternatively, Summary Adjudication of Issues* [Adv. Doc. No. 56] (the "MSJ") and self-calendared a hearing for September 5, 2018. The Trustee timely opposed the MSJ [Adv. Doc. No. 61] and Lancaster Baptist filed a timely reply [Adv. Doc. No. 63]. On August 29, 2018, the parties filed a *Notice of Settlement and Stipulation to Continue Summary Judgment Motion* [Adv. Doc. No. 64], which the Court approved by order entered August 31, 2018 [Adv. Doc. No. 66].

The Trustee now seeks approval of a settlement agreement with Lancaster Baptist that resolves their disputes relating to the Subject Transfers (the "Agreement"). A copy of the fully-executed Agreement is attached to the Motion as Exhibit "1." The Agreement provides that Lancaster Baptist will pay \$102,500 (the "Settlement Amount") in exchange for mutual releases and dismissal of the Amended Complaint with prejudice. Lancaster Baptist has also agreed to waive any claim that it may have against the Debtors' estate, including any claim for payment of an administrative expense.

As of the preparation of this tentative ruling, no timely opposition has been filed. Accordingly, the Court presumes all interested parties consent to its approval of the Motion pursuant to Local Bankruptcy Rule 9013-1(h).

II. Findings of Fact and Conclusions of Law

A court may approve a compromise or settlement disposing of an adversary proceeding or claim upon a motion and a noticed hearing. Fed. R. Bankr. P. 9019. "Approval should only be given if the settlement is 'fair and equitable and in the best interest of the estate.'" *Matter of Cajun Elec. Power Co-op., Inc.*, 119 F.3d 349, 355 (5th Cir. 1997). See *In re Schmitt*, 215 B.R. 417, 420 (B.A.P. 9th Cir. 1997) (citing *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986)). A court should consider several factors when determining whether a compromise is reasonable, fair, and equitable, including:

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Timothy M Rosen and Victoria S Rosen

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- (a) the probability of success in litigation;
- (b) the difficulties, if any, to be encountered in the matter of collection;
- (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and
- (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A&C Properties, 784 F.2d at 1381. "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). *See id.* In reviewing a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). A reviewing court need only find that the settlement does not fall below the lowest point in the range of reasonableness—not that the settlement or compromise offers a debtor the best possible resolution of the action or claim. *W.T. Grant Co.*, 699 F.2d at 608. The party proposing the compromise has the burden of persuading the court that the compromise is fair and equitable. *A&C Properties*, 784 F.2d at 1381.

For the reasons set forth below, the Court finds that the compromise is fair and reasonable and is in the best interests of the estate.

Probability of Success in the Litigation

The Trustee believes that he would be successful in avoiding the Subject Transfers and overcome Lancaster Baptist's affirmative defenses and arguments set forth in its MSJ. Nevertheless, the Trustee concedes and the Court agrees that there are several issues that may need to be tried and that litigation always brings the risk of loss, increased administrative costs and extra delay.

Difficulties to Be Encountered in Collection

The Trustee is not aware of any difficulty in collecting on a judgment against Lancaster Baptist, so the Court agrees that this factor is neutral.

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Complexity of the Litigation and Delay Attending It

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The Trustee does not believe that continuing to pursue his fraudulent transfer claims will be complex, but notes that continued litigation will likely include trial and potential appeals which would result in significant delay. The Court agrees that approving the Agreement will enable the estate to receive \$102,500 in unencumbered funds and avoid the uncertainty of protracted litigation and appeals. Such litigation would drain resources from the estate and reduce the distribution to creditors.

Paramount Interests of Creditors

The Court finds that the Agreement is in the best interest of creditors because it results in the immediate recovery of \$102,500 for the estate without incurring additional expenses and delay. Absent the Agreement, there is no guarantee that the Trustee will succeed in avoiding any of the Subject Transfers.

III. Conclusion

For the foregoing reasons, the Court GRANTS the Motion and APPROVES the Agreement.

The Trustee shall upload a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

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CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#104.00 Status Hearing

RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)

fr. 10-16-18

Docket 48

Tentative Ruling:

10/16/2018

Hearing vacated. See above.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

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CONT... Timothy M Rosen

Chapter 7

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 22, 2018

Hearing Room 1545

10:00 AM

2:18-19435 Tanya Rochelle Toland Vega

Chapter 7

#1.00 HearingRE: [14] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 1982 Paramount manufactured home, Serial Nos. PG4185A and PG4185B, Label Nos. CAL247083 and CAL 247084, Decal No. LAD2581; Located at 18145 Soledad Canyon Rd. Sp. 70, Canyon Country, CA 91387 . (Weifenbach, Diane)

Docket 14

Tentative Ruling:

10/18/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Since a chapter 7 case does not contemplate reorganization, the sole issue before the Court when stay relief is sought under 11 U.S.C. § 362(d)(2) is whether the Debtor has equity in the property. *See, e.g., Martens v. Countrywide Home Loans (In re Martens)*, 331 B.R. 395, 398 (8th Cir. BAP 2005); *Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

The subject property has a value of \$11,392.83 and is encumbered by a perfected deed of trust or mortgage in favor of the Movant. The liens against the property and the costs of sale total \$68,827.65. The Court finds there is no equity and

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CONT... Tanya Rochelle Toland Vega

Chapter 7

there is no evidence that the trustee can administer the subject real property for the benefit of creditors.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing

Party Information

Debtor(s):

Tanya Rochelle Toland Vega

Represented By
Nicholas M Wajda

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 23, 2018

Hearing Room 1568

10:00 AM

:
Adv#: 2:04-01337 Jacuzzi et al v. Pimienta

Chapter 0

#1.00 Hearing
RE: [58] Judgement Debtor Exam of ANTONIETA PIMIANTA LEFEVRE

Docket 58

Tentative Ruling:

10/22/2018

Examinee Antonieta Pimienta Lefevre does not reside or conduct business within 150 miles of this Court, and is therefore not required to appear at the examination.

Pleadings Filed and Reviewed:

- 1) Order to Appear for Examination [Doc. No. 60]
 - a) Application for Appearance and Examination [Doc. No. 58]
- 2) Examinee Antonieta P. Lefebvre's Opposition to Application and Order to Appear for Examination of Third Person Regarding Enforcement of Judgment [Doc. No. 65]

I. Facts and Summary of Pleadings

On September 17, 2018, the Court entered an order requiring Antonieta Pimienta Lefevre to appear to furnish information to aid in the enforcement of a money judgment against Hugo Pimienta. *See* Doc. No. 60 (the "ORAP"). The Court entered the ORAP based upon Plaintiff's counsel's representation, made under penalty of perjury, that Ms. Lefevre "resides or has a place of business in the county [of Los Angeles] or within 150 miles of the place of examination." *See* Doc. No. 58.

Ms. Lefevre has supplied evidence establishing that she resides at 901 Jefferson Street, Apartment 514, Oakland, CA 94607—which is not within 150 miles of the place of examination. Ms. Lefevre has further supplied evidence showing that her place of business is in Oakland, California.

II. Findings and Conclusions

Pursuant to Cal. Code Civ. Proc. §§491.150(b) and 708.160(b), an examinee must conduct business or reside within 150 miles of the place of examination. Ms. Lefevre

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CONT...

Chapter 0

does not reside or conduct business live within 150 miles of this Court. Therefore, Ms. Lefevre is not required to appear at this examination. To the extent the ORAP required Ms. Lefevre to appear for examination before this Court, is it HEREBY VACATED.

Ms. Lefevre's counsel states that he is communicating with Plaintiff's counsel to facilitate the production of documents and to renote the examination for a location in Oakland, California. In the Court's view, a stipulated resolution of this matter would be the most expeditious means for Plaintiff's counsel to obtain the information he seeks. To the extent the ORAP required Ms. Lefevre to produce documents, it shall remain in force. Plaintiff's counsel and Ms. Lefevre's counsel are directed to file a stipulation to renote the examination in Oakland, California by no later than **November 16, 2018**.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Defendant(s):

Hugo Pimienta

Represented By
William H Brownstein
Alberto J Campain

Plaintiff(s):

Margarita Jacuzzi

Represented By
Leonard A Goldman
Richard A Illmer
Alberto J Campain

John Jacuzzi Jr

Represented By
Leonard A Goldman
Richard A Illmer

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	Alberto J Campain
The Jacuzzi Family	Represented By Leonard A Goldman Richard A Illmer
James Jacuzzi	Represented By Leonard A Goldman Richard A Illmer Alberto J Campain
Patricia Jacuzzi	Represented By Leonard A Goldman Richard A Illmer Alberto J Campain
John Jacuzzi Sr	Represented By Richard A Illmer Alberto J Campain

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2:17-18223 Matthew Vidal Hernandez and Deborah Ann Hernandez

Chapter 7

#2.00 HearingRE: [17] Motion to Avoid Lien Judicial Lien with First National Bank of Omaha with Proof of Service

Docket 17

Tentative Ruling:

10/22/2018

For the reasons set forth below, the Lien Avoidance Motion is GRANTED.

Pleadings Filed and Reviewed

1. Debtors' Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) [Doc. No. 17]
2. First National Bank of Omaha's Notice of Opposition and Request for a Hearing [Doc. No. 18]
3. Notice of Hearing on Motion to Avoid Judicial Lien with First National Bank of Omaha [Doc. No. 19]
4. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Matthew Vidal Hernandez and Deborah Ann Hernandez (the "Debtors") filed a voluntary petition for relief under chapter 7 on July 6, 2017 (the "Petition Date"). Debtors' Schedule A identified a 50% ownership interest in real property located at 10415 Ferina Street, Bellflower, CA 90706 (the "Property"), valued at \$493,000. *See* Doc. No. 1. Debtors claimed a \$100,000 homestead exemption in the Property on Schedule C. *Id.* On October 16, 2017, the Debtors received their discharge [Doc. No. 11].

On July 25, 2018, the Debtors filed a *Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* [Doc. No. 17] (the "Lien Avoidance Motion"), pursuant to which the Debtors seek to avoid the judicial lien of First National Bank of Omaha ("FNB") securing a pre-petition judgment in the amount of \$6,154.82. In support of the Lien Avoidance Motion, the Debtors attached an appraisal report valuing the

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Property at \$485,000 as of July 6, 2017. Lien Avoidance Motion, Exhibit B. The Debtors also attached a grant deed reflecting title to the Property being held by Deborah Ann Hernandez and Marsha A. Tucker as joint tenants (the "Grant Deed") and a May 2017 billing statement from the first lien holder with a balance of \$332,956.53. *Id.*, Exhibits C & F.

On August 2, 2018, FNB filed a *Notice of Opposition and Request for Hearing* [Doc. No. 18] (the "Opposition"). FNB objects to the avoidance of its lien as follows:

1. The Lien Avoidance Motion fails to establish that there is not enough equity in the home to cover FNB's judicial lien.
2. On Debtors' Schedule C, under the section "Current value of the portion you own," the Debtors stated \$493,000, thereby indicating that they own 100% of the Property. However, this is contradicted by the Grant Deed which shows that Ms. Hernandez only owns a 50% interest in the Property. The Debtors received a discharge on October 16, 2017, and are judicially estopped from asserting a change in ownership at this stage of the proceedings.

On August 22, 2018, the Debtors filed a Notice of Hearing on the Lien Avoidance Motion [Doc. No. 19]. As of the preparation of this tentative ruling, the Debtors have not filed a reply.

II. Findings of Fact and Conclusions of Law

Pursuant to § 522(f), a debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption if such lien is a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in § 523(a)(5). 11 U.S.C. § 522(f). "For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of: (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property, exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* A debtor's interest in the property is determined by the "fair market value as of the date of the filing of the petition." 11 U.S.C. §§ 522(a), (f). To prevail on a motion to avoid a judicial lien, the debtor must show that: (1) he has an interest in the homestead property; (2) he is entitled to a homestead exemption; (3) the asserted lien impairs that exemption; and

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(4) the lien is a judicial lien. *In re Meeks*, 349 B.R. 19, 21 (Bankr. E.D. Cal. 2006). "As the moving party, the debtor carries the burden of proof on all factors." *Id.*; see also *In re Pederson*, 230 B.R. 158, 160 (B.A.P. 9th Cir. 1999); *In re Catli*, 999 F.2d 1405, 1406 (9th Cir. 1993).

According to the Debtors, their homestead exemption is impaired by FNB's lien because the sum of FNB's lien, all other liens (including the non-filing co-owner's 50% interest valued at \$242,500), and the Debtors' exemption is \$675,456.53. The Debtors then subtracted the value of the Debtors' interest in the Property (\$485,000) to show that FNB's lien impairs the Debtors' exemption to the extent of \$675,456.53.

FNB does not dispute that the Property was worth \$485,000 as of the Petition Date or that the Debtors are entitled to their claimed homestead exemption of \$100,000 pursuant to Cal. CCP § 704.730(a)(3). However, FNB does object to the Debtors' calculations based on a 50% ownership interest in the Property.

The Court agrees that the Debtors application of the § 522(f) formula is incorrect. In *In re Meyer*, the Ninth Circuit Bankruptcy Appellate Panel addressed the application of § 522(f)'s lien avoidance formula when the debtor owns a fractional interest in the property. 373 B.R. 84 (B.A.P. 9th Cir. 2007). The Court acknowledged a circuit split over whether to strictly apply the statutory formula in situations where property is co-owned and concluded that a mechanical application of the statutory formula would lead to an absurd result not intended by Congress. *Id.* at 90. Therefore, under *Meyer*, "nonavoidable encumbrances on co-owned property must be deducted from the total value of the property before a debtor's fractional interest is determined" for purposes of § 522(f). *Id.* at 91.

Using the same analysis applied in *Meyer*, the proper calculation is as follows:

Value of Collateral:	\$485,000
Minus nonavoidable encumbrances:	<u>(\$332,956.53)</u>
	\$152,043.47
Minus co-owner's interest in Collateral ($\$152,043.47 \div 2$):	<u>(\$76,021.74)</u>
= Debtors' interest in the Property:	\$76,021.74

Accordingly, applying the proper values into the formula, the Court takes the sum

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of FNB's lien (\$6,154.82), all other nonavoidable liens on the property (\$0), and the Debtor's exemption (\$100,000) to arrive at \$106,154.82. Subtracting the value of the Debtors' interest in the Property (\$76,021.74) shows that FNB's lien impairs the Debtors' exemption to the extent of \$30,133.08. Therefore, the Debtors are entitled to avoid FNB's lien under § 522(f).

FNB's judicial estoppel argument is overruled. "Judicial estoppel is an equitable doctrine that precludes a party from gaining an advantage by asserting one position, and then later seeking an advantage by taking a clearly inconsistent position." *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9th Cir.2001). Debtors' Schedule A clearly states that Debtors held a 50% ownership interest in the Property as of the Petition Date. *See* Doc. No. 1. The fact that Debtors incorrectly filled out Schedule C by listing the entire value of the Property, rather than 50% of that value, does not cancel out Debtors' Schedule A. Accordingly, the Court is not persuaded to find that the Debtors have taken clearly inconsistent positions with respect to their ownership interest.

For the reasons set forth above, the Lien Avoidance Motion is GRANTED.

Debtors shall lodge a conforming proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Matthew Vidal Hernandez

Represented By
Sundee M Teeple

Joint Debtor(s):

Deborah Ann Hernandez

Represented By

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Sundee M Teeple**

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Trustee(s):

Carolyn A Dye (TR)

Pro Se

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10:00 AM

2:18-20865 Worldwide Marketing Solutions

Chapter 7

#3.00 HearingRE: [6] Motion to Reject Lease or Executory Contract , Abandon Personal Property, Destroy Any Personal Property With Identifying Information; and Pay for the Cost of Such Destructions; Declaration of Timothy J. Yoo in Support (Pagay, Carmela)

Docket 6

Tentative Ruling:

10/22/2018

For the reasons set forth below, the Motion is GRANTED, subject to the Trustee appearing at the hearing and providing evidence demonstrating that the Landlord received actual notice of the motion.

Pleadings Filed and Reviewed

1. Motion for Entry of An Order Authorizing Chapter 7 Trustee: (1) To Reject Unexpired Non-Residential Real Property Lease For Debtor's Business Location and Related Storage Agreement Pursuant to 11 U.S.C. § 365; (2) To Abandon Personal Property at the Premises Pursuant to 11 U.S.C. § 554; (3) To Destroy And Personal Property With Personally Identifiable Information; and (4) To Pay for the Cost of Such Destruction [Doc. No. 6] (the "Motion")
2. Notice of Motion [Doc. No. 5]
3. As of the date of preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Worldwide Marketing Solutions (the "Debtor") filed a voluntary chapter 7 petition on September 17, 2018 (the "Petition Date"). The Chapter 7 Trustee ("Trustee") seeks authority to reject the Debtor's unexpired lease of non-residential commercial property located at 3130 Wilshire Boulevard, #300, Santa Monica, California 90403 (the "Premises") from Kilroy Realty, L.P. ("Landlord") pursuant to 11 U.S.C. § 365(a). The Trustee also seeks authority to reject the debtor's separate lease of storage space in the same building as the Premises from the Landlord. Copies of the lease agreement, amendments, and storage agreement (collectively, the "Lease") are attached to the Motion as Exhibit "1."

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The Trustee states that the Debtor ceased all business operations on the Premises pre-petition and the rent and other obligations payable under the Lease are generally at or above current market rates. Therefore, the Trustee does not believe it would be in the best interest of creditors to try to market the Lease for assignment to a third party and rejecting the Lease will avoid unnecessary depletion of estate resources. The Trustee requests that the Lease be deemed rejected effective September 28, 2018.

The Trustee also states that certain personal property of the Debtor's remains at the Premises, which includes furniture, office equipment and supplies, finished goods, infomercial video masters, and miscellaneous files and documents (collectively, the "Personal Property"). The Trustee believes the Personal Property is burdensome and of inconsequential value. Therefore, the Trustee seeks authority to abandon the Personal Property pursuant to 11 U.S.C. § 554(a). To the extent any Personal Property contains "personally identifiable information" as defined in § 101(41A), the Trustee seeks authority to destroy them and pay for the costs from estate funds.

As of the date of preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

A. The Proof of Service Does Not Reflect Proper Service on the Landlord

Bankruptcy Rules 6006(a), 9014(b), and 7004(b)(3) require the Motion to be served on Kilroy Realty, L.P. (the "Landlord") "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b)(3). The proof of service does not reflect service on the Landlord as required by 7004(b)(3). Although the Trustee served Michael S. Greger of Allen Matkins et al LLP, there is nothing in the record for this Court to conclude that Mr. Greger is authorized to accept service on behalf of the Landlord.

Accordingly, the Trustee is directed to appear to provide evidence demonstrating that the Landlord received actual notice of the motion.

B. Lease Rejection

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Under 11 U.S.C. § 365(a), a "trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A bankruptcy court's hearing on a motion to reject is a summary proceeding that involves only a cursory review of a trustee's decision to reject the contract." *Durkin v. Benedor Corp. (In re G.I Indus.)*, 204 F.3d 1276, 1282 (9th Cir. 2000). "Specifically, a bankruptcy court applies the business judgment rule to evaluate a trustee's rejection decision." *Id.* A court should approve the rejection decision unless it finds that the trustee's conclusion that rejection would be advantageous is so "manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice." *Agarwal v. Pomona Valley Med. Grp., Inc. (In re Pomona Valley Med. Grp., Inc.)*, 476 F.3d 665, 670 (9th Cir. 2007) (internal citation omitted).

Here, the Trustee states that the Debtor has ceased operating and the estate has no use for the Premises. Declaration of Timothy Yoo ("Trustee Decl."), ¶ 3. The Trustee further states that absent rejection of the Lease, the estate's resources will continue to be depleted and he does not believe that marketing the Lease for assignment will result in any net recovery for the estate. *Id.*, ¶ 4. Accordingly, the Court finds that it is in the best interest of the estate to authorize the Trustee to reject the Lease.

Next, the Trustee requests that the Court deem the Lease rejection nunc pro tunc to September 28, 2018, the Motion filing date. In support, the Trustee cites *Pacific Shores Development, LLC v. At Home Corporation (In re At Home Corporation)*, 392 F.3d 1064, 1071 (9th Cir. 2004). In *In re At Home Corporation*, the Ninth Circuit identified four non-exclusive factors to be applied by a bankruptcy court in making a determination whether "exceptional circumstances" warranted retroactive rejection of a lease:

- (1) the debtor's immediate filing of a motion to reject the lease;
- (2) a debtor's prompt action in setting that motion for hearing;
- (3) the vacancy of the leased premises; and
- (4) the landlord's conduct and motivation in opposing a retroactive rejection of the lease.

Id. at 1072.

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The Court finds it appropriate to deem the Lease rejected as of September 28, 2018, based on the fact that (i) the Trustee filed the Motion eleven days after the Petition Date; (ii) the Trustee selected the first available hearing date; and (iii) the Trustee states that the Debtor ceased operating on the Premises prior to the Petition Date. The Landlord has not responded to the Motion, so the fourth factor is inapplicable.

C. Abandonment of Personal Property

Under 11 U.S.C. § 554(a), "after noticed and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate."

Based on the Trustee's declaration, as well as the lack of opposition from any party in interest, the Court finds that the Personal Property is of inconsequential value and benefit to the estate. Therefore, the Trustee is authorized to abandon the Personal Property. The Trustee is also authorized to destroy an "personally identifiable information" as defined in 11 U.S.C. § 101(41A) and to pay for the costs from estate funds.

III. Conclusion

For the reasons stated above, the Motion is GRANTED, subject to the Trustee appearing at the hearing and providing evidence demonstrating that the Landlord received actual notice of the motion.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Debtor(s):

Worldwide Marketing Solutions

Represented By
Ovsanna Takvoryan

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay

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2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#4.00 Hearing
RE: [8] Motion for Order Authorizing Use of Cash Collateral

fr. 7-19-18; 8-21-18

Docket 8

Tentative Ruling:

10/22/2018

For the reasons set forth below, the Motion for Use of Cash Collateral is GRANTED on a final basis.

Pleadings Filed and Reviewed

1. Debtor's Supplemental Brief in Support of Motion for Order Authorizing Use of Cash Collateral (the "Renewed Motion") [Doc. No. 60]
 - a. Order Granting Debtor's Motion for Order Authorizing Use of Cash Collateral [Doc. No. 47]
 - b. Order Granting Debtor's Emergency Motion for Order Authorizing Use of Cash Collateral [Doc. No. 24]
 - c. Order Approving Stipulation for Interim Use of Cash Collateral and Grant of Adequate Protection [Doc. No. 44]
 - d. July Monthly Operating Report [Doc. No. 41]
 - e. August Monthly Operating Report [Doc. No. 54]
 - f. September Monthly Operating Report [Doc. No. 61]
2. As of the preparation of this tentative ruling, no opposition is on file.

I. Facts and Summary of Pleadings

Andrews & Son Tradings, Inc., dba Beston Shoes (the "Debtor") filed a voluntary Chapter 11 petition on July 13, 2018 (the "Petition Date"). The Debtor is an online wholesaler and retailer of shoes. The Court conducted an initial hearing on the Debtor's request to use cash collateral consisting of the Debtor's inventory and accounts receivables on July 19, 2018, and entered an order authorizing interim use of cash collateral on July 23, 2014. *See* Doc. No. 24. The Court conducted an interim

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hearing on August 21, 2018, and entered an order authorizing Debtor's continued use of interim cash collateral through October 23, 2018. *See* Doc. No. 47.

In connection with this hearing, the Debtor timely filed a *Supplemental Brief in Support of Motion for Order Authorizing Use of Cash Collateral* (the "Renewed Motion") [Doc. No. 60]. In support of the Renewed Motion, the Debtor submitted further evidence in support of its continued use of cash collateral, including revised projected income and expenses for the months of October 1, 2018 through March 30, 2018 (the "Projections"). The Debtor's August and September 2018 monthly operating reports ("MORs") show that the Debtor's actual revenue projections have been stronger than anticipated. *See* Doc. Nos. 41 & 54. Accordingly, the Debtor requests that the Court approve the modified budget attached as Exhibit "1" to the Declaration of Jiazheng Lu (the "Lu Declaration").

The Debtor also requests that the Court approve its continued adequate protection payments to secured creditors, except that Debtor seeks authority to cease making payments to New Commercial Capital ("NCC") because the Debtor cannot determine any loan or monies owed to and NCC has not filed a claim.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its

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inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

In this case, the Court previously determined that the secured creditors are adequately protected by the Debtor's ongoing operations, periodic cash payments, and replacement liens. *See* Doc. Nos. 24 & 47. Further, the Debtor's supplemental evidence and MORs show that the secured creditors' cash collateral is not declining in value. The Debtor's use of cash collateral to purchase new inventory and pay operating expenses will generate replacement income, which provides another form of adequate protection. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]").

The Court also finds it appropriate to authorize the Debtor to cease making monthly adequate protection payments to NCC based on the representations set forth in the Lu Declaration. *See* Doc. No. 60, Lu Decl., ¶ 11.

Based on the foregoing, the Court GRANTS the Motion for Use of Cash Collateral is GRANTED on a final basis and approves the Debtor's revised budget.

The Debtor shall upload a conforming order within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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10:00 AM

CONT... Andrew's & Son Tradings Inc.

Chapter 11

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, October 23, 2018

Hearing Room 1568

11:00 AM

2:16-19233 Oak River Asset Management LLC

Chapter 11

#100.00 HearingRE: [146] Application for Compensation / First Interim Application Of SierraConstellation Partners, LLC For Approval Of Fees And Reimbursement Of Expenses; Declaration Of Lawrence R. Perkins In Support Thereof for SierraConstellation Partners, LLC, Other Professional, Period: 7/12/2016 to 9/30/2018, Fee: \$20,014.75, Expenses: \$298.70.

Docket 146

Tentative Ruling:

10/22/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below which may be paid, subject to a final order.

Fees: \$20,014.75

Expenses: \$298.70

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By

David B Golubchik

Jeffrey S Kwong

Eve H Karasik

Robert Thomas Bryson

**United States Bankruptcy Court
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Tuesday, October 23, 2018

Hearing Room 1568

11:00 AM

2:16-19233 Oak River Asset Management LLC

Chapter 11

#101.00 HearingRE: [145] Application for Compensation / First Interim Application Of Levene, Neale, Bender, Yoo & Brill L.L.P. For Approval Of Fees And Reimbursement Of Expenses; Declaration Of David B. Golubchik In Support Thereof for Levene, Neale, Bender, Yoo & Brill L.L.P., Debtor's Attorney, Period: 7/12/2016 to 9/15/2018, Fee: \$255,878.00, Expenses: \$9,919.63.

Docket 145

Tentative Ruling:

10/22/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below which may be paid, subject to a final order:

Fees: \$255,878.00

Expenses: \$9,919.63

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By

David B Golubchik

Jeffrey S Kwong

Eve H Karasik

Robert Thomas Bryson

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Tuesday, October 23, 2018

Hearing Room 1568

11:00 AM

2:16-19233 Oak River Asset Management LLC

Chapter 11

#102.00 HearingRE: [144] Application for Compensation / First Interim Application Of Special Litigation Counsel, Yadegar, Minoofar & Soleymani LLP For Approval Of Fees And Reimbursement Of Expenses; Declaration Of Pedram Minoofar In Support Thereof for Yadegar, Minoofar & Soleymani LLP, Special Counsel, Period: 10/19/2016 to 8/31/2018, Fee: \$479,694.68, Expenses: \$10,557.84.

Docket 144

Tentative Ruling:

10/22/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, and excerpt for those specific items set forth below, the court approves the application and awards the fees and expenses as set forth herein, subject to a final order:

Fees: \$478,487.18 (Applicant's request for fees incurred on 10/3/2016 (\$747.50) and 10/6/2016 (\$460.00) are DENIED because Applicant's employment became effective on 10/19/2016 and Applicant has not articulated any basis for this Court to approve fees incurred prior to Applicant's employment).

Expenses: \$10,557.84

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By

David B Golubchik

Jeffrey S Kwong

Eve H Karasik

Robert Thomas Bryson

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Hearing Room 1568

10:00 AM

2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#1.00 Hearing
RE: [72] Motion to Continue Hearing On (related documents [23] Pre Trial Stipulation) 10/24/18 10:00 AM

Docket 72

***** VACATED *** REASON: PER ORDER ENTERED 10-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates
Donald E Iwuchuku

Defendant(s):

Wendy Tejada

Represented By
Donald E Iwuchuku

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18329 Edwin Wellington Terry

Chapter 7

#2.00 Show Cause Hearing re show cause, if any there be, why the Involuntary
Petition should not be dismissed
RE: [1] Chapter 7 Involuntary Petition Against an Individual

Docket 1

Tentative Ruling:

The Court has issued an order setting a continued hearing on this matter for
December 12, 2018, at 10:00 a.m. This hearing is VACATED and no
appearances are required.

Party Information

Debtor(s):

Edwin Wellington Terry

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#3.00 HearingRE: [141] Motion to Extend Time -- Debtors Motion to Extend Time to Assume or Reject Unexpired Leases of Nonresidential Real Property

Docket 141

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Motion is GRANTED as modified below.

Pleadings Filed and Reviewed

1. Debtor's Motion to Extend Time to Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 141] (the "Extension Motion")
 - a. Notice of Hearing on Extension Motion [Doc. No. 142]
 - b. Proof of Service [Doc. No. 143]
2. Wells Fargo's Limited Opposition to Debtor's Motion to Extend Time To Assume or Reject Unexpired Leases of Nonresidential Real Property [Doc. No. 155] (the "Limited Opposition")
3. Notice to Counterparties to Executory Contracts and Unexpired Leases to Potentially Be Assumed and Assigned, and Notice of Cure Amounts [Doc. No. 140]
4. As of the preparation of this tentative ruling, no reply is on file

I. Facts and Summary of Pleadings

Debtor-in-possession Sultan Financial Corporation (the "Debtor") filed a voluntary chapter 11 petition on July 13, 2018. The Debtor presently operates sixteen Aaron's stores throughout Southern California pursuant to separate unexpired commercial leases (collectively, the "Subject Leases"). The current deadline for the Debtor to assume or reject the Subject Leases is November 10, 2018.

On October 3, 2018, the Debtor filed a separate motion to approve a settlement and sale of substantially all of its assets [Doc. No. 138] (the "Sale Motion"). Pursuant to the Sale Motion, the Debtor seeks authority to assume and assign 15 of its 16 commercial leases to Aaron's in connection with an anticipated sale closing date of

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November 9, 2018. However, out of an abundance of caution, in the event the sale does not close by November 9, 2018, the Debtor seeks a 90-day extension, to February 9, 2019, of its deadline to assume, assign, or reject the Subject Leases. The Debtor states that there is more than sufficient cause to grant the requested extension because if an extension is not granted and the sale does not timely close, the Subject Leases will be rejected and the sale will fall apart.

With respect to the lease of commercial property located at 3265 W. Shaw Ave., Fresno, CA 93711 (the "Shaw Ave. Lease"), the Debtor states that it will continue to operate at that location for a brief period to complete the transition period for the Aaron's sale transaction, and then move to reject the Shaw Ave. Lease.

Wells Fargo Bank, N.A., ("Wells Fargo") filed a limited opposition to the Extension Motion [Doc. No. 155] (the "Opposition"). Wells Fargo states that pre-petition it entered into a series of transactions wherein it loaned money to the Randall & Patricia Family Revocable Trust (the "Sultan Trust"), Fresno-Blackstone, LLC (the "Blackstone LLC"), and Sultan Financial Niles, LLC (the "Sultan Niles LLC"), entities related to the Debtor (collectively, the "Sultan Related Entities") for the purchase of real property located that 3265 West Shaw Avenue Fresno, CA 93711 (the "Shaw Property"), 1614-1632 North Blackstone Avenue Fresno, CA 93703 (the "Blackstone Property") and 6473 Niles Street Bakersfield, CA 93306 (the "Niles Property," collectively the "Properties"). Wells Fargo further states that the Debtor is a guarantor of certain commercial guarantees with respect to the Properties and that the Debtor entered into lease agreements with each of the Sultan Related Entities for the lease of the Properties.

Wells Fargo objects to the relief requested in the Extension Motion on two grounds. First, Wells Fargo contends that the Debtor fails to adequately explain why a 90-day extension is appropriate, as opposed to some shorter extension. Wells Fargo also contends that any assumption and assignment (of the Blackstone and Niles Properties) should occur concurrently with the sale closing. Therefore, Wells Fargo seeks clarification as to whether that it the Debtor's intention.

Second, Wells Fargo contends that the Extension Motion does not provide an adequate reason for the Debtor's use of the Shaw Property beyond November 10, 2018, and how Debtor's intended rejection of the Shaw Ave Lease will impact Wells Fargo if the Debtor is no longer paying rent. Accordingly, Wells Fargo also seeks

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clarification on these issues.

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As of the preparation of this tentative ruling, the Debtor has not filed a reply.

II. Findings of Fact and Conclusions of Law

Section 365(d)(4) provides that an unexpired lease of nonresidential real property is deemed rejected if the Debtor does not assume such lease within 120 days after the date of the order for relief. Section 365(d)(4)(B) permits the Court to extend the Debtor's deadline to assume or reject nonresidential real property leases for an additional 90 days "for cause." Cause for an extension exists if the case involves numerous and complicated leases and if the Debtor remains current on its post-petition lease obligations. *Willamette Water Front, Ltd. v. Victoria Station Inc. (In re Victoria Station Inc.)*, 88 B.R. 231, 236 (B.A.P. 9th Cir. 1988), *aff'd*, 875 F.2d 1380 (9th Cir. 1989).

Based upon the Court's review of the separately filed *Notice to Counterparties to Executory Contracts and Unexpired Leases to Potentially Be Assumed and Assigned, and Notice of Cure Amounts* [Doc. No. 140], the Court finds that the Debtor is current on its post-petition lease obligations. To ensure the Debtor is able to consummate the proposed sale to Aaron's, the Court finds that "cause" exists for an extension of the Debtor's deadline to assume or reject the Subject Leases; however, the Court agrees that the Debtor has not articulated an adequate basis to grant a 90-day extension. Accordingly, the Court will grant the Debtor a 30-day extension, which may be extended by a separate motion or stipulation for good cause shown.

The remainder of the limited objections raised by Wells Fargo are overruled. As set forth in more detail in the Sale Motion, it appears that the Debtor intends to assume and assign the Subject Leases concurrently with the sale to Aaron's. If this is not the case, the Debtor should appear at the hearing to provide further clarification. Additionally, the Court finds cause exists to extend the deadline for the Debtor to assume or reject the Shaw Ave Lease. Wells Fargo's right to seek payment of an administrative expense for amounts owing prior to rejection is reserved.

III. Conclusion

For the reasons set forth above, the Extension Motion is GRANTED. The

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deadline for the Debtor to assume or reject the Subject Leases is December 10, 2018, without prejudice to further extension for good cause shown.

The Debtor shall lodge a conforming proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#4.00 HearingRE: [138] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) -- Debtors Motion For Entry of an Order (I) Pursuant to Bankruptcy Code Sections 105(a) and 363 and Bankruptcy Rule 9019, Authorizing and Approving that Certain Settlement Agreement Between the Debtor, Aarons, Inc., Zions Bancorporation, N.A., d/b/a California Bank & Trust, Randall C. Sultan, and Patricia E. Sultan; (II) Pursuant to Bankruptcy Code Sections 105(a), 363, And 365, Bankruptcy Rule 2002, 6004, 6006, 9007, and 9014, and Local Rule 6004-1(c), (A) Authorizing and Approving the Debtors Entry Into that Certain Asset Purchase Agreement with Aarons, Inc.; (B) Authorizing and Approving the Private Sale of Substantially All of the Debtors Assets Free and Clear of All Interests; and (C) Establishing Notice Procedures for Determining Cure Amounts and Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof. (Warfield, David)

Docket 138

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Debtor's Motion for Entry of an Order (I) Pursuant to Bankruptcy Code Sections 105(A) and 363 and Bankruptcy Rule 9019, Authorizing and Approving That Certain Settlement Agreement Between the Debtor, Aaron's, Inc., Zions Bancorporation, N.A., d/b/a California Bank & Trust, Randall C. Sultan, and Patricia E. Sultan; (II) Pursuant to Bankruptcy Code Sections 105(A), 363 and 365, Bankruptcy Rule 2002, 6004, 6006, 9007, and 9014 and Local Rule 6004-1(C), (A) Authorizing and Approving the Debtor's Entry Into That Certain Asset Purchase Agreement With Aaron's, Inc.; (B) Authorizing and Approving the Private Sale of Substantially All of the Debtor's Assets Free and Clear of All Interests; and (C) Establishing Notice Procedures for Determining Cure Amounts and Authorizing and Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [Doc. No. 138]

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(the "Motion")

- a. Notice of Motion [Doc. No. 139]
 - b. Notice to Counterparties to Executory Contracts and Unexpired Leases to Potentially be Assumed and Assigned, and Notice of Cure Amounts [Doc. No. 140]
 - c. Notice of Sale of Estate Property (LBR 6004-2) [Doc. No. 147]
 - d. Proof of Service [Doc. No. 148]
2. Statement of Zions Bancorporation, N.A., dba California Bank & Trust in Support of the Motion [Doc. No. 158]
 3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor-in-possession Sultan Financial Corporation (the "Debtor") filed a voluntary chapter 11 petition on July 13, 2018 (the "Petition Date"). The Debtor is in the rent-to-own industry and presently operates sixteen stores under the Aaron's Sales & Lease ("Aaron's") trademark in California (the "Stores"). The Debtor has sixteen separate, but virtually identical, franchise agreements (the "Franchise Agreements") with Aaron's, pursuant to which, the Debtor holds a nonexclusive license to operate its leasing and retail business using Aaron's licensing system (the "Aaron's System") and Aaron's service marks, trade names, trademarks, logos, and unique signs (collectively, the "Franchisor's Marks"). Among other fees, the Franchise Agreements require the Debtor to pay a weekly royalty fee to Aaron's in an amount equal to six percent of the Debtor's gross revenues.

The Debtor is solely owned by the Randall and Patricia Sultan Family Revocable Trust dated December 5, 1999, as amended (the "Sultan Family Trust"). Randall Sultan is the sole member of SFC's board of directors and the chief executive officer. Randall and Patricia Sultan (the "Sultans") personally guaranteed the Debtor's obligations under each of the Franchise Agreements. The Debtor's primary secured creditor is Zions Bankcorporation, N.A., successor by merger to California Bank & Trust ("CBT"). In exchange for certain term loans and lines of credit, CBT has a security interest in all of the Debtor's assets. As of the Petition Date, the Debtor owed CBT \$15,556,285.54. Aaron's also asserts an unsecured claim in the amount of \$4,630,053.63 as of that date.

Prior to filing bankruptcy, certain disputes arose between the Debtor and Aaron's.

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The parties participated in a mediation, which resulted in a settlement agreement dated October 19, 2016 (the "Aaron's Settlement"). Notwithstanding the Aaron's Settlement, the parties continued to have disagreements. At the same time, the Debtor was experiencing declining revenue and profitability and the CBT loans matured on June 15, 2018. Accordingly, the Debtor sought bankruptcy protection.

On July 16, 2018, the Debtor commenced an adversary proceeding against Aaron's by filing a complaint asserting six claims, each of which is based on the Debtor's contention that Aaron's did not make certain changes or adjustments to the Aaron's System that Debtor requested and that Aaron's breached its obligations under the Aaron's Settlement (Adv. Case. No. 2:18-ap-01225-ER) (the "Aaron's Litigation"). Aaron's denies each claim and contends that the Debtor's assertions are baseless.

Following several weeks of settlement discussions and two mediation sessions, the Debtor, CBT, the Sultans, individually and as trustees of the Sultan Family Trust, and Aaron's (collectively, the "Settling Parties") have agreed to resolve their disputes. The Debtor has agreed to sell substantially all of its assets to Aaron's free and clear of all interests for \$13,000,000, payable to CBT, subject to the terms and conditions set forth in a settlement agreement (the "Settlement Agreement") and purchase agreement (the "Purchase Agreement," together with the Settlement Agreement, the "Agreements").

The Debtor now seeks authorization and approval to enter into the Agreements, settle its dispute with Aaron's and CBT pursuant to Bankruptcy Rule 9019, and sell substantially all of its assets to Aaron's under § 363(f). The salient terms of the Settlement Agreement are as follows:

- Aaron's will pay CBT \$13 million on upon sale closing for the purchase of the Debtor's assets, except for certain excluded assets (the "Excluded Assets"). The Debtor will use its cash reserves to pay CBT \$300,000, provided that the payment does not render the Debtor administratively insolvent, in which case, the Debtor only has to pay an amount up to \$300,000 that would not render the Debtor administratively insolvent. After the Debtor satisfies all allowed administrative expense claims, the Debtor will pay all of its remaining cash to CBT, provided that such amount does not exceed CBT's claim. If those payments do not equal \$400,000, the Sultans will personally pay CBT up to

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\$50,000 in exchange for CBT's rights, claims, and interests in the Excluded Assets and the possibility of an administrative expense claim against the Debtor's estate. These payments will be in full satisfaction of CBT's claim.

- The Settling Parties will provide certain mutual releases.
- Upon execution of the Settlement Agreement, the Debtor will move to dismiss the Aaron's Litigation with prejudice. Following the sale closing date, CBT will move to dismiss a state court action presently pending against the Debtor with prejudice.
- Aaron's will defend and hold harmless against any damages the Debtor or Sultans are ordered to pay in connection with a pending lawsuit captioned *Byrd et al v. Aaron's, Inc., et al* (Case No. 11-00101), pending in the District Court for the Western District of Pennsylvania.
- The Debtor will continue to operate its business until the final payment due under the Agreements is paid.

The salient terms of the Purchase Agreement are as follows:

- Aaron's will purchase substantially all of the Debtor's assets free and clear pursuant to § 363(f) for \$13 million, with the exception of the Excluded Assets and certain excluded liabilities set forth in the Purchase Agreement, through a private sale.
- The Debtor will assume and assign to Aaron's a list of identified leases and executory contracts and any personal guaranty of the Sultans'.
- Aaron's will offer employment to all existing employees, subject to certain qualifications.
- The Debtor and Aaron's will enter into a transition service agreement, the terms of which are set forth in detail in the Purchase Agreement.

In connection with the proposed sale, the Debtor seeks to assume and assign certain executory contracts and leases. **[Note 1]** Concurrently with the filing of the Motion, the Debtor filed and served a *Notice to Counterparties to Executory Contracts and Unexpired Leases to Potentially be Assumed and Assigned, and Notice of Cure Amounts* (the "Assumption and Assignment Notice"). The Debtor seeks approval of the notice provided in the Assumption and Assignment Notice and authorization to assume and assign the executory contracts and unexpired leases identified in Exhibit A to the Assumption and Assignment Notice.

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The Debtor also requests that the Court make a finding under § 363(m) that Aaron's is a good faith purchaser and waiver of the 14-day stay on any order approving the proposed sale pursuant to Bankruptcy Rule 6004(h).

On October 12, 2018, CBT filed a statement in support of the Motion and requests that the Court approve the relief requested therein. Doc No. 158.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

The Court Approves the Settlement Agreement

The Court approves the Settlement Agreement. Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). The *A&C Properties* factors weigh in favor of approving the Amended Settlement Agreement. Applying the *A&C Properties* factors, the Court finds that the compromise is adequate, fair, and reasonable.

Probability of Success in the Litigation

This factor weighs in favor of approving the Settlement Agreement. While it is possible that additional litigation might yield a more favorable result for the estate, that potential is outweighed by the immediate resolution of all disputes between the

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Debtor and Aaron's and the avoidance of protracted and costly litigation and appeals.

Difficulties to be Encountered in Collection

This factor is neutral. The Debtor does not believe that it would have difficulty collecting upon any judgment against Aaron's.

Complexity of the Litigation

This factor weighs in favor of approving the Settlement Agreement. The Aaron's Litigation involves a number of complex issues and claims. Further, the action is in a relatively early stage of litigation and, absent a settlement, would likely require costly discovery, a trial, and appeals.

Paramount Interest of Creditors

This factor weighs in favor of approving the Settlement Agreement. While the Settlement Agreement appears to primarily benefit CBT, insiders, and administrative claimants, there is nothing in the record for the Court to conclude that unsecured creditors would receive any distribution if the Court were to deny the settlement. Additionally, approving the settlement will benefit the estate because it will enable the Debtor to wind down its business and more expeditiously administer the case.

The Court also notes that no interested party has objected to the proposed settlement. Pursuant to Local Bankruptcy Rule 9013-1(h), failure to respond to the Motion may be deemed consent to the granting of the Motion.

The Court Approves the Sale

Section 363(b) permits the debtor or trustee to sell estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325

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B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

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The Court finds that notice is proper and the Debtor has provided ample business justification for the proposed sale and on that basis approves the sale. In view of the specific facts of this case, the Court is satisfied that the private sale to Aaron's is fair and reasonable and the best opportunity for the Debtor to maximize the value of the Debtor's assets. As set forth in the Declaration of Randall C. Sultan (the "Sultan Decl.") filed in support of the Motion, there do not appear to be any apparent or viable alternative third-party purchasers and none of Aaron's other franchisees have expressed an interest. Sultan Decl., ¶¶ 22, 24. Furthermore, any third-party sale would require Aaron's consent prior to the Debtor's assumption and assignment of the Franchise Agreements and it is likely that Aaron would oppose such assumption and assignment, thereby dissuading interested parties from participating in a competitive bidding process. *Id.*

Based upon the Sultan Decl. at para. 26, the Court finds that Aaron's is a good-faith purchaser under § 363(m).

The 14-day stay provided by Bankruptcy Rule 6004(h) is waived.

The Sale is Free and Clear of All Interests, Including Successor Liability

Section 363(f)(2) provides that a sale may be free and clear of liens if the holder of the interest consents. No timely objection was filed, so all interested holders who received notice are deemed to have consented pursuant to LBR 9013-1(h). The Court also finds that the sale may proceed free and clear of all interests, such as potential holders of successor liability claims, pursuant to § 363(f)(5) because such individuals or entities could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Debtor May Assume and Assign Executory Contracts and Unexpired Leases

Under § 365, the Debtor may assume executory contracts and unexpired leases and, pursuant to § 363(b), assumed executory contracts and leases may be sold. Prior to assumption, the Debtor must cure any defaults.

Based on the Court's review of the Assumption and Assignment Notice, it does

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not appear any defaults exist. No timely objections to the proposed \$0.00 cure amounts were filed. Accordingly, the assumption and assignment of those executory contracts and unexpired leases is approved.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

The Debtor shall lodge a conforming proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Debtor states that it does not intend to provide notice of the Motion or the Assumption and Assignment Notice to the more than 12,000 individuals or entities (the "Customers") who are party to more than 18,000 ongoing, individual lease arrangements with the Debtor (the "Customer Contracts"). Motion, pdf pp. 26:23-28:11. For the reasons set forth in the Motion, the Court agrees that the Debtor is not required to provide notice to the Customers.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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2:18-18021 Sultan Financial Corporation

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#5.00 HearingRE: [119] Application to Employ Martini Akpovi Partners LLP as Accountants for the Debtor # 2 Exhibit B (Sultan Declaration)) (Warfield, David)

Docket 119

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Employment Application is GRANTED on the terms set forth below.

Pleadings Filed and Reviewed

1. Application to Employ Martini Akpovi Partners LLP as Accountants for the Debtor [Doc. No. 119] (the "Employment Application")
 - a. Notice of Employment Application [Doc. No. 120] (the "Notice of Application")
 - b. Proof of Service [Doc. No. 121]
2. United States Trustee's Objection to Employment Application and Request for Hearing [Doc. No. 126] (the "Objection")
3. Notice of Hearing on Employment Application [Doc. No. 135] (the "Notice of Hearing")
4. Debtor's Supplement to Employment Application [Doc. No. 163] (the "Supplement")
 - a. Amended Notice of Employment Application [Doc. No. 164] (the "Amended Notice of Application")
 - b. Proof of Service [Doc. No. 165]

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") filed a voluntary chapter 11 petition on July 13, 2018 (the "Petition Date"). On September 19, 2018, the Debtor filed an application to employ Martini Akpovi Partners LLP (the "Martini Firm") as the Debtor's accountants pursuant to 11 U.S.C. §§ 327(a) and 330, on a *nunc pro tunc* basis, effective as of the Petition Date (the "Employment Application"). Doc. No.

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The United States Trustee ("UST") filed an objection to the employment of the Martini Firm and requested a hearing [Doc. No. 126] (the "Objection"). The UST contends that the Employment Application fails to articulate any basis for granting *nunc pro tunc* employment, despite the fact that the application was filed two months after the proposed effective date. Therefore, the UST asserts that employment should only be effective as of the filing date of the Employment Application.

The UST also contends that the Employment Application contains inadequate information because: (i) aside from listing a billing range for professionals, there is no detail as to what the exact rate of each professional working on the case is; (ii) the Debtor seeks employment pursuant to the terms of a blank, unsigned, form engagement letter; and (ii) the application fails to state whether any retainer was received and why monthly *Knudsen* payments are required in this case.

Finally, the UST contends that the Notice fails to comply with Local Bankruptcy Rule ("LBR") 2014-1(b)(3), because it does not state whether compensation will be pursuant to 11 U.S.C. §§ 328 or 330 and does not describe the arrangement for compensation, including the hourly rate of each professional to render services, source of the fees, the source and amount of any retainer, the date on which it was paid, and any provision regarding replenishment thereof. For these reasons, the UST requests the Court deny the Employment Application.

On October 19, 2018, the Debtor filed a Supplement to the Employment Application. In response to the UST's objection to employment being *nunc pro tunc*, the Debtor requests that the Court authorize employment effective 30 days prior to the Employment Application filing date, or August 19, 2018 (instead of July 13, 2018). The Debtor states that authorizing employment as of that date is appropriate because the Martini Firm's services are essential to the Debtor's business operations and needed to be performed before the retention papers could be completed and presented to the Court.

Next, in response to the UST's objection to the lack of adequate information in the notice and application, the Debtor clarifies that no retainer was paid to the Martini Firm and compensation will be pursuant to 11 U.S.C. § 330. The Debtor also provides the specific hourly rates of each of the professional who may perform work

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for this case and filed an amended notice [Doc. No. 164] with the missing information. Finally, the Debtor attached as Exhibit A to the Supplement a fully executed engagement letter and states that any compensation will be paid only in such amounts as the Court may award pursuant to § 330. [Note 1]

II. Findings of Fact and Conclusions of Law

Pursuant to 11 U.S.C. § 327(a), a debtor-in-possession may employ a professional or professional organization that does not hold or represent an interest adverse to the estate, and that qualifies as a disinterested person, to represent or assist the debtor-in-possession in carrying out the debtor-in-possession duties under Title 11. Pursuant to Bankruptcy Rule 2014, an employment application brought under § 327 must state:

the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

Fed. R. Bankr. P. 2014(a). Additionally, LBR 2014-1(b)(3)(A)-(E) sets forth a list of information to be included in any notice of an employment application.

Having reviewed the Employment Application, Notice of Application, the Declaration of Steven Martini (the "Martini Decl."), Engagement Letters, Amended Notice of Hearing, and Supplement, the Court finds that the Employment Application and Amended Notice contain sufficient information to satisfy the requirements of Bankruptcy Rule 2014 and LBR 2014-1(b)(3).

The Court finds it appropriate to grant *nunc pro tunc* employment as of August 19, 2018. A *nunc pro tunc* approval of employment "should be limited to situations in which 'exceptional circumstances' exist." *In re Atkins*, 69 F.3d 970, 974 (9th Cir. 1995). "To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their

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services benefitted the bankrupt estate in a significant manner." *Id.*

Based on the Debtor's representations in the Supplement, the Court finds exceptional circumstances exist to authorize employment as of August 19, 2018.

III. Conclusion

For the reasons set forth above, the Employment Application is GRANTED with employment effective as of August 19, 2018.

The Debtor is directed to lodge a conforming proposed order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: In the prayer for relief, the Debtor requests authorization to employ the Martini Firm pursuant to 11 U.S.C. § 327(e). Supplement, p. 4:3. Section 327(e) is only applicable to attorneys who have previously represented the debtor. Accordingly, the request is denied.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

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#6.00 Hearing
RE: [400] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with Sports, Orthopedic and Rehabilitation Associates (SOAR) and Related Executory Contracts and Unexpired Leases Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

Docket 400

***** VACATED *** REASON: CONTINUED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts

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#7.00 Hearing
RE: [399] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with All Care Medical Group, Inc. and Related Executory Contracts and Unexpired Lease Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration # 6 Exhibit E (part 2) # 7 Exhibit F # 8 Exhibit G (part 1) # 9 Exhibit G (part 2)) (Moyron, Tania)

Docket 399

***** VACATED *** REASON: CONTINUED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#8.00 Hearing
RE: [364] Motion Notice Of Motion And Motion For An Order Authorizing The Debtors To Retain And Compensate Professionals Utilized By The Debtors In The Ordinary Course Of Business; Memorandum Of Points And Authorities In Support Thereof; Declaration Of Elspeth Paul

Docket 364

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Motion—which seeks the approval of procedures for the retention and employment of ordinary course professionals—is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for an Order Authorizing the Debtors to Retain and Compensate Professionals Utilized by the Debtors in the Ordinary Course of Business [Doc. No. 364] (the "Motion")
 - a) Certificate of Service [Doc. No. 525]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors seek approval of procedures allowing the Debtors to retain and pay professionals employed in the ordinary course of business (such professionals are known as "ordinary course professionals" or "OCPs"). Debtors do not believe that the OCPs are "professionals" within the meaning of §327, but seek approval of the proposed retention procedures in an abundance of caution.

The proposed retention procedures are as follows. Each OCP shall file with the Court and serve upon the Debtor, the United States Trustee ("UST"), all alleged

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secured creditors, counsel for the Official Committee of Unsecured Creditors ("Committee"), and all parties requesting special notice (collectively, the "Notice Parties") a disclosure declaration (the "Declaration"). The Declaration shall contain sets forth the following information:

- 1) to the best of the OCP's knowledge, a description of the effort(s) that were taken to search for connections with parties in interest;
- 2) a description of the proposed scope of services to be provided by the OCP;
- 3) the rate(s) proposed to be charged for the services;
- 4) all information otherwise required to be disclosed pursuant to Rule 2014 of the Federal Rules of Bankruptcy Procedure;
- 5) any prepetition amounts owed to the OCP by the Debtor;
- 6) to the extent that the OCP was not providing services as of the Petition Date, the date on which such services began postpetition; and
- 7) any supplemental information, if necessary.

The Notice Parties have ten days from the date of the filing and service of the Declaration to object to the retention of the OCP in question. If an objection is not resolved and/or withdrawn within twenty days after service of such objection, the Court shall adjudicate the matter at a hearing scheduled by the Debtor. If no timely objection is filed and served, or if an objection is withdrawn, the Debtor will be authorized to retain the OCP on a final basis without further order of the Court.

The Debtor will pay, without formal application to and order from the Court, 100% of the fees and expenses of each OCP, upon submission to and approval by the Debtor of an appropriate billing statement.

No opposition to the Motion is on file.

II. Findings and Conclusions

Section 327(b) provides: "If the trustee is authorized to operate the business of the debtor under section 721, 1202, or 1108 of this title, and if the debtor has regularly employed attorneys, accountants, or other professional persons on salary, the trustee may retain or replace such professional persons if necessary in the operation of such business."

The Court finds that the Debtors' proposed retention procedures are consistent with §327(b) and approves the procedures. The Court notes that procedures similar to those proposed here have been approved by a number of courts. **[Note 1]**

The OCPs that the Debtor seeks to employ fall within the ambit of §327(b). The OCPs have been regularly employed by the Debtor prior to the petition. The services

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they perform—collections, regulatory compliance, and litigation defense—are necessary regardless of whether a bankruptcy petition was filed. The fact that professionals are not paid a fixed salary does not disqualify the Debtor from retaining their services under §327(b). The professionals were employed by the Debtor prepetition and received regular payments, which necessarily varied depending upon the amounts of services that the professionals provided.

Under the Debtors' procedures, the rights of all parties to object are preserved. The Court finds that the procedures are an effective means of reducing the administrative costs of the case. The professionals the Debtors seek to employ do not regularly practice before the bankruptcy court and are not familiar with the Bankruptcy Code's required employment and compensation procedures. Were the professionals required to file fee applications, the Debtors would be required to spend significant time helping them to comply with the procedures—driving up administrative costs. If some OCPs were unwilling to assume the cost and burden of filing employment and fee applications and declined to continue working for the Debtor, the Debtor would incur additional costs retaining other professionals who are not already familiar with the Debtor's operations.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

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Sam J Alberts

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#9.00 HearingRE: [365] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Debtors Notice Of Motion And Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances; Memorandum Of Points And Authorities In Support Thereof (Moyron, Tania)

Docket 365

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Bidding Procedures Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 365] (the "Bidding Procedures Motion")
 - a) Notice of Sale of Estate Property [Doc. No. 366]
 - b) Declaration of Richard G. Adcock in Support of [Bidding Procedures Motion] [Doc. No. 393]
 - c) Declaration of James Maloney in Support of [Bidding Procedures Motion] [Doc. No. 394]
- 2) Opposition Papers:

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- a) Limited Objection of the Federal Communications Commission to [Bidding Procedures Motion] [Doc. No. 437]
- b) Limited Objection of Pension Benefit Guaranty Corporation to [Bidding Procedures Motion] [Doc. No. 439]
- c) Reservation of Rights of Premier, Inc. and its Subsidiaries in Relation to [Bidding Procedures Motion] [Doc. No. 444]
- d) Objection of Cigna Entities to [Bidding Procedures Motion] [Doc. No. 445]
- e) Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to [Bidding Procedures Motion] [Doc. No. 447]
 - i) Stipulation to Postpone Hearing on Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors' Sale Procedures Motion and Allow Further Briefing [Doc. No. 613]
- f) SEIU-UHW's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 450]
 - i) Declaration of David Miller in Support of SEIU-UHW's Objection [Doc. No. 453]
- g) Conditional Opposition to [Bidding Procedures Motion] [filed by OCH Forest 1] [Doc. No. 452]
 - i) Declaration of Charles Toeniskoetter in Support of Conditional Opposition to [Bidding Procedures Motion] [Doc. No. 456]
- h) Local 39's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 458]
- i) Limited Objection of Retirement Plan for Hospital Employees to Debtors' Motion for Entry of an Order Approving Bidding Procedures, Etc. [Doc. No. 460]
- j) Response to Debtors' [Bidding Procedures Motion] [filed by the California Attorney General] [Doc. No. 463]
 - i) Sur-Reply to Debtor's Reply to Response of California Attorney General to Bid Procedures Motion [Doc. No. 619]
- k) California Nurses Association Objection to Debtors' [Bidding Procedures Motion] [Doc. No. 465]
- l) Official Committee of Unsecured Creditors' Limited Objection to Debtor's Sale Motion [Doc. No. 490]
 - i) Declaration of Cynthia A. Nelson in Support of Official Committee of Unsecured Creditors' Limited Objection to Debtors' Sale Motion [Doc.

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- m) Limited Objection and Reservation of Rights of Verity MOB Financing LLC and Verity MOB Financing II LLC to [Bidding Procedures Motion] [Doc. No. 500]
- n) Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557]
 - i) Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557-1]
- o) Limited Objection and Reservation of Rights of U.S. Bank National Association, as Series 2017 Note Trustee, to [Bidding Procedures Motion] [Doc. No. 577]
- p) Reservation of Rights of INFOR (US), Inc. [Doc. No. 592]
- q) Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 597]
 - i) Declaration of Danielle Lucido in Support of Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 598]
- 3) Reply Papers:
 - a) Debtors' Reply to Response of California Attorney General to Debtors' Bid Procedures Motion [Doc. No. 560]
 - b) Omnibus Reply to Objections to [Bidding Procedures Motion] [Doc. No. 561]
 - c) Debtors' Reply to Objection of U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors Bid Procedures Motion [Doc. No. 562]
 - d) Reply to Objections of UMB Bank and US Bank to [Bidding Procedures Motion] [Doc. No. 621]
 - i) Objection to Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A., as Master Trustee and Wells Fargo Bank, N.A., as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 622]
- 4) Papers filed in Connection with the California Attorney General's Motion to Continue the Hearing on the Bidding Procedures Motion:
 - a) Notice of Motion and Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 599]
 - b) Debtors' Opposition to Attorney General's Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 605]

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- c) Official Committee of Unsecured Creditors' Objection to Motion to Continue Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 608]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors seek approval of procedures governing the sale of Saint Louise Regional Hospital ("St. Louise"), O'Connor Hospital ("O'Connor"), and related assets. Both hospitals are located in Santa Clara County. *See generally* Doc. No. 365 (the "Bidding Procedures Motion"). Pursuant to an Asset Purchase Agreement (the "APA") dated October 1, 2018, the assets to be sold (the "Assets") consist of:

all assets, businesses, real property, personal property, equipment, supplies, software, contracts, leases, licenses/permits, books, records, offices, facilities, and all other tangible and intangible property (a) whatsoever and wherever located that is owned, leased, or used primarily in connection with the Businesses by a Hospital Seller, (b) located in Santa Clara County, California that is owned, leased, or used primarily in connection with the Businesses by Verity Holdings, and (c) whatsoever and wherever located that is owned, leased, or used by Verity primarily in connection with the Businesses, in each case, except for the Excluded Assets.

APA at ¶1.8.

Certain of the Debtors' liabilities are excluded from the sale. Most significant is the exclusion of all "Labor Obligations," defined in the APA to include all "collective bargaining agreements ... that are in place with any labor unions" APA at ¶8.13.

Under the APA, the County of Santa Clara is the stalking horse bidder (the "Stalking Horse Bidder"). The proposed Breakup Fee is \$9.4 million, or 4.0% of the \$235 million purchase price. The Stalking Horse Bidder is also entitled to reimbursement for its reasonable due diligence expenses (the "Expense Reimbursement"). The Stalking Horse Bidder has agreed to cap the sum of the Breakup Fee and the Expense Reimbursement at 5% of the purchase price (i.e., the Breakup Fee is 4% of the purchase price and therefore the Expense Reimbursement cannot exceed 1% of the purchase price, or \$2.35 million).

Qualified overbidders (the "Overbidders") may participate in an auction to be held at the offices of the Debtors' counsel on December 10, 2018, at 10:00 a.m. To qualify

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to participate in the auction, Overbidders must provide a good-faith deposit in the amount of \$23.5 million. The proposed minimum overbid amount is the Breakup Fee (\$9.4 million) plus an additional bidding increment of \$7.5 million. Overbids will be evaluated based upon several factors, including (1) the amount of such bid; (2) the risks and timing associated with consummating such bid; (3) any proposed revisions to the form of the APA; and (4) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with the Official Committee of Unsecured Creditors (the "Committee"). If an auction is conducted, a hearing before the Court to approve the results of the auction (the "Sale Hearing") will take place on December 18, 2018.

The Debtors will seek to assume and assign certain contracts and leases to be identified in the Purchase Agreement (the "Assumed Executory Contracts"). Initially, the Assumed Executory Contracts will be those contracts and leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the Assets. The successful bidder may choose to exclude (or to add) certain contracts or leases to the list of Assumed Executory Contracts.

The Debtors will file with the Court and serve a Cure Notice upon each counterparty to the Assumed Executory Contracts. The Cure Notice will state the date, time, and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts must be filed and served. The Cure Notice will also identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts"). To the extent that there is a contract added to the list of contracts to be assumed by the successful bidder selected at the auction, the Bidding Procedures Motion shall be deemed to constitute a separate motion to assume and assign that contract to the successful bidder pursuant to §365.

A. Summary of the Objections Filed to the Bidding Procedures Motion and the Debtors' Replies in Support of the Motion

The objections to the Bidding Procedures Motion, and the Debtors' reply to each objection, are summarized below. [Note 1]

1. Objection of the Federal Communications Commission [Doc. No. 437]

The Federal Communications Commission (the "FCC") states that certain of the Debtors hold wireless licenses, the transfer of which is subject to FCC approval. To preserve its rights, the FCC requests that any order approving the Bidding Procedures

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Motion (the "Bidding Procedures Order") contain the following language:

Notwithstanding any other provision of this Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the Federal Communications Commission ("FCC") shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

The Debtors assert that the FCC's objection is premature because any Licenses that may be subject to FCC regulation have not yet been designated for assumption and assignment.

2. Objection of the Pension Benefit Guaranty Corporation [Doc. No. 439]

The Pension Benefit Guaranty Corporation (the "PBGC") argues that the proposed Bidding Procedures should be modified to require that all bidders expressly state whether they intend to assume the Debtors' pension obligations. PBGC asserts that a bidder's assumption of pension liabilities would effectively eliminate or reduce PBGC's claims against each of the Debtors, thereby providing value to the Debtors' respective estates and increasing recoveries for other creditors. Accordingly, PBGC contends that when evaluating overbids, the Debtors should give credit for the value of the pension plans' liabilities that an Overbidder agrees to assume.

In reply, the Debtors assert that they have repeatedly stated that in assessing the highest and best offers, they will consider all forms of consideration, including the assumption of pension liabilities. The Debtors state that the inclusion of any particular language providing whether or not a bidder will assume particular liabilities is unnecessary, and that given the scope of pension liabilities, it would be remarkable if any Qualified Bidder's bid failed to indicate whether pension liabilities would be assumed.

3. Objection of Cigna Entities [Doc. Nos. 445 and 561]

The Debtors are parties to various agreements with Cigna Healthcare of

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California, Inc. ("Cigna CA") and Life Insurance Company of North America ("LINA," and together with Cigna CA, "Cigna"). The Cigna Provider Agreements provide covered healthcare services to eligible participants within the Cigna Provider Network who receive treatment at the Debtors' hospitals. The agreements with LINA provide group disability benefits for the Debtors' employee benefits program (the "LINA Contracts").

Cigna objects to the Bidding Procedures Motion on the following grounds:

- 1) The proposed Bidding Procedures do not provide Cigna sufficient time to object to the assignment and assumption of executory contracts. If the successful purchaser does not assume the Cigna Provider Agreements, patients receiving treatment at the hospitals will be severely prejudiced, because they will no longer be part of the Cigna Provider Network and therefore will no longer be eligible to receive healthcare at the hospitals. Cigna must receive at least sixty days' notice of any decision to assume or reject the Cigna Provider Agreements.
- 2) Similarly, the proposed Bidding Procedures do not provide Cigna with sufficient notice of the disposition of the LINA Contracts. The Bidding Procedures should be altered to provide that, absent consent from Cigna, unequivocal and irrevocable notice of the proposed assumption and assignment of the LINA Contracts must be provided to Cigna and its counsel at least ten days prior to any hearing thereon.

In reply, the Debtors state that the notice demanded by Cigna is unreasonable, unduly burdensome to the estate, and could potentially delay the closing of the sale by up to two months. The Debtor states that the assumption and assignment procedures it has proposed are customary and reasonable, and that Cigna has failed to offer any support for the extraordinary divergence from customary practice that it requests.

4. Objection of the U.S. Department of Health and Human Services [Doc. Nos. 447, 562, and 613]

The United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services (collectively, "HHS") objects to the APA's characterization of Medicare Provider Agreements held by St. Louise and O'Connor as licenses rather than as executory contracts. According to HHS, the Medicare Provider Agreements are executory contracts which may only be assumed and assigned in conformance with the requirements of §365.

The Debtors assert that HHS should be judicially estopped from arguing that the

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Medicare Provider Agreements are executory contracts, because HHS has argued before other federal courts that Medicare Provider Agreements are licenses.

On October 22, 2018, the Debtors and HHS entered into a stipulation, which provides that the issues raised by HHS' objection should be addressed in connection with the Sale Hearing rather than the Bidding Procedures Motion.

5. Objection of OCH Forest 1 [Doc. Nos. 452 and 561]

OCH Forest 1 ("OCH") entered into a Partnership Agreement with O'Connor, under which OCH is the General Partner and O'Connor is the Limited Partner. The purpose of the Partnership Agreement was to develop and invest in a medical office building located at 455 O'Connor Drive, San Jose, CA (the "455 Property"). Under the Partnership Agreement, OCH holds a right of first refusal with respect to the transfer of the 455 Property. OCH does not object to the proposed sale, but objects to any modification of the Partnership Agreement.

Debtors assert that nothing in the Bidding Procedures Motion impairs OCH's rights and that OCH's objection is premature and should be addressed in connection with the Sale Hearing.

6. Objection of the California Attorney General and the Attorney General's Motion to Continue the Hearing on the Bidding Procedures Motion [Doc. Nos. 463, 599, 605, 608, and 619]

In July 2015, the California Attorney General (the "Attorney General") reviewed a transaction between the Debtors' predecessor, Daughters of Charity Ministry Services Corporation ("Daughters") and BlueMountain Capital Management, LLC ("Blue Mountain"). In connection with the July 2015 transaction, the Attorney General imposed various conditions governing the operation of the Debtors' hospitals (the "2015 Conditions"). Among other things, the 2015 Conditions require the hospitals to furnish specified amounts of charitable care, to continue to provide certain types of health care services, and to continue to operate emergency departments in accordance with minimum requirements.

The Attorney General asserts that any purchaser of the Assets remains bound by the 2015 Conditions. The Debtor disputes this contention, arguing that pursuant to § 363, the sale of the Assets may be free and clear of the 2015 Conditions. However, the Debtor further asserts that any disputes regarding the applicability of the 2015 Conditions are premature because it is possible that the winning purchaser will voluntarily agree to abide by the 2015 Conditions.

On October 19, 2018, the Attorney General filed a motion seeking to continue the

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hearing on the Bidding Procedures Motion by at least three weeks. The Attorney General contends that he is unable to adequately review the APA because the schedules to the APA have not yet been supplied.

The Debtors and the Official Committee of Unsecured Creditors (the "Committee") oppose any continuance of the Bidding Procedures Motion on the grounds that the Attorney General will have adequate time to review the APA schedules prior to the final Sale Hearing.

7. Objections of Entities Who Are Parties to or Benefit from Various Collective Bargaining Agreements with Certain of the Debtors [Doc. Nos. 450, 458, 460, 465, and 597]

The International Union of Operating Engineers, Stationary Engineers Local 39 ("Local 39"), the Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), the California Nurses Association (the "CNA"), and the Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC ("IFPTE Local 20") (collectively, the "Unions") are parties to collective bargaining agreements ("CBAs") with certain of the Debtors. The Debtors have filed a motion seeking to enter into a new CBA with Local 39, which is currently set for hearing on November 6, 2018.

Debtor VHS participates in a multi-employer defined benefit pension plan, the Retirement Plan for Hospital Employees (the "RPHE"). Pursuant to CBAs with the Unions, the Debtors are obligated to make pension contributions to the RPHE.

RPHE asserts that the Bidding Procedures should be modified as suggested by the PBGC, in order to encourage Overbidders to assume obligations arising under the RPHE. The Unions object to the Stalking Horse Bidder's proposal to purchase the Assets free and clear of the Debtors' pension obligations and the obligations under the unrejected CBAs. According to the Unions, any attempt to sell the assets free and clear of the CBAs constitutes an impermissible end-run around the requirements of § 1113. CNA further asserts that any purchaser of the Assets should be required to assume all pension obligations under the RPHE, given that the assumption of such obligations would avoid the accrual of a large withdrawal liability claim against the Debtors under 29 U.S.C. §1384.

Debtors dispute the Union's contention that they must obtain relief under §1113 before proceeding with the sale. Debtors rely upon *Local 211 v. Family Snacks, Inc.*, *Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001):

When a debtor is selling on a going concern basis, the union urges, *Ionosphere*

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should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

Debtors state that they will continue to work with the Unions to achieve a transfer of the hospitals in a manner that is in the best interest of all constituents. Debtors state that any bids that assume CBAs will be given appropriate weight and deference.

8. Objection of the Official Committee of Unsecured Creditors [Doc. Nos. 490, 491, and 561]

The Official Committee of Unsecured Creditors (the “Committee”) objects to the Bidding Procedures Motion on the following grounds:

- 1) The proposed Breakup Fee is too high and will chill bidding. The Breakup Fee should be reduced from 4% to 3%. A study conducted by Cynthia Nelson, a Senior Managing Director in the Corporate Finance & Restructuring group at FTI Consulting, Inc. (the “FTI Fee Study”) shows that in bankruptcy sales of between \$50 million to \$250 million, breakup fees are generally set at 3% or less.
- 2) The minimum overbid increment should be reduced from \$7.5 million to \$5 million to encourage bidding.
- 3) The proposed sale includes more than just the assets necessary to operate the O’Connor and St. Louise hospitals. The APA also includes an urgent care facility containing medical office space located in Morgan Hill, CA (the “De Paul Property”). If the De Paul Property is not separately valued as part of the stalking horse bid, creditors will be unable to ascertain whether the highest price was obtained for this property. The Stalking Horse Bidder and all other Overbidders should be required to allocate with specificity the portion of the overall purchase price attributable to the De Paul Property.

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In response to the Committee's objection, the Debtor asserts that the Breakup Fee and minimum overbid increment are consistent with relief granted by other Bankruptcy Courts, were negotiated between the Debtors and the Stalking Horse Bidder in good faith, and were agreed to in the exercise of the Debtors' reasonable business judgment. Regarding the allocation of the purchase price, the Debtors assert that the APA already contemplates that the Stalking Horse Bidder will provide schedules allocating the purchase price among the various Assets being sold.

9. Objections of UMB Bank, Wells Fargo, and U.S. Bank [Doc. Nos. 557, 621, and 622]

UMB Bank, N.A., in its capacity as successor master trustee for certain master trust indenture obligations ("UMB"), and Wells Fargo Bank, N.A., in its capacity as indenture trustee for the series 2005 revenue bonds ("Wells Fargo") object to the Bidding Procedures Motion on the following grounds:

- 1) Based upon a study prepared by Benjamin Ilhardt, the Senior Vice President of Houlihan Lokey Capital, Inc. (the "HL Fee Study"), the Breakup Fee is too high. The Houlihan Study shows that in comparable cases, breakup fees ranged from a minimum of 1.5% to a maximum of 3.8%, with a mean of 2.8% and a median of 3.0%. An appropriate break-up fee in this case would not exceed 3% of the stalking horse bid—that is, \$7.05 million.
- 2) The HL Fee Study further demonstrates that the proposed Expense Reimbursement of \$2.35 million is excessive. An appropriate expense reimbursement would be no more than \$1.4 million.
- 3) The minimum overbid increment of \$7.5 million should be reduced to \$1 million.

Similar to UMB and Wells Fargo, U.S. Bank, N.A., in its capacity as Note Trustee for the Series 2017 Notes ("U.S. Bank"), asserts that the Bid Protections proposed by the Debtors are not reasonable and will chill competition.

Debtors reply to the objections of UMB, U.S. Bank, and Wells Fargo as follows:

- 1) The Bid Protections provided to Santa Clara County were necessary to induce it to serve as the stalking horse purchaser. Retaining Santa Clara as the stalking horse purchaser was essential given that a sale to Santa Clara can close rapidly, as it is not subject to review by the California Attorney General under Cal. Corp. Code §5914.
- 2) Santa Clara is not purchasing certain excluded assets, including accounts

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receivable, which should generate an additional \$65 million in incremental proceeds to the estate. When the Breakup Fee is computed as a percentage of the sale price plus the \$65 million in incremental proceeds, it is only 3.1%.

- 3) The testimony of Benjamin Ilhardt in support of the HL Fee Study is objectionable because Mr. Ilhardt is not qualified as an expert, and the types of sales cited in the HL Fee Study are not comparable as they do not involve health care or public entities.

10. Reservation of Rights of Premier and Infor [Doc. Nos. 444, 561, and 592]

Premier, Inc. and its subsidiaries (collectively, “Premier”) provides information technology and related services to the Debtors. Infor (US), Inc. (“Infor”) licenses copyrighted software to the Debtors and provides related maintenance and support services. Both Premier and Infor assert that the Debtors may not assume or assign any of their intellectual property absent consent.

Debtors state that nothing in the Bidding Procedures Motion prevents Premier and Infor from presenting their objections in connection with the Sale Hearing.

11. Reservation of Rights of Verity MOB Financing II [Doc. No. 500]

Verity MOB Financing LLC and Verity MOB Financing II LLC (collectively, the “MOB Financing Entities”) assert security interests in certain of the Debtors’ assets. The MOB Financing Entities filed a Reservation of Rights, stating that they are in ongoing negotiations with the Debtors regarding their right to credit-bid and hope to resolve their issues prior to the October 24 hearing on the Bidding Procedures Motion.

II. Findings and Conclusions

A. The Attorney General’s Motion for a Continuance is Denied

The Attorney General’s motion for a three week continuance of the Bidding Procedures Motion is DENIED. The hospitals that are the subject of the Bidding Procedures Motion are operating at a loss, meaning that every day that a future sale is postponed imposes significant costs upon the estate and upon creditors. The fact that APA schedules have not yet been provided does not constitute sufficient cause for a continuance.

On a related note, certain parties have suggested that the sale timeline proposed by the Debtors is too aggressive and that professionals require more time to review various matters pertaining to the sale. It is important for the Court to point out that sales on a rapid timeline are routine in bankruptcy, since delay almost always imposes

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additional costs upon creditors. The sale timeline proposed here affords professionals a sufficient opportunity to represent their client's interests.

B. Certain Objections Are Premature and Will Not be Decided in Connection with this Hearing

This hearing involves only the approval of the Bidding Procedures that will be used at the auction of the Assets. The Court finds that many of the objections are more appropriately considered at the final Sale Hearing, at which point the identity of the successful purchaser will be known. Many objections are based upon hypothetical future events and raise issues that may never ripen. For example, it is unknown whether the successful purchaser will assume the Debtors collective bargaining obligations; nor does the Court know which executory contracts or unexpired leases will be assumed.

For these reasons, the Court does not at this time rule upon the objections asserted by the Federal Communications Commission, the Pension Benefit Guaranty Corporation, the U.S. Department of Health and Human Services, the California Attorney General, the Unions who are parties to various CBAs (Local 39, SEIU-UHW, CNA, IFPTE Local 20), the Retirement Plan for Hospital Employees, OCH Forest 1, Premier, Infor, and the MOB Financing Entities. All such objections are preserved for the Sale Hearing and may be raised at that time.

The Court declines to require the Debtors to include the language proposed by the Federal Communications Commission (the "FCC") in the Bidding Procedures Order. The FCC's language pertains to the final transfer of assets, which is not at issue in the Bidding Procedures Motion. The FCC's ability to assert that such language should be included in a final order approving the sale is preserved.

C. Additional Language Regarding Overbidders' Intent with Respect to the Assumption or Rejection of Pension Obligations is Not Required

The PBGC argues that the Bidding Procedures Order must include additional intended to encourage potential Overbidders to assume the Debtors' pension obligations. The Court finds that the Debtors have made abundantly clear that they are soliciting offers that provide for the assumption of pension obligations. No additional language in the Bidding Procedures Order is required.

D. The Bidding Procedures Are Approved

The objections to the proposed Bidding Procedures are overruled. The Court finds that the Bidding Procedures are likely to maximize the proceeds received by the

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estate. *See Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005) (“The court’s obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances.”).

The Committee and secured creditors UMB, Wells Fargo, and U.S. Bank (collectively, the “Secured Creditors”) assert that the proposed Breakup Fee is too high. The objections to the Breakup Fee are overruled.

In evaluating the Breakup Fee, the Court first must rule upon the Debtors’ evidentiary objections to the HL Fee Study. The Court finds that Benjamin Ilhardt, as a Senior Vice President in the Financial Restructuring Group of Houlihan Lokey Capital, Inc., is qualified to introduce expert testimony regarding the reasonableness of breakup fees. However, the Court affords the HL Fee Study only minimal weight. The sale transactions selected for the HL Fee Study are comparable in amount to the instant sale, but do not involve companies in the healthcare industry.

This distinction is key in view of the significantly greater regulatory compliance obligations placed upon healthcare entities. More due diligence is required to adequately value entities that are subject to additional regulations. Regulations introduce additional complication in assessing an entity’s future cash flow; this issue is of particular salience in the healthcare sector, where regulations are frequently subject to change. For instance, buyers of a healthcare entity are required to assess the possibility that the Affordable Care Act could be subject to significant revision, and to consider the impact of such possible revision on the viability of any healthcare entity’s continuing operations. Against this backdrop, it is not surprising that the Debtors would be required to negotiate a higher than average Breakup Fee to induce Santa Clara County to become the Stalking Horse Bidder.

For the same reasons, the Court accords only minimal weight to the FTI Fee Study submitted by the Committee. Like the HL Fee Study, the FTI Study does not involve any sales in the healthcare industry. The breakup fees for such sales do not afford a truly comparable yardstick for assessing the Breakup Fee at issue here.

The Committee and the Secured Creditors similarly contend that the proposed Expense Reimbursement is too high. These objections, which once again are premised upon comparing this healthcare sale to sales in other industries, are overruled. Where more due diligence is required, a higher Expense Reimbursement amount will be necessary.

The Committee and the Secured Creditors contend that the minimum overbid increment of \$7.5 million should be reduced. The Court finds that the Debtors exercised reasonable business judgment in establishing the overbid increment, and declines the invitation of the parties to overrule the Debtors’ business judgment.

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However, it may be prudent for the Debtor to allow itself the leeway to accept incremental bids at less than \$7.5 million should the bidding process become stalled.

E. Cigna's Objections are Overruled

The Court finds that the procedures proposed by the Debtor regarding the assumption of executory contracts and unexpired leases are customary and reasonable for sales of this type. Cigna demands 60 days' notice regarding an assumption/rejection decision pertaining to the Cigna Provider Agreements. Such a lengthy notice period would unduly delay the closing of the sale, to the detriment of the estate and creditors. The ten day notice period demanded by Cigna with respect to the disposition of the LINA Contracts would likewise impose unreasonable delay.

III. Conclusion

Based upon the foregoing, the Bidding Procedures Motion is GRANTED. The hearing to approve the sale and authorize the assumption and assignment of Assumed Executory Contracts shall take place on **December 18, 2018, at 10:00 a.m.**

The Court will sign enter the Bidding Procedures Order in the form proposed by the Debtors. Because bids must be solicited on a shortened timeframe, no objections to the form of the Bidding Procedures Order will be entertained subsequent to this hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Certain of the objections propounded by various parties have now been resolved. Only objections that remain unresolved are discussed herein.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

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Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#10.00 Hearing
RE: [302] Motion for Order Compelling O'Connor Hospital to Assume or Reject Affiliation Agreement; Memorandum of Points and Authorities; Declaration of Ann Dohn

Docket 302

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Motion is DENIED without prejudice.

Pleadings Filed and Reviewed

1. Stanford Health Care's Motion for Order Compelling O'Connor Hospital to Assume or Reject Affiliation Agreement [Doc. No. 302] (the "Motion")
2. Notice of Motion [Doc. No. 303]
3. Official Committee of Unsecured Creditors' Response to Motion [Doc. No. 454] (the "Committee Response")
4. Debtors' Opposition to Motion [Doc. No. 455] (the "Debtor Opposition")
5. Stanford's Reply in Support of its Motion [Doc. No. 545] (the "Reply")

I. Facts and Summary of Pleadings

Summary of Motion

Stanford Health Care ("SHC") moves for an order shortening the time by which O'Connor Hospital (the "Debtor") must assume or reject the *Affiliation Agreement* (the "Agreement") with SHC.

SHC is affiliated with Stanford University School of Medicine and the pediatric hospital, Lucile Salter Packard Children's Hospital. SHC personnel oversee: (a) 115 medical residency and fellowship programs accredited by the Accreditation Counsel for Graduate Medical Education ("ACGME"); (b) three medical residency and fellowship programs pending accreditation by the ACGME; and (c) sixty non-standard fellowship medical residency and fellowship programs. These programs are carried out at 35 participating training sites, and involve 1,350 medical residents and fellows (collectively, the "Trainees") who are obtaining their post-graduate medical

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training through SHC.

To address an increasing need for a physician residency training program in primary care, SHC entered into discussions with the Debtor about developing a joint physician training program. As a result of those discussions, SHC and the Debtor executed the Agreement, which was made effective as of July 1, 2017.

Pursuant to the Agreement, the SHC and the Debtor formed the Stanford Health Care/O'Connor Hospital Family Medicine Program and the Stanford Health Care/O'Connor Hospital Family Medicine/Sports Medicine Program (together, the "Joint Program"). These programs train doctors in these fields by providing three-year residency training programs in family medicine and one-year fellowships in sports medicine with the Debtor. The Joint Program has been reviewed and approved by the ACGME.

The Agreement specifies the terms and condition under which the Joint Program is funded and operated. Under the Agreement and Joint Program, the Debtor receives the services of approximately 27 doctors who provide a substantial portion of the patient care at the Debtor's hospital at virtually no cost to the Debtor.

SHC moves to compel the Debtor to assume or reject the Agreement by no later than November 15, 2018, and seeks a determination that, in the event of rejection, the automatic stay will not bar SHC from terminating the Agreement. SHC contends that because the Agreement provides great benefit to the Debtor, there is no reason to delay the decision to assume or reject it. More importantly, SHC states that there is a looming deadline which necessitates a prompt decision on assumption or rejection. Specifically, the Joint Program is currently in the process of conducting interviews for next year's Joint Program. SHC must rank and submit its list of desired applicants based on those interviews by January 15, 2019. SHC must declare the total number of residents it can accept into the Joint Program by January 31, 2019. These dates are fixed national deadlines; there is no flexibility. Any delay in assuming the Agreement jeopardizes the success of the Joint Program by reducing the number and quality of doctors, if any, who will join the Joint Program next year.

Additionally, SHC needs to know whether the Debtor intends to assume or reject the Agreement as soon as possible so that it can take the appropriate steps to find other comparable residency slots for current Trainees. SHC also contends that the Debtor's market value may be negatively impacted if it rejects the Agreement and the California Attorney General will likely oppose Debtor's attempt to reject the Agreement.

Summary of Debtor's Opposition and Committee Response

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The Debtor opposes the Motion, contending that the relief sought by SHC is premature and would complicate the Debtor's efforts to sell its hospital. The Debtor has filed a Bidding Procedures Motion in connection with the sale of the hospital and, pursuant to that motion, the Debtor requests a late November 2018 auction. The Bidding Procedures Motion further provides that within 48 hours of the conclusion of the auction, the Debtors will provide notice to executory contract counterparties identifying the successful bidder and the contracts to be assumed and assigned along with the cure amounts. Therefore, given this timetable, Debtor contends that SHC will not be prejudiced by having to wait a few additional weeks.

The Debtor also submits that it will be prejudiced if it is forced to decide whether to assume or reject the Agreement prior to the sale. The Debtor asserts that if it decides to assume the Agreement, it will be required to pay cure costs of almost \$900,000 (according to SHC's calculations) without knowing whether the successful bidder will want to assume the Agreement. The Debtor also states that, contrary to SHC's contentions, the Agreement is not revenue positive. Rather, the 2018 costs to the Debtor are (\$1,770,542). Declaration of Carl James ("James Decl."), p. 16:1-2.

The Official Committee of Unsecured Creditors (the "Committee") agrees with the Debtor that it would be premature for the Debtor to be required to make a decision regarding assumption or rejection of the Agreement at this time. The Committee requests that the Motion be denied without prejudice.

Summary of SHC Reply

In support of its Reply, SHC reemphasizes the likelihood that any successful bidder will assume the Agreement and the opposition the Debtor will face from the California Attorney General (the "Attorney General") if the Debtor attempts to reject the Agreement. SHC also argues that its evidence demonstrating that it will likely suffer irreparable harm from any further delay because potential applicants will likely have made their residency decisions before the auction and/or sale hearing remains uncontroverted.

II. Findings of Fact and Conclusions of Law

Pursuant to §365(d)(2), the Debtor may assume or reject an executory contract at any time prior to plan confirmation. However, the Court may order the Debtor, for cause, to "determine within a specified period of time whether to assume or reject" an executory contract. §365(d)(2). "In deciding whether to accelerate the debtor's decision, the court must balance the interests of the contracting party against the interests of the debtor and its estate." *In re Physician Health Corp.*, 262 B.R. 290, 292

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(Bankr. D. Del. 2001).

Having weighed the evidence before it, the Court finds that the Debtor's interests in maintaining flexibility with respect to the marketing of its assets outweighs SHC's interest in obtaining a more immediate decision regarding whether the Agreement will be assumed or rejected. SHC contends that it will suffer irreparable harm if the Debtor does not make a decision by November 15, 2018, with respect to assumption or rejection. However, SHC also presents arguments and evidence in support of its position that assumption "is a no brainer" and highly probable under any scenario. These arguments seems to cut against a finding of irreparable harm to SHC because SHC is presumably making these same representations to potential candidates as they consider whether to take on the risk of possible rejection in making their residency application decisions.

In any event, any prejudice to SHC resulting from an approximate three-week delay in knowing whether the Debtor will assume or reject the Agreement is outweighed by the interest of preserving the Debtor's flexibility with respect to the marketing of its assets. Maintaining such flexibility benefits the Debtor as well as creditors.

Although SHC contends that it may be much later than late November before the Debtor gives notice of its intention to assume or reject its executory contracts, SHC's argument appears to be based an old information (SHC Reply, Exhibits C & D). Concurrently with this Motion, the Court is issuing a tentative ruling with respect to the Debtor's proposed Bidding Procedures Motion. Among the approved provisions therein, is a requirement that within 48 hours of the conclusion of the auction, the Debtor must provide notice to executory contract counterparties of its intent to assume or reject. In the event the auction is delayed or the Debtor fails to comply with that provision, SHC is free to renew its Motion on an expedited basis.

Finally, SHC takes the position that the Attorney General will insist upon assumption of the Agreement and has argued that the Debtor cannot sell the hospital free and clear of the Agreement. However, the Attorney General did not file a response to the Motion and that issue is not presently before the Court. Furthermore, it is premature to determine the enforceability of the Agreement until the final bidder is known.

Based upon the foregoing, the Motion is DENIED without prejudice. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

**United States Bankruptcy Court
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Wednesday, October 24, 2018

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, October 24, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#11.00 Hearing
RE: [334] FINAL HEARING re Motion for Interim Order Authorizing Credit Card Program with City National Bank

fr. 10-3-18

Docket 332

Tentative Ruling:

10/23/2018

For the reasons set forth below, the Debtor's motion for authorization to obtain a credit card facility with City National Bank is GRANTED on a final basis.

Pleadings Filed and Reviewed:

- 1) Emergency Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 332]
 - a) Notice of Errata to Emergency Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 336]
 - b) Application for Order Setting Hearing on Shortened Notice [Doc. No. 334]
 - c) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 341]
 - d) Notice of Hearing on Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 343]
 - e) Declaration of Tania M. Moyron on Telephonic Notice Given of Hearing on Motion for Interim Order Authorizing Credit Card Program with City National Bank [Doc. No. 362]
- 2) Order Authorizing Credit Card Program with City National Bank [Doc. No. 414]
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 414-418 and 421-24 [Doc. No. 529]
- 3) No Opposition is on file

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of

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CONT... Verity Health System of California, Inc.

Chapter 11

its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

On October 5, 2018, the Court granted, on an interim basis, the Debtor’s motion for authorization to open a revolving credit card account with City National Bank. Doc. No. 414. The proposed credit card facility has a credit line of \$20,000. The Debtors use the credit line to pay for immediate expenses arising in the course of delivering health care services, such as purchasing fuel for patient transportation vehicles and purchasing emergency supplies for the Debtors’ facilities. The Debtors state that since filing for bankruptcy, they have had no access to a credit card to use in everyday transactions. This is the final hearing on the Motion seeking authorization to borrow under the credit facility. No opposition to the Motion is on file.

II. Findings and Conclusions

The Motion is GRANTED on a final basis. The Debtors require a credit facility in order to pay for everyday expenses. Absent the proposed credit facility, employees of the Debtors will continue to be required to use their personal credit cards to pay for emergency business expenses, and subsequently seek reimbursement from the Debtors—a cumbersome and unnecessary process.

Pursuant to §363(b)(1), the Court authorizes the Debtor to use property of the estate to fund the \$20,000 deposit with City National Bank, on a final basis. Pursuant to §364(d), the Debtors are authorized to incur the secured credit under the proposed facility, on a final basis.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge’s Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
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CONT... Verity Health System of California, Inc.

Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, October 24, 2018

Hearing Room 1568

11:00 AM

2:17-22786 Beach Dans, Inc.

Chapter 11

#100.00 HearingRE: [139] Motion Notice Of Motion And Motion For Order Approving Payment Of U.S. Trustee Fees From Trust Account; Declaration Of Robert P. Goe In Support Thereof with proof of service

Docket 139

Tentative Ruling:

10/23/2018

The Debtor's Motion – which seeks to pay UST fees from sales proceeds currently held in the Debtor's attorney's client-trust account—is GRANTED in its entirety.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Approving Payment of U.S. Trustee Fees from Trust Account [Doc. No. 139] (the "Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Beach Dans, Inc. (the "Debtor") commenced a voluntary Chapter 11 petition on October 18, 2017. The Debtor's principal asset was a Denny's-franchised restaurant located at 601 Long Beach Blvd., Long Beach, CA 90802 (the "Restaurant"). On December 8, 2017, the Court approved the sale of the Restaurant for \$1,010,000. *See* Doc. No. 57. The sale closed on December 28, 2017.

The Debtor's counsel, Goe & Forsythe, LLP ("G&F"), currently holds \$801,974.68 in sales proceeds in its client trust account. G&F seeks authorization to pay quarterly fees to the United States Trustee (the "UST") for the third quarter of 2018. Fees of \$650.00 are due by October 31, 2018.

No opposition to the Motion is on file.

II. Findings of Fact and Conclusions of Law

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11:00 AM

CONT... Beach Dans, Inc.

Chapter 11

Section 363(b)(1) authorizes the Debtor to use property of the estate, other than in the ordinary course of business, upon Court approval. The Court approves the payment of the UST fees as requested in the Motion.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

**United States Bankruptcy Court
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11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#101.00 Hearing
RE: [302] Motion for Order Compelling O'Connor Hospital to Assume or Reject Affiliation Agreement; Memorandum of Points and Authorities; Declaration of Ann Dohn

Docket 302

***** VACATED *** REASON: WILL BE HEARD AT 10:00 A.M. TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

Adv#: 2:17-01505 Krasnoff, Chapter 7 Trustee v. Peterson et al

#1.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01505. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Ronald Peterson, Maitreya, LLC, a Nevada limited liability company, Maitreya, LLC, an Arizona limited liability company. (Charge To Estate). Trustee's Complaint: (1) For Declaratory Relief; (2) In the Alternative, For Sale of Real Property Pursuant to 11 U.S.C. § 363(h); (3) For Turnover; (4) For Avoidance of Postpetition Transfer; (5) For Declaratory Relief and (6) For Dissolution of Limited Liability Company Nature of Suit: (14 (Recovery of money/property - other)),(31 (Approval of sale of property of estate and of a co-owner - 363(h))), (11 (Recovery of money/property - 542 turnover of property)),(91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy)))(Shechtman, Zev)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-3-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Anne Lan Peterson

Represented By
Vincent B Garcia

Defendant(s):

Ronald Peterson

Pro Se

Maitreya, LLC, a Nevada limited

Pro Se

Maitreya, LLC, an Arizona limited

Pro Se

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Zev Shechtman
Eric P Israel

**United States Bankruptcy Court
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CONT... Anne Lan Peterson

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:16-15536 Hahn Jake Kim

Chapter 7

Adv#: 2:16-01339 Nobel Textile, Inc., a California corporation v. Kim

#2.00 TRIAL RE: [1] Adversary case 2:16-ap-01339. Complaint by Nobel Textile, Inc., a California corporation against Hahn Jake Kim. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

fr. 9-27-16,12-6-16,1-24-17,4-25-17,5-2-17,5-9-17, 8-15-17
10-24-17; 9-24-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-19-18**

Tentative Ruling:

2/20/2018

Tentative Ruling:

Having reviewed the parties' Joint Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)

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CONT...

Hahn Jake Kim

Chapter 7

- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **9/24/2018**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The Court will not require the Plaintiff to submit an order referring this matter to the Mediation Panel, but the Court expects that the parties will complete a second day of mediation before Mr. Nassif as the parties have stated they intend to do in the most recent Status Report.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Hahn Jake Kim

Represented By
Sanaz S Bereliani

Defendant(s):

Hahn Jake Kim

Pro Se

**United States Bankruptcy Court
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9:00 AM

CONT... Hahn Jake Kim

Chapter 7

Plaintiff(s):

Nobel Textile, Inc., a California

Represented By
Nico N Tabibi

Trustee(s):

David A Gill (TR)

Pro Se

**United States Bankruptcy Court
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#3.00 Trial

RE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott)

fr. 2-21-18

Docket 1

***** VACATED *** REASON: CONITNUED 11-26-18 AT 9:00 A.M.**

Tentative Ruling:

2/20/2018 (Amended after hearing in RED)

Tentative Ruling:

Plaintiff has demanded a jury trial. However, "[b]ankruptcy litigants ... have no Seventh Amendment right to a jury trial in dischargeability proceedings." *American Express v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124 (9th Cir. 1996). A bench trial will be conducted in this matter.

Having reviewed Defendant's Unilateral Status Report, the Court HEREBY ORDERS that the following dates shall apply to this action:

- 1) The last day to amend pleadings and/or join other parties is **4/12/2018**.
- 2) The last day to disclose expert witnesses and expert witness reports is **6/26/2018**.
- 3) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **7/26/2018**.
- 4) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **8/14/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)

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9:00 AM

CONT...

Joven C Cabasag

Chapter 7

- 5) The last day for dispositive motions to be heard is **8/21/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
- 6) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **8/25/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
- 7) A Pretrial Conference is set for **9/11/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- 8) Trial is set for the week of **10/29/18**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlager or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Joven C Cabasag

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

CONT... Joven C Cabasag

Chapter 7

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:17-10900 Blue Global, LLC

Chapter 7

Adv#: 2:17-01451 TIMOTHY J. YOO, Chapter 7 Trustee v. SOUNDSIDE HOLDINGS INC

#4.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01451. Complaint by TIMOTHY J. YOO, Chapter 7 Trustee against SOUNDSIDE HOLDINGS INC. (Charge To Estate). Complaint For: (1) Avoidance And Recovery Of Preferential Transfers [11 U.S.C. §§ 547(b), 550(a), And 551]; And (2) Disallowance Of Any Claims Held By Defendant [11 U.S.C. § 502(d)] Nature of Suit: (12 (Recovery of money/property - 547 preference)),(14 (Recovery of money/property - other)) (Kwong, Jeffrey)

fr. 2-21-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-11-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Blue Global, LLC

Represented By
Sanaz S Bereliani

Defendant(s):

SOUNDSIDE HOLDINGS INC

Pro Se

Plaintiff(s):

TIMOTHY J. YOO, Chapter 7

Represented By
Jeffrey S Kwong

Trustee(s):

Timothy Yoo (TR)

Represented By
Monica Y Kim

**United States Bankruptcy Court
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

Adv#: 2:18-01027 Gonzalez v. Cazares, as Trustee of the 2016 Rafael Cazares Tor

#5.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01027. Complaint by Rosendo Gonzalez against Ricardo Cazares, as Trustee of the 2016 Rafael Cazares Torres Family Irrevocable Trust Dated February 19, 2016. (Charge To Estate). Trustee's Complaint: (1) To Avoid and Recover Fraudulent Transfer; and (2) For Turnover Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)),(11 (Recovery of money/property - 542 turnover of property)) (Shechtman, Zev)

Docket 1

***** VACATED *** REASON: STIPULATED JUDGMENT ENTERED 4-9
-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

Defendant(s):

Ricardo Cazares, as Trustee of the

Pro Se

Plaintiff(s):

Rosendo Gonzalez

Represented By
Zev Shechtman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

**United States Bankruptcy Court
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01317 Liberty Asset Management Corporation v. Tsang et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01317. Complaint by Liberty Asset Management Corporation against Steven Tsang, Hieu Tai Tran, Benjamin Kirk, Lucy Gao Seh, Sunshine Valley, LLC, California International Bank, N.A., All Persons Unknown, Claiming Any Legal or Equitable Right, Title, Estate, Lien, or Interest in the Property Described in the Complaint Adverse to Plaintiff's Title, or Any Cloud Upon Plaintiff's, DOES 1 through 10. (Charge To Estate). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(11 (Recovery of money/property - 542 turnover of property)) (Stein, Michael)

fr. 3-26-18

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 10-15-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford Frey

Defendant(s):

Steven Tsang

Pro Se

Hieu Tai Tran

Pro Se

Benjamin Kirk

Pro Se

Lucy Gao Seh

Pro Se

**United States Bankruptcy Court
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9:00 AM

CONT... Liberty Asset Management Corporation Chapter 11

Sunshine Valley, LLC Pro Se

California International Bank, N.A. Pro Se

All Persons Unknown Claiming Pro Se

DOES 1 through 10, inclusive Pro Se

Plaintiff(s):

Liberty Asset Management

Represented By
Jeffrey S Kwong
Michael Stein
Linda Kim
David B Golubchik

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 29, 2018

Hearing Room 1568

9:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01028 Official Committee of Unsecured Creditors of Garde v. The Irving I.

#7.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01028. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center against The Irving I. Moskowitz Foundation. (14 (Recovery of money/property - other)) (Bisconti, Anthony)

Docket 1

***** VACATED *** REASON: DISMISSED ON 5-21-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

The Irving I. Moskowitz Foundation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Anthony Bisconti

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#100.00 Hearing re whether the case should be dismissed

fr. 9-26-18

Docket 0

Tentative Ruling:

10/29/2018:

Hearing required. The Court has reviewed the papers filed on Saturday, October 27 by the Debtor and the Trustee with respect to Luiz Munoz's Emergency Motion.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#100.10 HearingRE: [200] Emergency motion Motion Of Luis Munoz To: (1) Re-Set Munoz Motion For Relief From Stay To Court Calendar; And (2) Compel Chapter 7 Trustee To Make Monthly Payments To Luis Munoz; Declaration Of Robert M. Yaspan

Docket 200

Tentative Ruling:

See Cal. No. 100, incorporated in full by reference.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff
Aaron E de Leest

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-19830 Rosie Marie Nunez

Chapter 7

#101.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Ford Flex, VIN 2FMGK5C8XGBA06755 . (Wang, Jennifer)

Docket 11

Tentative Ruling:

10/25/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit Movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant has established a *prima facie* case that cause exists, and Debtor has not responded with evidence establishing that the property is not declining in value or that Movant is adequately protected.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

CONT... Rosie Marie Nunez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rosie Marie Nunez

Represented By
Heather J Canning

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-19830 Rosie Marie Nunez

Chapter 7

#101.10 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Nissan Pathfinder with Proof of Service. (Zahradka, Robert)

Docket 13

Tentative Ruling:

10/25/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

CONT... Rosie Marie Nunez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rosie Marie Nunez

Represented By
Heather J Canning

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-20677 Otto Leonel Avendano Ortega

Chapter 7

#102.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Toyota Camry .

Docket 9

Tentative Ruling:

10/25/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

CONT... Otto Leonel Avendano Ortega

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Otto Leonel Avendano Ortega

Represented By
Theresa Hana

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, October 29, 2018

Hearing Room 1568

10:00 AM

2:18-20281 Ronelio Garcia

Chapter 11

#103.00 HearingRE: [36] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1947 237th Pl, Torrance, CA 90501 . (Wong, Jennifer)

Docket 36

Tentative Ruling:

10/25/2018

For the reasons set forth below, the Motion is DENIED without prejudice.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property) [Doc. No. 36] (the "R/S Motion")
2. Debtor's Response to Motion Regarding the Automatic Stay and Declaration(s) in Support [Doc. No. 38] (the "Opposition")
3. As of the preparation of this tentative ruling, Movant has not filed a reply

I. Facts and Summary of Pleadings

Debtor-in-possession Ronelio Garcia (the "Debtor") filed this voluntary chapter 11 case on September 4, 2018 (the "Petition Date"). On October 5, 2018, Wells Fargo Bank, N.A., ("Movant") filed a "Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)" [Doc. No. 36] (the "R/S Motion") seeking relief from the automatic stay pursuant to §§ 362(d)(1) and (d)(2) with respect to real property located at 1947 237th Pl., Torrance, CA 90501-6103 (the "Property"). Movant asserts that cause exists to grant it relief from stay because the Debtor only has \$732.43 in equity in the Property and has failed to make approximately 20 monthly payments. Movant states that its total claim as of October 5, 2018 was \$924,267.57, which almost entirely exceeds the Property's alleged fair market value of \$925,000. After factoring in costs of sale, Movant asserts that the Debtor has no equity in the Property and Movant's interest is not adequately protected by an equity cushion.

On October 15, 2018, the Debtor filed an opposition to the R/S Motion [Doc. No. 38] (the "Opposition"). In support of the Opposition, the Debtor attached his

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Monday, October 29, 2018

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CONT...

Ronelio Garcia

Chapter 11

declaration stating that the Property is currently listed for sale for \$1,150,000, that he intends to cure arrears as soon as the sale closes and offers to make adequate protection payments of one contractual payment per month. Based on this fair market value, the Debtor contends that Movant is adequately protected by a 19.56% equity cushion, or \$225,000. The Debtor also disputes Movant's contention that the Property is not necessary for an effective reorganization.

As of the date of the preparation of this tentative ruling, Movant has not filed a reply.

II. Findings of Fact and Conclusions of Law

11 U.S.C. § 362(d)(1)

Under 11 U.S.C. § 362(d)(1), the Court shall grant relief if the movant's interest in the property is not protected by an adequate equity cushion.

In this case, Movant submitted an "Exterior-Only Inspection Residential Appraisal Report" dated June 7, 2018 in support of its \$925,000 valuation. Debtor submitted a declaration stating that the Property is currently listed at \$1,150,000, but did not attach a listing agreement or competing appraisal. The Debtor has also offered to begin making monthly adequate protection payments to Movant in the amount of \$8,829.09 until the Property is sold.

Relief from stay under § 362(d)(1) is DENIED without prejudice. To ensure that Movant's interest is adequately protected, the Debtor is directed to make monthly adequate protection payments to Movant in the amount of \$8,829.00 and to pay Movant's claim, in full, upon the close of escrow – which will presumably occur within the next few months. If the Debtor fails to make any adequate protection payments by the close of business on the 5th day of each month, on declaration so stating, Movant may lodge an order granting relief from stay under § 362(d)(1), and the Court will enter such order without further notice or hearing.

11 U.S.C. § 362(d)(2)

Under 11 U.S.C. § 362(d)(2), the court shall grant relief from the stay if "(A) the

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CONT... Ronelio Garcia

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debtor does not have any equity in such property; and (B) such property is not necessary for an effective reorganization."

On this record the Court is not persuaded to find that the Debtor lacks equity in the Property or that the Property is not necessary for an effective reorganization. Accordingly, Movant's request for relief under § 362(d)(2) is denied without prejudice.

The Debtor shall lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ronelio Garcia

Represented By
Dennis E McGoldrick

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 30, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18; 5-29-18; 7-30-18; 9-12-18; 10-9-18

Docket 0

*** VACATED *** REASON: CONTINUED 11-16-18 AT 9:00 .AM.

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

Trustee(s):

Timothy Yoo (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, October 30, 2018

Hearing Room 1568

9:00 AM

CONT...

Morad Javedanfar

Anthony A Friedman

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 31, 2018

Hearing Room 1568

10:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#1.00 Hearing
RE: [16] Motion for Approval of Cash Collateral Stipulation

fr. 5-16-18; 7-18-18; 8-20-18

Docket 16

Tentative Ruling:

10/30/2018:

No appearances required. For the reasons set forth below, CONTINUE hearing to January 16, 2019 at 10:00 a.m.

This is a continued hearing on the "Motion for Approval of Cash Collateral Stipulation" (the "Motion") [Doc. No. 16]. The Court held an initial hearing on the Motion on May 16, 2018. The Debtor and the United States, on behalf of the IRS, appeared at the hearing. The parties agreed on the record at the hearing that the parties would stipulate to further use of cash collateral for 60 days, through July 18, 2018. *See* Doc. Nos. 21, 27. The Debtor's interim use of cash collateral has been extended a number of times. *See* Doc. Nos. 31, 33, 60. On September 19, 2018, the Court entered an order authorizing the Debtor's continued interim use of cash collateral through October 31, 2018 [Doc. No. 70]. As set forth in that order, the Court directed the IRS to file any opposition to the Debtor's continued use of its cash collateral by October 17, 2018. *Id.* As of the date of the preparation of this tentative ruling, the IRS has not objected.

Based on the foregoing, the Debtor is authorized to use cash collateral on an interim basis through **January 16, 2019**. The Debtor's continued use of cash collateral remains conditioned upon the Debtor's tender of \$1,000 monthly adequate protection payments to the IRS, in the form of a cashier's check or money order in their office, no later than the close of business on the 9th of each month. If at the close of business on the 9th of the month, the IRS does not receive the Debtor's adequate protection payment, on declaration so stating, the IRS may lodge an order dismissing or converting the case, and the Court will enter such order without further

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CONT... Henderson Mechanical Systems, Inc.
notice or hearing.

Chapter 11

A final hearing regarding the Debtor's use of cash collateral shall be held on **January 16, 2019 at 10:00 a.m.** The deadline for the IRS to oppose the continued use of cash collateral is **January 2, 2019**. The deadline for the Debtor to file a reply to any opposition filed by the IRS is **January 9, 2019**.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 31, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#2.00 Hearing

RE: [632] Debtors Motion For Entry of an Order Sealing Employee Information

Docket 632

Tentative Ruling:

10/30/2018:

For the reasons set forth below, the Motion to Seal is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Debtors' Motion and Motion for Entry of an Order Sealing Employee Information [Doc. No. 632] (the "Motion to Seal")
 - a) Declaration of Richard G. Adcock in Support of Debtors' Motion
 - b) Application for Order Setting Hearing on Shortened Notice [Doc. No. 633]
 - i) Notice of Errata to Application for Order Setting Hearing on Shortened Notice [Doc. No. 651]
 - ii) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 635]
 - c) Notice of Hearing on Debtors' Motion for Entry of an Order Sealing Employee Information [Doc. No. 648]
 - i) Declaration of Service by Kurtzman Carson Consultants, LLC [Doc. No. 660]
- 2) U.S. Trustee's Objection to Debtors' Motion for Entry of an Order Sealing Employee Information in Conjunction with KEIP/KERP Motion [Doc. No. 667]
 - a) Evidentiary Objection to Declaration of Richard G. Adcock in Support of Debtors' Motion for Entry of an Order Sealing Employee Information [Doc. No. 668]
- 3) Debtors' Reply to U.S. Trustee's Objection to Debtors' Motion for Entry of an Order Sealing Employee Information in Conjunction with KEIP/KERP Motion [Doc. No. 708]
 - a) Debtors' Reply to U.S. Trustee's Evidentiary Objection to Declaration of Richard G. Adcock in Support of Debtors' Motion for Entry of an Order Sealing Employee Information [Doc. No. 706]

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10:00 AM

CONT... Verity Health System of California, Inc.

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- 4) Official Committee of Unsecured Creditors' Response to Debtors' Motion for Entry of an Order Sealing Employee Information [Doc. No. 698]
- 5) Related Papers:
 - a) Notice of Motion and Debtors' Motion for Entry of Order Authorizing and Approving (I) Key Employee Incentive Plan, and (II) Key Employee Retention Plan [Doc. No. 631] (the "KEIP/KERP Motion")

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

A hearing on the Debtors' motion seeking approval of a Key Employee Retention Plan ("KERP") and Key Employee Incentive Plan ("KEIP") (the "KERP/KEIP Motion") is set for November 13, 2018, at 10:00 a.m. In support of the KERP/KEIP Motion, the Debtors seek authorization to file under seal the following information (the "Confidential Information"):

- 1) The identity and salary of the twenty employees subject to the KERP.
- 2) The identity and salary of the twenty-five employees subject to the KEIP.

The Debtors assert that if the Confidential Information is publicly disclosed, they will be irreparably harmed because employee morale will be affected negatively, employees not subject to the KERP or KEIP will leverage the Confidential Information against the Debtors, and competitors will seek to poach the Debtors' employees.

The United States Trustee (the "UST") is the only party who opposes the Motion to Seal. The UST argues that the Confidential Information is not a "trade secret or confidential research, development, or commercial information" within the meaning of §107(b)(1), and is not otherwise subject to protection under any of the other provisions of §107. The UST asserts that the testimony offered in support of the Motion to Seal by the Debtors' CEO, Richard G. Adcock (the "Adcock Declaration"), is speculative and is an unqualified opinion.

In reply to the UST, the Debtors maintain that the Confidential Information is commercial information within the meaning of §107(b)(1), and cite multiple

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CONT... Verity Health System of California, Inc.

Chapter 11

unpublished decisions in which similar information was sealed. The Debtors argue that Mr. Adcock's testimony is admissible, and point to numerous other bankruptcy proceedings in which similar testimony was admitted.

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the Motion to Seal. The Committee requests that, in the event the Motion is granted, any order granting the Motion be without prejudice to the rights of any party in interest to move to unseal all or part of the Confidential Information.

II. Findings and Conclusions

Section 107(b) provides in relevant part: "On request of a party in interest, the bankruptcy court shall ... protect an entity with respect to a trade secret or confidential research, development, or commercial information." Bankruptcy Rule 9018 implements §107, and provides in relevant part:

On motion or on its own initiative, with or without notice, the court may make any order which justice requires ... to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

Commercial information is "information which would cause 'an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.'" *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994) (internal citations omitted); *Ad Hoc Protective Comm. for 10 1/2% Debenture Holders v. Itel Corp. (In re Itel Corp.)*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982) (explaining that "commercial information" is information that, if disclosed, would afford "an unfair advantage to competitors by providing them information as to the commercial operations of the debtor").

Confidential commercial information qualifies for protection under §107(b) even if it does not rise to the level of a trade secret. *Orion Pictures Corp.*, 21 F.3d at 27. A party seeking a protective order under §107 need not satisfy Civil Rule 26, which provides that a protective order may issue only "for good cause":

When Congress addressed the secrecy problem in § 107(b) of the Bankruptcy Code it imposed no requirement to show "good cause" as a condition to

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Verity Health System of California, Inc.

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sealing confidential commercial information. This omission is particularly significant because FRCP 26(c), from which the language of § 107(b) appears to have been drawn, expressly required “good cause” to be established before a discovery protective order could be granted—even when the material sought to be protected was “a trade secret or other confidential research, development, or commercial information.”

Orion Pictures Corp., 21 F.3d at 28.

Protection under §107 is mandatory upon a showing that the information at issue falls within a protected category:

In other areas of the law, courts have relied on showings of “compelling reasons,” or balancing the interests of privacy and public right to know, when reviewing a request for judicial non-disclosure. The mandatory language of § 107(b) negates the need for such inquiries. Thus, if the information fits any of the specified categories, the court is *required* to protect a requesting interested party and has no discretion to deny the application. The discretion lies not in whether a court may protect an interested party, but in whether the matters complained of fall within the exception and in what type of protective remedy is necessary under the facts of each case.

Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.), 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995) (internal citations and quotation marks omitted); *see also Father M, et al. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 430–31 (9th Cir. 2011) (“[Section] 107 eliminates a court’s discretion by making it mandatory for a court to protect documents falling into one of the enumerated exceptions.... Under § 107, the strength of the public’s interest in a particular judicial record is irrelevant; if the exception pertains, the bankruptcy court must issue a protective order on a motion by the affected person or party.”).

The Court finds that the Confidential Information constitutes “confidential ... commercial information” within the meaning of §107(b). The Motion to Seal is supported by unconverted testimony from Mr. Adcock, establishing that disclosure of the Confidential Information would likely cause competitors to poach the Debtors’ key employees. [Note 1] Therefore, disclosure of the Confidential Information would provide competitors an unfair advantage by giving them insight into the Debtors’

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CONT... Verity Health System of California, Inc.

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compensation structure. Mr. Adcock's testimony further establishes that disclosure would harm both the morale of the Debtors' employees who are not eligible to participate in the KERP and KEIP, and the morale of certain key employees (who would learn their peers' compensation). The Court finds that disclosure would unfairly disadvantage the Debtors relative to competitors not required to disclose equivalent information.

The Court's finding is bolstered by the decisions of multiple other bankruptcy courts, who have found that compensation data of the type at issue here is subject to protection under §107(b). *See, e.g., In re Allied Holdings, Inc.*, 377 B.R. 716, 717–18, n.1 (Bankr. N.D. Ga. 2005) (sealing employee names and compensation data); *In re Georgetown Steel, LLC*, 306 B.R. 542, 546 (Bankr. D. S.C. 2004) (finding that publication of compensation data would "place Debtor at a competitive disadvantage" in retaining employees); *In re A123 Systems, Inc.*, Case No. 12-2859 [Doc. No. 247] (Bankr. D. Del. Nov. 6, 2012) (sealing employee names and compensation data); *In re Brookstone*, Case No. 14-10752 [Doc. No. 24] (Bankr. D. Del. Apr. 3, 2014) (same).

Because the Confidential Information constitutes "commercial information" as that term is defined in §107(b), protection is mandatory. *See Phar-Mor, Inc.*, 191 B.R. at 679; *Father M*, 661 F.3d at 430–31 (cited above). The UST's objection to the Motion is overruled.

There is no merit to the UST's argument that disclosure of the Confidential Information will not subject the Debtors to the poaching of its key employees. The UST's theory is that competitors could simply ask key employees whom they sought to recruit about the terms of their compensation. The UST's argument overlooks the reality that the Debtors' key employees would be unlikely to disclose such information to competitors or recruiters. Under the KERP and KEIP, employees forfeit their right to receive incentive payments if they disclose Confidential Information to anyone not authorized to receive it.

The Committee's request that the order granting the Motion be without prejudice to the ability of any party to move to unseal the Confidential Information is GRANTED. The Debtor shall include language to that effect in its proposed order on the Motion.

Based upon the foregoing, the Motion to Seal is GRANTED in its entirety. The Debtor shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

Rulings on United States Trustee's Evidentiary Objections to Adcock

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, October 31, 2018

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Declaration

Adcock Decl. ¶5: "I have read the KEIP/KERP Motion, the Seal Motion and the Kearns Declaration, and agree with the factual representations contained therein."

UST Objection: "Local Bankruptcy Rule 9013-1(i), in pertinent part, states '[t]he verification of a motion is not sufficient to constitute evidence on a motion, unless otherwise ordered by the court.'"

Ruling: Objection overruled. As the Debtors note, paragraph five of the Adcock Declaration is not intended to proffer as evidence statements elsewhere in the moving papers. The Court notes that in making the findings of fact necessary to adjudicate the Motion to Seal, it relies only upon facts supported by declaration testimony, not upon representations or argument set forth in the moving papers.

Adcock Decl. ¶8: "The Debtors seek to seal the Confidential Information (as defined in the Seal Motion) to protect their employees and their trade secrets, not as any litigation tactic. The Debtors will be harmed if Confidential Information could be obtained by competitors who would be able to "poach" employees and negotiate at an advantage against the Debtors. Additionally, compensation information is protected to prevent employees from examining what their peers earn. Employee morale would be negatively affected by publishing the identities and salaries of the KERP and KEIP Participants. Absent sealing of the Confidential Information and based upon my observations and experience, I believe critical employees will leave and/or otherwise will not perform as necessary and the Debtors' will have a limited ability to hire qualified replacement employees in the future."

UST Objection: "FRE Rules 103(c), 602, 611(a), and 701/703. The contention that competitors may 'poach' and negotiate at an advantage against the Debtors assumes facts not in evidence, is speculative and is an unqualified opinion. Also FRE Rule 602 and 701 regarding speculation that competitors will actually use information to 'poach' employees or otherwise negotiate at an advantage against the Debtors. It is also speculative that morale may be negatively impacted by the publication of the identities and salary of the KERP and KEIP participants and that critical employees may leave or otherwise not perform as necessary or that Debtors' will have limited ability to hire replacement employees.

"The United States Trustee notes and presumes a number of KERP and KEIP participants include Debtors' former or present insiders, officers or directors whose compensation and bonuses in the one year prior to filing have already been disclosed

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CONT... **Verity Health System of California, Inc.**

Chapter 11

in connection with the response to questions 4 and 30 of the statement of Financial Affairs or in the Notice of Setting of Insider Compensation."

Ruling: The UST's objections under Rules 701 and 703 are OVERRULED. Rule 701 provides that testimony offered by a lay witness must not be based upon scientific, technical, or otherwise specialized knowledge within the scope of Rule 702. Rule 703 provides that an expert may offer testimony based upon "facts or data in the case that the expert has been made aware of or personally observed."

The declaration filed by Mr. Adcock in support of the Motion to Seal (the "Adcock Decl.") [Doc. No. 634] incorporates by reference Mr. Adcock's declaration filed in support of the Debtors' first-day motions (the "Adcock First Day Decl.") [Doc. No. 8]. The Court considers both the Adcock Declaration and the Adcock First Day Decl. in adjudicating the UST's evidentiary objections.

Mr. Adcock's declarations establish that he is qualified to offer expert opinion regarding the business operations of a large integrated healthcare system such as that operated by the Debtors. Specifically, Mr. Adcock's testimony shows that:

- 1) Mr. Adcock has 25 years' experience in the healthcare industry, including 15 years' experience with not-for-profit operations. Adcock Decl. at ¶3. Mr. Adcock has accumulated extensive senior-level experience in the areas of healthcare delivery, hospital acute care services, health plan management, product management, acquisitions, integrations, population health management, budgeting, disease management, medical devices, human resources, and personnel management. *Id.*
- 2) Mr. Adcock became VHS' Chief Operating Officer ("COO") in August 2017. Mr. Adcock became VHS' Chief Executive Officer ("CEO") in January 2018. In his roles as COO and CEO at VHS, Mr. Adcock has become intimately familiar with all aspects of VHS and its affiliates. *Id.* at ¶2; *see also* Adcock First Day Decl. at ¶¶11–130 (providing a comprehensive overview of all aspects of the Debtors' business operations).
- 3) From 2014 until 2017, Mr. Adcock served as Executive Vice President and Chief Innovation Officer of Sanford Health, a large integrated health system headquartered in the Dakotas. First Day Decl. at ¶4. Mr. Adcock has also served as a Director of Engineering at GE Medical Systems and the Vice President of Research and Development at Micro Medical Systems. *Id.* at ¶5.

Under Federal Rule of Evidence ("FRE") 702, an expert may be qualified by

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CONT... Verity Health System of California, Inc.

Chapter 11

"experience" or "training." Here, Mr. Adcock's declarations amply establish that he has sufficient experience and training to testify as an expert regarding the business operations of the Debtors. As noted by one bankruptcy court, witnesses who have worked in the industry at issue "may be prime candidates for providing relevant [expert] testimony." *Stanziale v. Southern Steel & Supply, LLC (In re Conex Holdings, LLC)*, 518 B.R. 269, 286 (Bankr. D. Del. 2014).

It is within the scope of Mr. Adcock's expertise to testify that disclosure of the Confidential Information would negatively affect the morale of the Debtors' employees, would likely cause competitors to poach employees from the Debtors, and would likely cause the Debtors' critical employees to leave or to fail to perform as necessary.

For the same reasons, the UST's objection under Rule 602 (which requires testimony to be supported by personal knowledge) is overruled. Mr. Adcock's declarations contain sufficient evidence showing that he has personal knowledge of the Debtors' business operations.

Rule 611(a) requires the Court to "exercise reasonable control over the mode and order of examining witnesses" so as to effectively determine the truth, avoid wasting time, and protect witnesses from undue embarrassment. The Court finds that consideration of Mr. Adcock's declarations, in their entirety, is consistent with the objectives of Rule 611(a), and overrules the UST's objection under that rule.

Rule 103(c) provides that the "court may make any statement about the character or form of the evidence, the objection made, and the ruling." There is no basis for excluding any portion of Mr. Adcock's declarations under Rule 103(c). The UST's objection under Rule 103(c) is overruled.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

For the reasons set forth below, the UST's evidentiary objections to the Adcock Declaration are overruled.

**United States Bankruptcy Court
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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-17298 Roy Noe Brave Viera and Jhoseline Brave Rivera

Chapter 7

#1.00 HearingRE: [20] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Mini Cooper Wagon 4D Countryman S I4 . (Skigin, Cheryl)

Docket 20

Tentative Ruling:

11/1/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
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Judge Ernest Robles, Presiding
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10:00 AM

CONT... Roy Noe Brave Viera and Jhoseline Brave Rivera

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Roy Noe Brave Viera

Represented By
Kelly L Casado

Joint Debtor(s):

Jhoseline Brave Rivera

Represented By
Kelly L Casado

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-19473 Petra Gonzalez

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 15517 Mission Preserve Pl., San Diego, CA 92131 . (O, Christina)

Docket 9

Tentative Ruling:

11/1/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved the transfer of all or part ownership of, or other interest in, the Property without the consent of Movant or court approval and multiple bankruptcy cases affecting the Property. Declaration of Melba Arredondo in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed

**United States Bankruptcy Court
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CONT... Petra Gonzalez

Chapter 7

circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Petra Gonzalez	Pro Se
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Trustee(s):

Wesley H Avery (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-20885 Barrington H Hall

Chapter 7

#3.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 6856 White Avenue, Long Beach, CA 90806 . (Weber, Edward)

Docket 11

Tentative Ruling:

11/1/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Court finds that there is sufficient evidence to grant relief pursuant to 11 U.S.C. § 362(d)(4). The filing of the petition was part of a scheme to delay, hinder, and defraud creditors, which involved multiple bankruptcy cases affecting the Property. Declaration of Marcel Bruetsch in support of Motion at paragraph 18.

For the same reasons, the Motion is GRANTED pursuant to section 362(d)(1) based on Debtor's bad faith filing. The 14-day period specified in Fed.R.Bankr.P. 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the Court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real

**United States Bankruptcy Court
Central District of California
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Monday, November 5, 2018

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10:00 AM

CONT... Barrington H Hall

Chapter 7

property shall accept a certified copy of this order for indexing and recording. All other relief is denied.

The Court notes that Debtor's case was dismissed on October 19, 2018. The Court vacates the dismissal for the limited purpose of entering an order on this Motion.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Barrington H Hall	Pro Se
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Trustee(s):

John J Menchaca (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-21463 William Manuel Olano Deras and Brittne Nicole Rascon

Chapter 7

#4.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA ACCORD, VIN: 1HGC R2F5 6GA1 41047 .

Docket 8

Tentative Ruling:

11/1/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 5, 2018

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10:00 AM

CONT... William Manuel Olano Deras and Brittne Nicole Rascon Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

William Manuel Olano Deras

Represented By
Raj T Wadhvani

Joint Debtor(s):

Brittne Nicole Rascon

Represented By
Raj T Wadhvani

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [515] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: . (Polis, Thomas)

Docket 515

***** VACATED *** REASON: RESCHEDULED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [506] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: License Bonds .

Docket 506

***** VACATED *** REASON: RESCHEDULED 11-13-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 5, 2018

Hearing Room 1568

10:00 AM

2:18-19433 Rafael Antonio Granados

Chapter 7

#7.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1610 W. Gardena Blvd., Gardena, CA 90247 .

Docket 9

Tentative Ruling:

11/1/2018

The Motion is DENIED without prejudice. Pursuant to the Court's "Self-Calendaring Instructions" for residential unlawful detainer motions for relief from stay on shortened notice, no later than 7-days prior to the hearing, the motion and supporting documents are required to be served by posting or personal service on the Debtor. Here, although the proof of service attached to the Motion is dated 10/29/18, it does not state what date the pleadings were served on the Debtor and does not specify that the Debtor was served either by personal delivery or posting (as opposed to overnight mail service, facsimile transmission and/or e-mail) as required by the Court's Self-Calendaring Instructions. The Movant may refile the Motion with service upon the Debtor in a manner consistent with the Court's Self-Calendaring Instructions.

Party Information

Debtor(s):

Rafael Antonio Granados

Represented By
Nicholas M Wajda

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:11-10532 Wellman Alcides Ponce Martinez

Chapter 7

#1.00 APPLICANT: Accountant for Trustee: Biggs & Co

Hearing re [62] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/5/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$4,123.50

Expenses: \$144.59

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wellman Alcides Ponce Martinez

Represented By
Sydell B Connor

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:11-10532 Wellman Alcides Ponce Martinez

Chapter 7

#2.00 APPLICANT: Trustee: ROSENDO GONZALEZ

Hearing re [62] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/5/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$7,085.44

Total Expenses: \$916.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wellman Alcides Ponce Martinez

Represented By
Sydell B Connor

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:11-10532 Wellman Alcides Ponce Martinez

Chapter 7

#2.10 HearingRE: [60] Application for Compensation First and Final Application for Compensation and Reimbursement of Costs of Leonard Carder, LLP and Altshuler Berzon, LLP for Leonard Carder LLP and Altshuler Berzon LLP, Trustee's Attorney, Period: 9/1/2014 to 8/23/2018, Fee: \$55,711.67, Expenses: \$2,500. , Rosendo)

Docket 60

Tentative Ruling:

11/5/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$58,211.67

Expenses: \$2,500

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wellman Alcides Ponce Martinez

Represented By
Sydell B Connor

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#3.00 Hearing
RE: [31] Motion For Summary Judgment

fr. 10-2-18

Docket 31

Tentative Ruling:

11/5/2018

This hearing is VACATED.

The Court has issued an order requiring Plaintiffs to show cause why this action should not be dismissed for failure to prosecute, based upon Plaintiffs' failure to submit further briefing in support of their motion for summary judgment, as ordered by the Court. The hearing on the Order to Show Cause shall take place on **December 12, 2018, at 10:00 a.m.**

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Leonard Pena

FRIENDGIFTR, INC

Represented By
Leonard Pena

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

CONT... ROBERT MARK CARPENTER

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#4.00 Hearing

RE: [266] Motion RE: Objection to Claim Number 14 by Claimant Carlos Mosquera. et al.. OBJECTION TO CLASS PROOF OF CLAIM OF CARLOS MOSQUERA AND JUAN F. RODRIGUEZ; NOTICE OF MOTION AND MOTION BY CREDITOR PEOPLE OF THE STATE OF CALIFORNIA FOR AN ORDER DISALLOWING IN PART CLAIM #14; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF TIMOTHY KOLESNIKOW IN SUPPORT THEREOF

fr. 8-15-18

Docket 266

Tentative Ruling:

11/5/2018

For the reasons set forth in the Court's tentative ruling approving Debtor's motion to approve a settlement with the Class Claimants and Committee of Unsecured Creditors (*see* November 6, 2018, Cal. No. 5), the Court DENIES the Objection to Claim 14 as MOOT.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

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David R Haberbush

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#5.00 HearingRE: [286] Motion to Approve Compromise Under Rule 9019 With Proof of Service

Docket 286

Tentative Ruling:

11/5/2018

For the reasons set forth below, the Settlement Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion By Debtor and Debtor-In-Possession For Order Approving Settlement Between Debtor, The Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and All Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 286] (the "Settlement Motion")
2. Declarations of Alfredo Barajas, Elizabeth Zarate, Neil S. Lerner, Daniel H. Reiss, and David R. Haberbush in Support of Settlement Motion [Doc. No. 287]
3. Notice of Settlement Motion [Doc. Nos. 300, 302]
4. Fully Executed Settlement Agreement [Doc. No. 313]
5. California Attorney General's Opposition to Settlement Motion [Doc. No. 373] (the "Opposition")
6. Committee's Reply [Doc. No. 381]
7. Debtor's Reply [Doc. No. 382]
8. Declarations of Alfredo Barajas and David R. Haberbush in Support of Debtor's Reply [Doc. No. 385]
9. State's Supplemental Declaration of Timothy J. Kolesnikow in Response to Replies to Opposition to Approve Settlement [Doc. No. 391] (the "State's Supplemental Declaration")

I. Facts and Summary of Pleadings

Debtor-in-possession, Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor"), filed a

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voluntary Chapter 11 petition on July 6, 2017 (the "Petition Date"). The Debtor operates a trucking company throughout the western United States. Prior to the Petition Date, the Debtor employed each of its drivers as an independent contractor, with wages paid through a 1099. As a result, no withholdings for taxes or other required withholdings were taken from their compensation. These employment practices led to two lawsuits – the Class Action (defined below) and the Enforcement Action (defined below and referred to by the Debtor as the California Lawsuit) before the Superior Court of the State of California (the "State Court"). The Debtor sought bankruptcy protection to limit its potential liability in the Class Action and Enforcement Action and to reorganize its affairs.

The Enforcement Action

The State of California (the "State") commenced the Enforcement Action against the Debtor and its principal, Alfredo Barajas, on September 5, 2008. The Enforcement Action alleges that the Debtor misclassifies its driver employees as independent contractors, and thus commits "unfair competition" within the meaning of California Business and Professions Code §17200, by failing to pay the minimum wage, secure workers' compensation insurance, and report and remit payroll taxes. The State seeks an injunction, civil penalties, and restitution of unpaid wages.

In August 2009, the Debtor and Mr. Barajas filed a motion for judgment on the pleadings in the Los Angeles Superior Court (the "State Court"), arguing that the State's claims against them were pre-empted by the Federal Aviation Administration Authorization Act. On September 22, 2009, the State Court granted the motion and entered judgment in favor of the Debtor and Mr. Barajas. On December 7, 2009, the State appealed the judgment. The Enforcement Action was stayed during the appeal, which lasted from December 7, 2009 to April 8, 2015. The State Court's judgment in favor of the Debtor and Mr. Barajas was ultimately reversed and litigation began anew in the State Court in April 2015.

On February 18, 2016, the State filed a supplemental complaint (the "Supplemental Complaint"), adding the Debtor's sister company, Green Anchor Lines, Inc. ("Green Anchor") as a defendant. The State alleges that Green Anchor supplied the Debtor's drivers from 2009 through at least December 2016. The Supplemental Complaint makes the same allegations and seeks the same relief as the

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The Class Action

On June 14, 2017, Carlos Mosquera and Juan Francisco Rodriguez, on behalf of themselves and all others similarly situated (the "Class Claimants") commenced an action against the Debtor in the State Court Court (the "Class Action"). The Class Action seeks restitution and damages from the Debtor due to the Debtor's employment practices for all drivers, statutory penalties under the California Labor Code, and an injunction. The Class Action is brought under the Private Attorneys General Act ("PAGA").

The Class Action has not been set for trial but, absent approval of the parties' settlement agreement, the Debtor expects trial will likely be set for the latter half of 2019 and that it will be forced to incur significant attorneys' fees and expenses in preparing for trial.

The Removal and Remand Proceedings

On or about July 7, 2017, the Debtor removed both the Enforcement Action and Class Action to this Court.

On July 28, 2017, the State moved to remand the Enforcement Action back to State Court for adjudication, which this Court granted by Order entered September 15, 2017. *See People of the State of California, ex rel. Edmund G. Brown Jr., Attorney General of the State of California v. Pac Anchor Transportation, Inc., et al.* 2:17-ap-01345-ER, Adv. Dkt. Nos. 10, 23.

On September 5, 2017, this Court *sua sponte* issued an Order to Show Cause why the Class Action should not be remanded to the State Court for adjudication. On October 2, 2017, the Committee, Class Claimants, and the Debtor filed a stipulation with this Court agreeing to remand the Class Action to State Court and to a modification of the automatic stay of 11 U.S.C § 362 to allow for adjudication by the State Court (the "Remand Stipulation"), which the Court approved by Order entered October 4, 2017 (the "Remand Order"). *See Mosquera et al v. Pac Anchor Transportation, Inc.*, 2:17-ap-0136-ER, Adv. Dkt. Nos. 10, 12. Additionally, the

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Remand Order stated:

Plaintiffs shall have until January 2, 2018 to file a proof of claim in Debtor's bankruptcy proceeding and Plaintiffs may file a single proof of claim on behalf of the entire class that Plaintiffs represent without the need to file a motion with the bankruptcy court or take any other procedural action. By virtue of this Order, Plaintiffs shall be authorized to file a single proof of claim on behalf of the entire class without taking any other action or seeking any other authority to do so.

Remand Order, ¶ 5.

The State and Class Claimants' Proofs of Claim

On January 2, 2018, the State filed Proof of Claim Number 12 which consists entirely of the Enforcement Action Complaint and what appears to be two copies of the Supplemental Complaint ("State Claim 12"). Minutes later, the State filed Proof of Claim Number 13 using the Court mandated form and asserting a claim for \$22,300,000 for "[r]estitution for unpaid wages, unreimbursed expense, and civil penalties." The State asserts that \$500,000 of its claim is entitled to priority treatment pursuant to § 507(a)(4) and \$15,000,000 is entitled to priority treatment pursuant to § 507(a)(7) ("State Claim").

The Committee, Class Claimants, and the Debtor subsequently stipulated to continue the deadline for the Class Claimants to file a proof of claim on behalf of the entire class to February 2, 2018, which this Court approved by Order entered January 9, 2018 (the "Continued Bar Date Order"). *See* Doc. Nos. 176, 178. On February 2, 2018, the Class Claimants filed proof of claim number 14 ("Class Claim 14" or "Class Claim").

Summary of the Settlement Motion

On July 30, 2018, the Debtor filed a motion seeking approval of a settlement between the Debtor, the Class Claimants, and the Committee (collectively, the "Parties") that will resolve the Class Action [Doc. No. 286] (the "Settlement Motion"). A copy of the proposed settlement agreement (the "Agreement") is attached to the Declaration of Alfredo Barajas (the "Barajas Decl.") as Exhibit 1. A

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copy of the fully executed Agreement appears on the docket as entry number 313.

Pursuant to the terms of the Agreement, three conditions must be satisfied before its terms become effective and binding upon the Parties: (1) certification of the class, appointment of class representatives, approval of attorneys' fees and costs, and approval of the Agreement by the State Court; (2) approval by the Bankruptcy Court; and (3) confirmation of a chapter 11 plan of reorganization incorporating the terms of the Agreement.

The salient terms of the Agreement are as follows:

- The Debtor and Committee will jointly propose and seek approval of a disclosure statement and plan of reorganization ("Plan").
- The Plan will include the following provisions, among others:
 - The Debtor will propose to pay general unsecured creditors, inclusive of the claims of the Class Claimants and their attorneys' fees and costs, \$4,500,000, as follows: (i) \$750,000 on the effective date of the Plan; and (ii) quarterly distributions of \$187,500, beginning April 1, 2019 and ending January 1, 2024, for a total of \$3,750,000.
 - These payments will be made to a disbursing agent/claims administrator chosen by the Committee.
 - In the event the Bankruptcy Court confirms the Plan but the State Court does not conduct a fairness hearing and issue an order approving the Agreement prior to December 27, 2018, the Debtor shall make all distributions required under the Plan to a person or entity chosen by the Committee. If the State Court denies the Agreement, the funds shall be returned to the Debtor, confirmation of the Plan will be revoked, and the Agreement shall become void and of no force and effect.
 - On the effective date, the Committee will be replaced by a post-confirmation committee (the "Plan Committee") to monitor the Debtor's compliance with the Plan and take enforcement actions in the event of default.
 - Except as provided therein, all existing statute of limitations for the commencement of all avoidance claims under 11 U.S.C. § 542 et seq. will be tolled from the effective date of the Plan until final payment is

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made.

- The Plan will establish a liquidating trust pursuant to the terms of the liquidating trust agreement attached to the Plan.
 - In the event of default, subject to certain provisions set forth in the Agreement and at the election of the Plan Committee, the Debtor's assets will vest in the Liquidating Trust.
- The Liquidating Trust will have standing to pursue all avoidance claims against the Debtor's insiders.
- The Debtor is enjoined from employing drivers as independent contractors or owner operator drivers. Debtor must only use employee drivers.
- The Parties will draft and execute a separate settlement agreement that will fully resolve the Class Action.
- The Agreement is subject to approval by the State Court in two steps: (1) preliminary approval; and (2) an order after a fairness hearing.
- In the event Alfredo Barajas and Elizabeth Zarate (the "Principles" or "Insiders") file their own bankruptcy case, the Liquidating Trust will have a \$100,000 claim against the Insiders in full satisfaction of any existing avoidance claims.
- The Agreement is subject to approval by the Bankruptcy Court. The Bankruptcy Court Order approving the Agreement shall provide:
 - That the Class Claimants in the Class Action are given the retroactive authority under Rule 9014 to file a class proof of claim consistent with the Remand Order.
 - That the class of creditors designated in the Class Action is deemed certified as a class for all purposes (voting, allowance) under Rule 7023.
 - Class Claimants, as representatives of the class members, have the standing to vote for the Plan on behalf of each of the class members.
 - For purposes of voting and distribution of funds under the Plan, the entire class of creditors designated in the Class Action will hold an allowed unsecured claim in the aggregate sum of \$14,000,000 and a claim for penalties in the sum of \$31,000,000.
- If either the Bankruptcy Court or the State Court decline to approve the

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Agreement, the Agreement shall be null and void.

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The Debtor also requests that the order granting the Settlement Motion and approving the Agreement specifically state that the State's objection to Class Claim 14, filed on June 21, 2018 (Dkt. No. 266) (the "Objection to Class Claim 14") is overruled as moot. Debtor asserts that State's objection is based on the Class Claimant's alleged failure to file a motion under Bankruptcy Rule 9014 to obtain authority to file a single proof of claim for the putative class and a lack of certification of the Class Action. However, the Debtor contends that the objection should be overruled because the Remand Order waived the need for the Class Claimants to file a formal motion under Bankruptcy Rule 9014. **[Note 1]**

Summary of the State's Opposition

The State objects to approval of the Agreement and contends that the proposed settlement falls below the lowest point in the range of reasonableness. The State's main points of objection are summarized as follows:

- The settlement is not proposed in good faith because it is designed to disenfranchise the State by giving a controlling vote to Carlos Mosquera on behalf of the class of creditors designated in the Class Action without compliance with certain procedural requirements to confer standing on him to act on behalf of the class. Specifically, the Settlement Motion seeks to treat Class Claim 14 as a class, but Mr. Mosquera has not obtained class certification in the State Court or filed a motion under Bankruptcy Rules 9014 and 7023 to allow his claim to bind the other putative class members.
- The State's right to due process will be violated if the Court approves the Agreement, which inflates the votes of a class that has not been finally certified for purposes of plan confirmation. The State will also be prejudiced because it contends that it is the rightful party in interest to pursue claims for restitution and under the Agreement, its \$15,000,000 claim for civil penalties will be reduced to less than \$10,000.
- The agreement is not in the best interest of the estate. The putative class of creditors will be better off if the State is allowed to pursue the restitution claim

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because it can pursue claims that the Class Claimant is barred from pursuing by applicable statute of limitations and because any recovery it may ultimately receive will not be reduced by potentially 1/3 for payment of attorneys' fees and costs.

- The Agreement seeks to release at least \$8,000,000 in potential avoidance claims against the Insiders in exchange for no consideration, other than the ability to file a \$100,000 claim in their future bankruptcies. The Debtor and Committee fail to provide sufficient evidence or analysis in support of their reason for entering into the Agreement in light of the limitations on the avoidance actions.
- The Agreement does not contain any effective enforcement mechanism in the event of default, since the property re-vests in the Debtor, who would be free to dispose of it as it sees fit, which could leave no assets for the Liquidating Trust.

Summary of the Debtor and Committee Reply Briefs

The Committee responds to the State's contention that the Committee and Class Claimants have agreed to waive large potential fraudulent transfer claims for "no real consideration" by arguing that the State's arguments are detached from the reality of the facts of this case. The Debtor is a family-trucking business run primarily by Mr. Barajas. Without Mr. Barajas's willingness to continue to operate the Debtor's business, unsecured creditors face the much more uncertain prospect of chapter 7 liquidation. The Committee submits that there is substantial value to both creditors and the community in which Debtor operates to allow the Debtor to continue to operate. Additionally, the Committee reiterates its belief that a judgment against the Insiders would likely be worthless and that the settlement achieves an excellent outcome from unsecured creditors in this case.

The Committee also contends that the State mischaracterizes the Agreement's enforcement mechanisms in the event Debtor defaults. The Committee states that paragraphs K, L, and M in the Agreement provide for a comprehensive enforcement regime and preserves the Liquidating Trustee's ability to pursue the Insiders with respect to any avoidance actions in the event of a default.

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Finally, the Committee highlights that the State has not presented any evidence establishing the value and viability of any potential avoidance actions and has not presented any viable alternatives to resolve this chapter 11 case in a manner that would better serve the interests of general unsecured creditors. Therefore, the Committee requests the Court overrule the State's Opposition.

The Debtor responds to the State's Opposition as follows. Debtor contends that the State's contention that the Agreement is not proposed in good faith because the Agreement disenfranchises the State of their vote on Debtor's Plan and the State will only receive \$10,000 lacks merit. First, Debtor states that the Agreement does not affect the State's right to vote on the Plan, so it is not being disenfranchised of its right to vote. Second, Debtor contends that the fact that the State will only receive \$10,000 does not support a finding that the Agreement was proposed in bad faith. Debtor asserts that the State elected not to participate in mediation and therefore deprived itself of the right to object to the proposed terms of its treatment as a result of the Settlement.

Debtor also contends that the State's arguments regarding Debtor's decision not to pursue its affirmative defenses are similarly without merit because it is within Debtor's reasonable business judgment to evaluate the risks of litigation and determine that it is in the best interests of the estate not to pursue all defenses it might have available to it. Debtor also contends that the State's contention that the Agreement is not in the putative class' best interest because of the amount of attorneys' fees to be paid from the settlement proceeds lacks merit because the Class Claimants have chosen competent counsel to represent them and it is within their discretion to decide when and how they want to resolve their claims.

With respect to the State's arguments regarding the waiver of avoidable transfer claims against Insiders, Debtor submits that even under a more heightened scrutiny, the Agreement is still fair and reasonable. The Debtor highlights that the Agreement was negotiated with the Class Claimants and Committee and that Committee counsel performed a competent review of relevant financial documents.

Finally, Debtor submits that any objection the State has to the purported lack of effective enforcement mechanisms in the Plan in the event of a default should be raised in the context of the confirmation hearing and, in any event, asserts that there is no evidence to support a finding that Debtor's principals intend to engage in any

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criminal activity.

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Summary of State's Supplemental Declaration

On November 5, 2018, the State filed a Supplemental Declaration of Timothy J. Kolesnikow (the "Supplemental Kolesnikow Decl.") refuting the Debtor and Committee's contentions that they have provided the State with adequate documentation regarding the Insider transfers. The State contends that it has not received all of the financial documents it has requested.

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that approval of the Settlement Motion requires this Court to conduct an analysis of Civil Rule 23, made applicable herein by Bankruptcy Rule 7023 and 9014. The Class Claimants have not filed a separate motion under Bankruptcy Rule 7023 seeking class certification for purposes of filing a single class claim. However, such a request is implicit in the Parties' request that the Court approve certain provisions in the Agreement regarding class certification and Carlos Mosquera and Juan Francisco Rodriguez's standing to file a claim on behalf of the entire class. *See* Agreement, ¶¶ 6A – 6D. Specifically, paragraph 6A states that the Bankruptcy Court's order approving the Agreement shall provide "[t]hat the class of creditors designated in the Class Action is deemed certified as a class for all purposes (voting, allowance) under Rule 7023."

Accordingly, the Court finds it appropriate to treat the Settlement Motion as a request for the Court to apply Bankruptcy Rule 7023 in this contested matter. *See In re Mortg. & Realty Tr.*, 125 B.R. 575, 579-80 (Bankr. C.D. Cal. 1991) (citing *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989); *In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988)) ("[Bankruptcy] Rule 9014 allows a court to 'invoke [Bankruptcy] Rule 7023 and thereby Fed. R. Civ. P. 23, the class action rule, to 'any stage' in contested matters....").

In the alternative, the Court *sua sponte* considers class certification under Bankruptcy Rule 7023. *See e.g., Mortland v. Aughney*, 2011 WL 2653515, at *2 (N.D. Cal. July 6, 2011) (contemplating trial court's authority to *sua sponte* consider class certification but affirming trial court's decision to not apply Bankruptcy Rule 7023 because class representatives had not met the criteria for certifying a class). The

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Court finds it appropriate to excuse any purported procedural deficiencies in light of the Court's Remand Order, which the putative class members reasonably and justifiably relied on in choosing to forego filing individual proofs of claim by the claims bar date and in only now seeking relief under Bankruptcy Rule 7023.

The Court also finds that the State has not been deprived of due process or unfairly prejudiced as a result of the delay and lack of a formal motion under Bankruptcy Rule 7023 because: (a) the State received electronic notice of the Continued Bar Date Order and did not seek reconsideration of that order [*See* Doc. Nos. 176, 178]; and (b) the State has had a number of opportunities to address issues relevant to Bankruptcy Rule 7023's application and should have raised any substantive arguments against class certification in its objection to the Class Claim [Doc. No. 266], or opposition to the Settlement Motion [Doc. No. 373]. Nothing foreclosed the State from pleading these issues in the alternative.

A. Class Certification is Appropriate Under Bankruptcy Rule 7023

Whether to permit a class action proof of claim is a matter of discretion. *In re Chaparral Energy, Inc.*, 571 B.R. 642, 646 (Bankr. D. Del. 2017). In exercising that discretion, a two-step analysis is performed:

First, the court must decide whether it is beneficial to apply Bankruptcy Rule 7023, via Bankruptcy Rule 9014(c), to the claims administration process. Second, the court must determine whether the requirements of Federal Rule 23 have been satisfied, such that a class proof of claim may be properly filed.

Id. (internal citations omitted).

1. The Court Exercises its Discretion to Apply Bankruptcy Rule 7023

Courts have developed a three-factor framework for consideration in deciding whether to apply Bankruptcy Rule 7023 to the claims administration process. *Chaparral Energy*, 571 B.R. at 646. Those factors are: (1) whether the class was certified pre-petition; (2) whether the members of the putative class received notice of the bar date; and (3) whether class certification will adversely affect the

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administration of the estate. *Id.* (citing *In re Musicland Holding Corp.*, 362 B.R. 644, 654 (Bankr. S.D.N.Y. 2007) (the "*Musicland* factors")). No one factor is dispositive; a factor may take on more or less importance in any given case. *Id.*

In this case, the first *Musicland* factor weighs against applying Bankruptcy Rule 7023 to the Class Claim, because the putative class was not certified pre-petition. However, as the *Chaparral Energy* court noted, the failure to obtain class certification pre-petition, is not fatal to applying Bankruptcy Rule 7023. *See Chaparral Energy*, 571 B.R. at 646 (collecting cases allowing the filing of a class proof of claim where class not certified pre-petition).

The Court finds that the second *Musicland* factor weighs in favor of applying Bankruptcy Rule 7023 to the Class Claim. Here, all known putative class members received notice of the claims bar date. *See* Dkt. No. 46. The Court recognizes that "other courts have declined to apply Bankruptcy Rule 7023 on the basis that class certification would constitute an improper extension of the bar date for potential claimants who were served with notice but did not timely file proofs of claim." *See In re MF Global, Inc.*, 512 B.R. 757, 763-64 (Bankr. S.D.N.Y. 2014); *citing Musicland*, 362 B.R. at 656 ("Allowing the class proof of claim would extend the bar date for those creditors who failed to file a timely claim to the prejudice of those creditors who did").

However, the Court finds that the Remand Order makes this case distinguishable from other cases because the putative class members reasonably and justifiably relied on the Remand Order in deciding not to file individual proofs of claim. In fact, aside from the Class Claim, *none* of the putative class members filed a proof of claim. Accordingly, if this Court were to now decline to apply Bankruptcy Rule 7023 to the Class Claim, the drivers would be unfairly prejudiced.

The third *Musicland* factor weighs strongly in favor of applying Bankruptcy Rule 7023. The Court finds that class certification will not adversely affect the administration of the case and, in light of the pending settlement, will enable a more expedient and judicious administration of the case.

2. The Class Claim Satisfies the Requirements of Civil Rule 23(a)

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a. Legal Standard**

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Class certification involves a two-part analysis. *Chiang v. Neilson (In re Death Row Records, Inc.)*, 2012 Bankr. LEXIS 1227, at *41 (B.A.P. 9th Cir. Mar. 21, 2012). First, the movant must demonstrate that the proposed class satisfies the requirements of Civil Rule 23(a) that:

- (1) the members of the proposed class be so numerous that joinder of all claims would be impracticable;
- (2) there be questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties must be typical of the claims or defenses of absent class members; and
- (4) the representative parties must fairly and adequately protect the interest of the class.

Id. at *42.

If a movant meets the requirements of Civil Rule 23(a), then at least one of the three subsections of Civil Rule 23(b) must also be met before a class action may proceed. *Id.*

When determining whether the Civil Rule 23 requirements are met, courts may consider the allegations made in the pleadings, but sometimes must look beyond the pleadings. *Blackie v. Barrack*, 524 F.2d 891, 901 (9th Cir. 1975); *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982). Courts may also consider judicially noticeable matters as well as circumstantial and anecdotal evidence, including evidence provided in declarations. *Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571 (9th Cir. 2010).

b. Civil Rule 23(a)

i. Numerosity

Civil Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Though there is no exact numerical cut-off, "numerosity is presumed where the plaintiff class contains forty or more members." *In re Cooper*

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Companies Inc., Secs. Litig., 254 F.R.D. 628, 634 (C.D. Cal. 2009).

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The Court finds the numerosity requirement satisfied because there are approximately 200 members in the putative class. First Amended Class Action and PAGA Complaint (the "Class Complaint"), ¶ 26.

ii. Commonality

Commonality focuses on the relationship of common facts and legal issues among class members, but:

All questions of fact and law need not be common to satisfy [Civil Rule 23(a)(2)]. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class.

Hanlon v. Chrysler Corp., 150 F.3d 1101, 1019 (9th Cir. 1998).

Here, the Court finds that there are a number of substantive factual and legal issues common to all class members. There is no dispute that the putative class members are all current or former independent contractors of the Debtor who worked for the Debtor from approximately September 5, 2004 to June 14, 2017 (the date the Class Complaint was filed). There is also no dispute that the common thread underlying the putative members' claims against the Debtor stem from the Debtor's classification of the drivers as independent contractors and related employment practices. The Court also finds that the allegations in paragraph 27(a) – (t) in the Class Complaint provide further evidentiary support in favor of finding that commonality exists.

iii. Typicality

Civil Rule 23(a)(3) requires that the claims of the class representative be typical of the class claims. *In re Death Row Records*, 2012 LEXIS, at *45. In examining typicality, courts consider "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs and whether other class members have been injured by the same course of conduct." *Id.*

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(citing *Kanawi v. Bechtech Corp.*, 254 F.R.D. 102, 110 (N.D. Cal. 2008); *Hanon v. DataProducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

Here, the Court finds that the claims of Messrs. Mosquera and Rodriguez are typical of the claims of the other putative class members. Messrs. Mosquera and Rodriguez worked as drivers for the Debtor and were exposed to the same treatment as the other drivers and sustained the same types of damages and losses resulting from the alleged misclassification as independent contractors and unfair business practices. *See* Class Complaint, ¶ 28. Therefore, the Court finds that the Class Action involves claims for relief based upon conduct by the Debtor that is not unique to Messrs. Mosquera and Rodriguez. Consequently, all class members have been injured by the same alleged course of conduct.

iv. Adequacy of Representation

Civil Rule 23(a)(4) requires a determination that the class representative will adequately protect the interests of the class. *In re Death Row Records*, 2012 LEXIS, at *46. In determining whether the interests of a class will be adequately represented, the court must determine that the class representative does not have an interest antagonistic to the class and that the class counsel must be qualified, experienced and able to conduct the litigation. *Id.* (citing 5 James Wm. Moore, Moore's Federal Practice § 23.25[3][a] 3d ed. 2007).

There is nothing in the record to support a finding that Messrs. Mosquera and Rodriguez have any conflicts with the interests of the other putative class members. In fact, the record supports an opposite finding in view of the U.S. Trustee's decision to appoint Messrs. Mosquera and Rodriguez as members of the Committee of Unsecured Creditors with fiduciary duties owing to all unsecured creditors. *See* Doc. No. 53. Moreover, the proposed Agreement, which will provide a significant payout to the drivers, provides further support for finding that Messrs. Mosquera and Rodriguez have adequately represented the putative class members' interests. Finally, the entire class of putative creditors received notice of the Settlement Motion and none of them have objected.

Kabatech LLP, proposed Class Action counsel for Messrs. Mosquera and Rodriguez, is experienced in complex class action litigation. Class Complaint, ¶ 29. Further, the Court approved the application to employ Levene, Neale, Bender Yoo &

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Brill ("LNBYB") as Committee counsel after notice and an opportunity to request a hearing [Doc. No. 78]. In so doing, the Court found LNBYB competent to represent the interests of all general unsecured creditors, including the putative class claimants.

c. Civil Rule 23(b)

Once the requirements of Civil Rule 23(a) are met, at least one of the requirements of Civil Rule 23(b) must also be satisfied before a class can be certified. *In re Death Row Records*, 2012 LEXIS, at *47.

In this case, the Court finds that Civil Rule 23(b)(3) is satisfied. Civil Rule 23(b)(3) is satisfied when:

The court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:

- (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
- (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;
- (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
- (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

The Supreme Court has applied the standard set forth in Civil Rule 23(b)(3) as follows:

To qualify for class certification under [Civil] Rule 23(b)(3), a class must meet two requirements beyond the [Civil] Rule 23(a) prerequisites: Common questions must 'predominate over any questions affecting only individual members;' and class resolution must be 'superior to other available methods for the fair and efficient adjudication of the controversy.' In adding 'predominance' and

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‘superiority’ to the qualification-for-certification list, the Advisory Committee sought to cover cases ‘in which a class action would achieve economies of time, effort, and expenses, and promote ... uniformity in decision as to persons similarly situated, without sacrificing procedural fairness or bringing about undesirable results.’

Amchem Products, Inc., v. Windsor, 531 U.S. 591, 616 (1997).

As described in section II.A.2.b.ii above, the Court finds that common questions of law and fact predominate over any questions affecting individual class members. The Court also finds that, in light of the proposed Agreement and the risks of protracted litigation and possible liquidation of this estate absent approval of the settlement, authorizing a single class claim is far superior to other available methods. Further, if the class members were required to file separate proofs of claim, the Debtor could object to the validity of each claim and it would be overly expensive and burdensome for each of the drivers (and the estate) to have to defend their claim on an individual basis. *See* also Class Complaint, ¶ 30.

For the reasons set forth above, the Court overrules the State’s objections and finds it appropriate to certify the class for purposes of filing a single proof of claim and voting on Debtor’s chapter 11 plan of reorganization. Certification shall be *nunc pro tunc* to the date of the filing of the proof of claim. *See In re Musicland Holding Corp.*, 362 B.R. 644, 652 (Bankr. S.D.N.Y. 2007) (citing *In re Matter of American Reserve Corp.*, 840 F.2d 487, 493 (7th Cir. 1988) (“If the court certifies the class, ... the self-appointed agent has become ‘authorized,’ and the original filing is effective for the whole class”)).

B. The Agreement is Fair, Reasonable, and in the Best Interest of Creditors

The Court approves the Agreement. Bankruptcy Rule 9019(a) permits the Court to approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v.*

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Kane (In re A&C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983). "While insider status alone is not fatal to dealings between a debtor and an insider, the court must scrutinize dealings more carefully." *In re Hyloft, Inc.*, 451 B.R. 104, 113 (Bankr. D. Nev. 2011).

The *A&C Properties* factors weigh in favor of approving the Agreement. Applying the *A&C Properties* factors, the Court finds that the compromise is adequate, fair, and reasonable. Further, the Court finds that all of the conditions precedent to the effectiveness of the Agreement ensure that the Agreement is fair and appropriate in light of the facts and circumstances of this case, the Class Action, and the Enforcement Action.

1. Probability of Success in the Litigation

This factor weighs in favor of approving the Agreement. Under the Agreement, the Parties have resolved all disputes between them and paved the way for a confirmable plan of reorganization that eliminates the uncertainty and costs of protracted litigation. Absent the Agreement, the Class Action would almost certainly involve continued litigation and appeals that could take several years to conclude. Although the Debtor might ultimately be successful, at least in part, if litigation were to continue, the Debtor's success would harm the largest body of unsecured creditors – the Class Claimants – by reducing their claim. Conversely, if the Class Claimants were to prevail, such victory may ultimately prove to be fruitless if the Debtor is unable to satisfy such a judgment and is forced to liquidate.

2. Difficulties to be Encountered in Collection

This factor weighs in favor of approving the Agreement. Under the Agreement, the Debtor proposes to pay \$4,500,000 to general unsecured creditors in exchange for, among other things, dismissal of the Class Action. The Debtor states that if the

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Agreement is not approved, it will be forced to choose between continuing to litigate with the Class Action and closing down its business and proceeding with liquidation. Accordingly, approving the Agreement ensures that the Debtor's creditors will recover a sizeable distribution and reduces the possibility that the Debtor will seek to liquidate.

The Court is not persuaded to find that the Agreement is unfair simply because the proposed payment to general unsecured creditors is subject to payment of attorneys' fees and costs. The alternative to approving the settlement is continued litigation that will result in substantial administrative expenses that would be entitled to priority payment before the claims of general unsecured creditors.

3. Complexity of the Litigation and the Expense, Inconvenience and Delay Necessarily Attending It

This factor weighs in favor of approving the Agreement. Continued litigation will undoubtedly be complex, expensive and protracted. If the Debtor is forced to continue litigating both the Class Action and the Enforcement Action, it will be unable to confirm its current Plan and unsecured creditors, including the Class Claimants, will have to wait significantly longer to receive a distribution on their claims, or will receive nothing at all. Under the Agreement, general unsecured creditors will receive an immediate *pro rata* share of \$750,000 and a *pro rata* share of quarterly payments totaling an additional \$3,750,000.

4. Paramount Interest of Creditors

This factor weighs in favor of approving the Agreement. The Court finds that the Agreement is in the best interest of creditors because it resolves expensive litigation and paves the way for a confirmable plan of reorganization that will net unsecured creditors \$4,500,000 in total distributions. The Agreement is a realistic settlement that vindicates the rights of the drivers while still allowing the Debtor to attempt to reorganize its affairs and continue to operate.

Absent approval of the Agreement and confirmation of the Debtor's Plan, there is an increased likelihood that the Debtor will be forced to fire its employees, shut down its business, and liquidate its assets. Although the State vigorously argues that

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denying the Agreement to allow it to pursue its claims on behalf of the putative class claimants will result in a larger recovery for those creditors, given the realities of bankruptcy, even if successful, it would likely be a pyrrhic victory. The Court finds its compelling that none of the putative members of the Class Action have opposed the Settlement Motion.

The Court is also unpersuaded by the State's argument that the Agreement grants the Insiders a release of nearly \$8,000,000 in potential avoidance claims in exchange for little to no consideration and no explanation or evidence. In support of the Settlement Motion, the Debtor attached the declaration of Committee counsel Daniel H. Reiss (the "Reiss Decl."). Mr. Reiss testifies that he reviewed a number of financial documents, a verified financial statement prepared by Trojan & Co., CPA firm, and notices of liens issued by the IRS and Franchise Tax Board and determined that there is little value to pursuing causes of actions against the Insiders when weighed against the cost of litigation or the ability to recover against them. Reiss Decl., ¶ 9. Mr. Reiss also testifies that the Committee employed Van Horn Appraisers & Auctioneers to value the Debtor's rolling stock. After reviewing the valuation opinion (Exhibit 4), Mr. Reiss determined based upon the net valuation of the Debtor's vehicles, accounts receivable and cash on hand that general unsecured creditors would receive more under the Agreement than through a chapter 7 liquidation. *Id.* at ¶ 10.

Similarly, the Court unpersuaded by the State's arguments regarding the lack of any meaningful enforcement mechanisms.

For these reasons, the State's objections are overruled.

III. Conclusion

For the reasons set forth above, the Settlement Motion is GRANTED.

The Debtor is directed to lodge a conforming order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel

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at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Debtor also states that it anticipates obtaining preliminary approval of the Class Action from the State Court prior to the hearing on this Settlement Motion and contends that approval by this Court of the Agreement will moot the objection. However, as of the preparation of this tentative ruling, it does not appear that the State Court has ruled on the issue of preliminary class certification. Further, even if the State Court had ruled on the issue, this Court must still make its own findings with respect to class certification pursuant to Bankruptcy Rules 9014 and 7023.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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#6.00 Hearing re [279] Objection to Proof of Claim Number 12 filed by the State of California, Department of Justice as superceded by Proof of Claim number 13

Docket 0

Tentative Ruling:

11/5/2018

See Calendar No. 7, incorporated herein by reference.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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#7.00 Hearing re [275] Objection to Proof of Claim Number 13 filed by the State of California, Department of Justice: (1) For improperly claiming rights to priorities; and (2) as duplicative of proof of claim number 14.

Docket 0

Tentative Ruling:

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For the reasons set forth below, the Objections to Claims 12 and 13 are SUSTAINED.

Pleadings Filed and Reviewed

1. Debtor's Objection to Proof of Claim Number 13 Filed by the State of California, Department of Justice: (1) For Improperly Claiming Rights to Priorities; and (2) as Duplicative of Proof of Claim Number 14 [Doc. No. 275] ("Objection to Claim 13")
2. Request for Judicial Notice in Support of Objection to Claim 13 [Doc. No. 276] ("Debtor's RJN")
3. Declarations of Alfredo Barajas, David R. Haberbush, Jolene R. Rice, Neil S. Lerner, and Carla I. Huey in Support of Objection to Claim 13 [Doc. No. 277]
4. Notice of Objection to Claim 13 [Doc. No. 278]
5. Debtor's Objection to Proof of Claim Number 12 Filed by the State of California, Department of Justice as Superseded by Proof of Claim 13 [Doc. No. 279] ("Objection to Claim 12")
6. Declarations of Alfredo Barajas and David R. Haberbush in Support of Objection to Claim 12 [Doc. No. 280]
7. Notice of Objection to Claim 12 [Doc. No. 281]
8. State of California's Opposition to Objection to People's Proof of Claim # 13 by Debtor [Doc. No. 371] (the "Opposition")
9. Request for Judicial Notice in Support of Opposition [Doc. No. 372] ("State's

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RJN")

10. Debtor's Reply in Support of Objection to Claim 13 [Doc. No. 386] ("Debtor's Reply")
11. Declaration of Neil S. Lerner in Support of Debtor's Reply [Doc. No. 387]
12. Debtor's Request for Judicial Notice in Support of Debtor's Reply [Doc. No. 388]

I. Facts and Summary of Pleadings

Debtor-in-possession, Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor") filed this voluntary Chapter 11 case on July 6, 2017.

The Enforcement Action

Pre-petition, the State of California, Department of Justice (the "State") commenced the Enforcement Action against the Debtor and its principal, Alfredo Barajas, on September 5, 2008. The Enforcement Action alleges that the Debtor misclassifies its driver employees as independent contractors, and thus commits "unfair competition" within the meaning of California Business and Professions Code §17200, by failing to pay the minimum wage, secure workers' compensation insurance, and report and remit payroll taxes (the "Complaint"). The State seeks an injunction, civil penalties, and restitution of unpaid wages.

In August 2009, the Debtor and Mr. Barajas filed a motion for judgment on the pleadings in the Los Angeles Superior Court (the "State Court"), arguing that the State's claims against them were pre-empted by the Federal Aviation Administration Authorization Act. On September 22, 2009, the State Court granted the motion and entered judgment in favor of the Debtor and Mr. Barajas. On December 7, 2009, the State appealed the judgment. The Enforcement Action was stayed during the appeal, which lasted from December 7, 2009 to April 8, 2015. The State Court's judgment in favor of the Debtor and Mr. Barajas was ultimately reversed and litigation began anew in the State Court in April 2015.

On February 18, 2016, the State filed a supplemental complaint (the "Supplemental Complaint"), adding the Debtor's sister company, Green Anchor Lines, Inc. ("Green Anchor") as a defendant. The State alleges that Green Anchor

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supplied the Debtor's drivers from 2009 through at least December 2016. The Supplemental Complaint makes the same allegations and seeks the same relief as the original complaint.

The Class Action

On June 14, 2017, Carlos Mosquera and Juan Francisco Rodriguez, on behalf of themselves and all others similarly situated (the "Class Claimants") commenced an action against the Debtor in the State Court (the "Class Action"). The Class Action seeks restitution and damages from the Debtor due to the Debtor's employment practices for all drivers, statutory penalties under the California Labor Code, and an injunction. The Class Action is brought under the Private Attorneys General Act ("PAGA").

On February 2, 2018, the Class Claimants filed proof of claim number 14 (the "Class Claim") asserting a claim for \$52,400,000 for damages alleged in the Class Action.

Proofs of Claim 12 and 13

On January 2, 2018, the State filed Proof of Claim Number 12 which consists entirely of the Enforcement Action Complaint and what appears to be two copies of the Supplemental Complaint ("Claim 12"). Minutes later, the State filed Proof of Claim Number 13 using the Court mandated form and asserting a claim for \$22,300,000 for "[r]estitution for unpaid wages, unreimbursed expense, and civil penalties" ("Claim 13" or "State Claim"). The State asserts that \$500,000 of its claim is entitled to priority pursuant to § 507(a)(4) and \$15,000,000 is entitled to priority pursuant to § 507(a)(8).

Summary of Debtor's Objection to Claim 12 and Claim 13

Claim 13 – the State Claim

Debtor filed a limited objection to the State Claim on the grounds that: (1) the non-penalty portion of the State's claim is wholly duplicative of the non-penalty portion of the Class Claim; (2) the State impermissibly seeks priority treatment pursuant to 11 U.S.C. § 507(a)(4) [wage, salaries, or commissions (up to \$12,850)

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earned within 180 days before the bankruptcy petition is filed or the cessation of the debtor's business, whichever is earlier], in the sum of \$500,000; and (3) the State impermissibly seeks priority treatment pursuant to 11 U.S.C. § 507(a)(8) [taxes or penalties owed to governmental units] in the sum of \$15,000,000.

Debtor requests that the Court disallow the State's claim for restitution in the amount of \$7,300,000 (\$6,800,00 as a general unsecured claim and \$500,000 as an alleged priority claim under § 507(a)(4)), in its entirety, on the grounds that the State's claim for restitution is identical to the restitution portion of the Class Claim. Debtor contends that the State's restitution claim stems from the same statutes, claimants and alleged violations as in the Class Action (except the Debtor asserts that the Class Action covers a longer period). Debtor submits that because it has reached a settlement with the Class Claimants which resolves the Class Action's claim to restitution, any recovery by the State, on behalf of those same claimants, must be disallowed as duplicative.

In the alternative, Debtor requests that if the Court is not inclined to disallow the State's restitution claim as duplicative, the Court reclassify the \$500,000 portion of the State's claim for unpaid wages as a general unsecured claim because the State has not presented evidence to establish that it is entitled to priority treatment under § 507(a)(4).

Finally, Debtor requests that the Court reclassify the State's claim for \$15,000,000 in penalties as a general unsecured claim because the State has not presented evidence establishing that it is entitled to priority treatment under § 507(a)(8). Debtor contends that the State has conceded that its claim is not a penalty related to taxes, but instead for alleged unfair competition.

Claim 12

Debtor also objects to the State's Claim 12 on the basis that it does not conform to the Official Form and appears to have been amended by the State Claim, thereby making it wholly duplicative of the State Claim. Therefore, Debtor requests that the Court disallow the State's Claim 12 in its entirety.

Summary of State's Opposition in Support of Claim 13

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The State opposes Debtor's Objection to the State Claim (Claim 13) as follows. As a preliminary matter, the State contends that Debtor's argument that the State Claim is duplicative of the Class Claim is premature because the proposed settlement with the Class Claimants has not yet been approved. The State argues that the Debtor has not identified any law or code section to show that its claim is presently invalid.

Next, the State contends that its claim is not duplicative of the Class Claim for a number of reasons. First, the State asserts that some of the Class Claimants' claims are barred by applicable statute of limitations ("SOL"). The State contends that Class Action claims five, nine and ten, which seek damages for minimum wage violations, failure to reimburse business expenses, and unlawful deductions from wages, are governed by a three-year SOL. The State also states that Class Action claim twelve, which seeks damages for unfair competition, is governed by a four-year SOL. Accordingly, the State contends that any claim for damages stemming from before June 14, 2013 is time-barred. By contrast, the State asserts that its claims, which were first asserted on September 5, 2008, reach back as far as September 5, 2004. Therefore, the State submits that its claim for restitution stemming from September 4, 2005 to June 13, 2013 is not duplicative of the amounts sought in the Class Claim. Therefore, the State requests that the Court allow its claim for restitution in full or, alternatively, for the periods prior to June 14, 2013; however, the State has not provided any calculation as to what amount that would be.

The State also highlights that the Debtor raised the statute of limitations defense in a Joint Initial Status Conference Statement filed in the Class Action. *See* State's RJN. The State contends that the Debtor's attempt to now waive this valid defense in connection with the currently pending settlement is in derogation of its responsibilities as a fiduciary for the estate and all of its other creditors and improperly favors the Class Claimants over others.

Second, the State contends that its claim is not duplicative of the Class Claim because the public interests that it seeks to enforce are distinct from those raised by the Class Claimants under the PAGA. The State contends that the Class Action claims seek to vindicate the Labor and Workforce Development Agency's interest in enforcing the Labor Code, while the Enforcement Action seeks to prevent and deter unfair business practices on a broader level.

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Next, with respect to the priority status of its claim for \$500,000 in unpaid wages under § 507(a)(4), the State states that the liability and amount of the unpaid wages for the 180-days prior to the petition date will be determined by the State Court. The State also contends that the Debtor's objection on this ground merely a formal objection, without any evidence. Accordingly, the State contends that the Debtor has not satisfied its burden under *In re Holm*, 931 F.2d 620, 623 (9th Cir. 1991) to shift the burden back to the State to prove the validity of its claim. The State also contends that based upon its review of the Debtor's financial statements and the Debtor's own admissions, it is evident that approximately 40 to 80 drivers were employed by the Debtor during the 180-day pre-petition period and were misclassified as independent contractors. See Declaration of Timothy Kolesnikow, ¶¶ 8, 9 & Exhs 5, 6. Therefore, the State requests the Court overrule the Debtor's objection on this basis.

Finally, the State does not contest the Debtor's request to reclassify its claim for \$15,000,000 in penalties from a priority claim to a general unsecured claim.

As of the preparation of this tentative ruling, the State has not filed an opposition to Debtor's Objection to Claim 12.

Debtor's Reply

Debtor responds to the State's opposition as follows. First, the Debtor asserts that approval of the concurrently-pending settlement agreement will resolve all of the State's claims and that the State concedes that its claim for restitution is duplicative of the restitution damages being settled in the Class Action. Further, the Debtor states that disallowance of the State Claim is intended to be conditional – subject to the Debtor's ability to successfully confirm its plan. The Debtor states that if its plan is not confirmed, then disallowance of the State's Claim would no longer be effective.

Next, Debtor refutes the State's contention that it did not cite any legal authority establishing its claim should be disallowed. Debtor reiterates its position that applicable Ninth Circuit authority bars the State from double recovery with respect to any amounts settled in the Class Action for the same claims. Debtor also contends that the State will be estopped from continuing to litigate its duplicate claims under a theory of res judicata if the settlement is approved.

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In response to the State's SOL arguments, the Debtor contends that it is within its reasonable business judgment to waive its affirmative defenses in exchange for certain concessions from the Class Claimants and to achieve a settlement that resolves the Class Action and benefits the estate as a whole. In response to the State's contention that its claim is not duplicative because it seeks to protect a different public interest than in the Class Action, Debtor contends that this argument is irrelevant to whether the claims are duplicative. Debtor also states that the settlement achieves the interests the State seeks to protect because it results in an agreed upon injunction, payment of restitution, and allowance of the State's claim for penalties.

Finally, Debtor responds to the State's arguments regarding priority treatment under § 507(a)(4) by asserting that it is the State, and not it, that has failed to carry its burden of proof.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 502(a), a claim is deemed allowed unless a party in interest objects. If an objection to a claim is made, the court, after notice and a hearing, shall allow such claim, except to the extent the "claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other because such claim is contingent or unmatured." 11 U.S.C. § 502(b)(1).

The Court presumes that a proof of claim filed in accordance with FRBP 3001 is valid and the amounts therein claimed correct. *See In re Southern Cal. Plastics, Inc.*, 165 F.3d 1243, 1247-48 (9th Cir. 1999). An objecting party may rebut this presumption by presenting "facts tending to defeat the claim." *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991). The Ninth Circuit Bankruptcy Appellate Panel has held that a "claim objection that does not actually contest the debtor's liability or the amount of the debt is not enough to disallow a proof of claim, even if the proof of claim lacks documentation required by Rule 3001(c)." *In re Campbell*, 336 B.R. 430, 434 (9th Cir. BAP 2005), *citing In re Heath*, 331 B.R. 424 (9th Cir. BAP 2005). However, once the objecting party overcomes the presumption, "the burden reverts in the claimant to prove the validity of the claim by a preponderance of the evidence." *Ashford v. Consolidated Pioneer Mortgage (In re Consolidated Pioneer Mortgage)*, 178 B.R. 222, 226, aff'd 91 F.3d 151 (9th Cir. 1996). Indeed, notwithstanding the burden-shifting scheme, "the ultimate burden of persuasion is

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always on the claimant." *Holm*, 931 F.2d at 623.

The Court finds that Claim 12 was not filed in accordance with FRBP 3001 and appears to be amended by the State Claim (Claim 13). Additionally, the State has not opposed Debtor's objection to Claim 12. Accordingly, Claim 12 is disallowed in its entirety.

With respect to the State Claim (Claim 13), the Court finds that the claim was filed in accordance with FRBP 3001 and is therefore presumed valid. However, the Court finds that the Debtor has rebutted the presumption of validity by providing "facts tending to defeat the claim" – namely, that the \$7,300,000 portion of the State Claim that seeks restitution is duplicative of the amounts being settled in the Class Action and deemed allowed in the Class Claim. *See California v. IntelliGender, LLC*, 771 F.3d 1169, 1176 (9th Cir. 2014) ("insofar as the State sought restitution on behalf of members of the settlement class, such relief should be enjoined because allowing the claims to go forward would amount to a double recovery).

The State's contention that the Debtor's objection is premature is overruled. As set forth in this Court's concurrently posted tentative ruling on the Settlement Motion (*see* November 6, 2018, 10:00 a.m., Cal. No. 5), the Court finds that the proposed settlement, which resolves the Class Action and provides for payment in satisfaction of the Class Claimants' restitution claims, is fair, reasonable, and in the best interests of the estate. The Court has considered the relief and arguments advanced in both the Class Action and Enforcement Action and finds that the proposed settlement of the Class Action provides the best chance of recovery for the Class Claimants. The proposed settlement is a realistic settlement that vindicates the rights of the drivers while still allowing the Debtor to attempt to reorganize its affairs and continue to operate. Conversely, if the Court were to deny the settlement agreement and allow the Enforcement Action to continue litigation on the restitution claims, the most likely result would be that the Debtor will liquidate, and general unsecured creditors will receive nothing.

In light of the Court's tentative ruling approving the settlement agreement, the Court has also concurrently posted a tentative ruling on the State's objection to the Class Claim that denies the claim objection as moot (*see* November 6, 2018, 10:00 a.m., Cal. No. 4). If the Debtor is unable to confirm its pending plan of reorganization, this tentative ruling on the issue of duplication will be vacated.

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10:00 AM

CONT... Pac Anchor Transportation Consisting of the Merger

Chapter 11

The Court overrules the State's arguments regarding applicable SOL's. First, the State filed the only objection to the Class Claim and it did not assert any SOL arguments in that objection. Therefore, the Court does not find the argument properly before it in connection with this claim objection. Second, and more importantly, this argument is mooted by the Court's tentative ruling approving the settlement agreement.

The Court also finds that the Debtor has rebutted the presumption of validity of the State's entitlement to priority treatment under § 507(a)(8) for the \$15,000,000 portion of its claim relating to penalties. In its Opposition, the State concedes that it is not entitled to priority treatment. Accordingly, the State shall have an allowed general unsecured claim in the amount of \$15,000,000.

III. Conclusion

For the reasons set forth above, the Debtor's Objections to Claims 12 and 13 are SUSTAINED in their entirety. Claim 12 is disallowed in its entirety on a final basis. The portion of the State Claim for \$7,300,000 in restitution is conditionally disallowed as duplicative of the Class Claim. If the Debtor is unable to confirm its chapter 11 plan of reorganization, then this Court's ruling will be deemed vacated. The State Claim for \$15,000,000 in penalties is reclassified as a general unsecured claim.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

CONT... Pac Anchor Transportation Consisting of the Merger

Chapter 11

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#8.00 Hearing
RE: [16] Motion for Setting Property Value Re: 10735 Lesterford Ave, Downey, CA 90241 (Tang, Kevin)

Docket 16

Tentative Ruling:

11/5/2018

For the reasons set forth below, the hearing on the Valuation Motion is CONTINUED to **January 9, 2019, at 10:00 a.m.**

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Order Determining Value of Collateral [Doc. No. 16] (the "Valuation Motion")
 - a) Amended Notice of Hearing [Doc. No. 19]
- 2) Opposition to Motion for Order Determining Value of Collateral [Doc. No. 25]

I. Facts and Summary of Pleadings

Maria G. Gallarza-Dominguez (the "Debtor") commenced a voluntary Chapter 11 petition on June 26, 2018. Doc. No. 1. Debtor has an interest in real property located at 10735 Lesterford Ave., Downey, CA 90241-3063 (the "Property"). The Property is encumbered by a First Deed of Trust (the "DOT") in favor of Deutsche Bank National Trust Company, as Trustee for American Home Mortgage Assets Trust 2007-3, Mortgage-Backed Pass-Through Certificates Series 2007-3 ("Deutsche"). Deutsche asserts a secured claim against the Property in the amount of \$1,195,778.35. *See* Proof of Claim 5-1 ("Claim 5").

The Debtor seeks an order valuing the Property at \$600,000, for the purpose of bifurcating Deutsche's claim for plan treatment purposes (the "Valuation Motion"). In support of the claimed valuation, the Debtor submits an *Appraisal Report* prepared by Perez & Associates (the "Appraisal").

Deutsche opposes the Valuation Motion and asserts that there may be significantly more equity in the Property than alleged by Debtor. Deutsche requests that the hearing on the Valuation Motion be continued for at least sixty days to permit Deutsche to

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

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CONT... Maria G Gallarza-Dominguez

Chapter 11

further investigate the Property's value and to obtain a verified full interior appraisal, if necessary.

II. Findings and Conclusions

The Court agrees that Deutsche should have the opportunity to further investigate the Property's value and to obtain a full interior appraisal of the Property, should Deutsche deem it necessary. A continued hearing on the Valuation Motion shall take place on **January 9, 2019, at 10:00 a.m.** Deutsche shall submit further evidence in support of its position as to the Property's value by no later than **December 26, 2018**. Should Deutsche determine that it wishes to obtain a full interior appraisal, the Debtor shall reasonably cooperate with Deutsche in providing access to the Property. The Debtor's opposition to Deutsche's additional valuation evidence is due by **January 2, 2019**. No further briefing will be accepted unless otherwise ordered by the Court.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Kevin Tang

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing

RE: [410] Motion to approve compromise / Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry Into New Collective Bargaining Agreements With International Union of Operating Engineers, Stationary Engineers, Local 39; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

Docket 410

***** VACATED *** REASON: RESCHEDULED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
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Los Angeles
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

2:17-14364 Silla Automotive, LLC

Chapter 7

#100.00 Hearing
RE: [144] Application for Compensation Second Interim Fee Application for Compensation and Reimbursement of Costs for Berkeley Research Group LLC, Accountant, Period: 7/3/2017 to 8/31/2018, Fee: \$18,563.00, Expenses: \$43.78. , R. Todd)

Docket 144

Tentative Ruling:

11/5/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$18,563

Expenses: \$43.78

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

Trustee(s):

Richard K Diamond (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

CONT... Silla Automotive, LLC

Chapter 7

Howard Kollitz
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

2:17-14364 Silla Automotive, LLC

Chapter 7

#101.00 HearingRE: [148] Application for Compensation Interim Fees and/or Expenses (11 U.S.C. § 331) for Development Specialists, Inc., Accountant, Period: 3/1/2018 to 9/30/2018, Fee: \$8252.00, Expenses: \$0.00. , Thomas)

Docket 148

Tentative Ruling:

11/5/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,252

Expenses: \$0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

Trustee(s):

Richard K Diamond (TR)

Represented By
Howard Kollitz

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

CONT... Silla Automotive, LLC

Zev Shechtman
Sonia Singh

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

2:17-14364 Silla Automotive, LLC

Chapter 7

#102.00 HearingRE: [146] Application for Compensation Second Interim Application For Compensation By Danning, Gill, Diamond & Kollitz, LLP, As General Counsel To Chapter 7 Trustee; Declarations Of Zev Shechtman And Richard K. Diamond, As Trustee In Support Thereof, with Proof of Service for Danning, Gill, Diamond & Kollitz, LLP, General Counsel, Period: 7/1/2017 to 9/30/2018, Fee: \$28,550.50, Expenses: \$1,498.37.

Docket 146

Tentative Ruling:

11/15/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$28,550.50

Expenses: \$1,498.37

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Silla Automotive, LLC

Represented By
James R Selth

**United States Bankruptcy Court
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Tuesday, November 6, 2018

Hearing Room 1568

11:00 AM

CONT... Silla Automotive, LLC

Chapter 7

Trustee(s):

Richard K Diamond (TR)

Represented By
Howard Kollitz
Zev Shechtman
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:16-25814 Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

#1.00 APPLICANT: Accountant for Trustee (Other Firm) - HAHN FIFE & COMPANY, LLP

Hearing re [72] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,058

Expenses: \$368.80

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Andres Jeronimo

Represented By
Levi Reuben Uku

Joint Debtor(s):

Maria Clementina Jeronimo

Represented By
Levi Reuben Uku

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:16-25814 Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

#2.00 APPLICANT: Attorney for Trustee (Other Firm) - LEVENE NEALE BENDER YOO & BRILL

Hearing re [72] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$19,973

Expenses: \$725.41

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Andres Jeronimo

Represented By
Levi Reuben Uku

Joint Debtor(s):

Maria Clementina Jeronimo

Represented By
Levi Reuben Uku

**United States Bankruptcy Court
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:16-25814 Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

#3.00 APPLICANT: Trustee - HEIDE KURTZ

Hearing re [72] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$5,250

Total Expenses: \$94.10

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Andres Jeronimo

Represented By
Levi Reuben Uku

Joint Debtor(s):

Maria Clementina Jeronimo

Represented By
Levi Reuben Uku

**United States Bankruptcy Court
Central District of California
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Andres Jeronimo and Maria Clementina Jeronimo

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:17-17893 Duane L. Pettit and Marcia R. Pettit

Chapter 7

#4.00 APPLICANT: Accountant for Trustee - HAHN FIFE & COMPANY, LLP

Hearing re [58] and [59] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$2,100

Expenses: \$373.10

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Duane L. Pettit

Represented By
Herbert N Wiggins

Joint Debtor(s):

Marcia R. Pettit

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Duane L. Pettit and Marcia R. Pettit

Chapter 7

Herbert N Wiggins

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:17-17893 Duane L. Pettit and Marcia R. Pettit

Chapter 7

#5.00 APPLICANT: Attorney for Trustee - SMILEY WANG EKVALL

Hearing re [58] and [59] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$23,638

Expenses: \$947.67

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Duane L. Pettit

Represented By
Herbert N Wiggins

Joint Debtor(s):

Marcia R. Pettit

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Duane L. Pettit and Marcia R. Pettit

Chapter 7

Herbert N Wiggins

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:17-17893 Duane L. Pettit and Marcia R. Pettit

Chapter 7

#6.00 APPLICANT: Trustee - HEIDE KURTZ

Hearing re [58] and [59] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$7,776.47

Total Expenses: \$122.92

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Duane L. Pettit

Represented By
Herbert N Wiggins

Joint Debtor(s):

Marcia R. Pettit

Represented By
Herbert N Wiggins

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Duane L. Pettit and Marcia R. Pettit

Chapter 7

Trustee(s):

Heide Kurtz (TR)

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:17-24053 Katie May McKay

Chapter 7

#7.00 Show Cause Hearing

RE: re [36] Amended Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments

Docket 1

Tentative Ruling:

11/6/2018

This hearing is VACATED. The Court will enter an order waiving the delinquent amount. Any dismissal order is VACATED and a DISCHARGE will be entered if otherwise appropriate.

Party Information

Debtor(s):

Katie May McKay

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:17-24396 CRESTALLIANCE, LLC

Chapter 7

#8.00 HearingRE: [129] Application for Compensation First Interim Application for Allowance and Payment of Fees and Reimbursement of Expenses of Weiland Golden Goodrich LLP, Counsel for the Chapter 7 Trustee; Memorandum of Points and Authorities; Declaration of Beth E. Gaschen in Support Thereof (with Proof of Service) for Weiland Golden Goodrich LLP, Trustee's Attorney, Period: 6/6/2018 to 10/16/2018, Fee: \$37,335.00, Expenses: \$1,166.82.

Docket 129

Tentative Ruling:

11/6/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court is prepared to approve the application and awards the fees and expenses set forth below.

Fees: \$37,335

Expenses: \$1,166.82

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

CRESTALLIANCE, LLC

Represented By
Matthew D. Resnik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... CRESTALLIANCE, LLC

Chapter 7

Trustee(s):

David M Goodrich (TR)

Represented By
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-17994 Gary Finesilver

Chapter 7

#9.00 Show Cause Hearing

RE: [20] Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments

Docket 1

Tentative Ruling:

11/6/2018

The case is dismissed based on the Debtor's failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$83.75; in addition, the Debtor's final installment payment (in the amount of \$83.75) comes due on November 15, 2018.

Pleadings Filed and Reviewed:

- 1) Order Approving Payment of Filing Fee in Installments (the "Fee Installment Order") [Doc. No. 12]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 22]
 - a) Notice of OSC [Doc. No. 25]

On July 13, 2018, the Court entered an order requiring Gary Finesilver ("Debtor") to pay the filing fee according to the following schedule:

- First installment payment: \$83.75 on or before 8/15/2018;
- Second installment payment: \$83.75 on or before 9/14/2018;
- Third installment payment: \$83.75 on or before 10/15/2018; and
- Final installment payment: \$83.75 on or before 11/15/2018.

See Fee Installment Order.

The Debtor made the first and second installment payments, but failed to make the third installment payment. Fees are delinquent in the amount of \$83.75. In addition, a final installment payment in the amount of \$83.75 comes due on November 15, 2018.

**United States Bankruptcy Court
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Gary Finesilver

Chapter 7

On September 28, 2018, the Court issued an *Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments* (the "OSC"). The OSC ordered the Debtor to make the delinquent installment payments by no later than one week prior to the hearing. The Debtor has not made the delinquent payment and has not responded to the OSC.

Bankruptcy Rule 1017(b)(1) provides: "If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case."

The Debtor's case is dismissed based on the Debtor's failure to comply with the Court's Fee Installment Order and OSC. The Court will enter an order dismissing the case.

Party Information

Debtor(s):

Gary Finesilver

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-19512 Dejuandra Stevi Kyshawn Grant

Chapter 7

#10.00 Show Cause Hearing
RE:[13] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments.

Docket 1

***** VACATED *** REASON: PAYMENT MADE 11/2/2018**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dejuandra Stevi Kyshawn Grant	Pro Se
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Trustee(s):

Carolyn A Dye (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-19673 Elmer Ruballo Moran

Chapter 7

#11.00 Show Cause Hearing
RE:[18] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtors Failure To Pay The Filing Fee In Installments

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-6-18

Tentative Ruling:

11/6/2018

Tentative Ruling:

This hearing is **VACATED**.

The Court has entered an order discharging the Order to Show Cause. As previously ordered, the Debtor shall make the final fee installment payment, in the amount of \$105.00, by no later than **November 22, 2018**.

Party Information

Debtor(s):

Elmer Ruballo Moran	Pro Se
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Trustee(s):

Timothy Yoo (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-19736 Martin Miramontes

Chapter 7

#12.00

Show Cause Hearing

RE: [15] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments

Docket 1

***** VACATED *** REASON: DISMISSED 11-1-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martin Miramontes

Pro Se

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:12-29275 Monge Property Investments, Inc.

Chapter 11

#13.00 Hearing

RE: [683] Motion for approval of chapter 11 disclosure statement (SECOND AMENDED) Describing Second Amended Chapter 11 Plan Of Reorganization And Setting Dates And Procedures For Approval Of Second Amended Chapter 11 Plan Of Reorganization; Memorandum Of Points And Authorities; Declaration Of Ruben Monge, Jr. In Support Thereof, with Proof of Service

Docket 683

*** VACATED *** REASON: CONTINJUED 1-23-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Monge Property Investments, Inc.

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#14.00 Hearing

RE: [254] Motion Debtors' Notice of Motion and Motion to Reject Health System Management Agreement with Integrity Healthcare, LLC; Memorandum of Points and Authorities; Declaration of Richard G. Adcock

FR. 10-17-18

Docket 254

Tentative Ruling:

11/6/2018

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion to Reject Health System Management Agreement with Integrity Healthcare, LLC [Doc. No. 254] (the "Motion")
 - a) Notice of Filing of Letter from Wendi Horwitz, Deputy Attorney General, to John O. Chelsey, Ropes & Gray, LLP Re: Proposed Changes in Governance and Control of Daughters of Charity Health System, Dated Dec. 3, 2015 [Doc. No. 256]
 - b) Notice of Filing of Letter from Alicia Berry, Deputy Attorney General, Regarding Termination of Management Agreement with Integrity Healthcare, LLC, Dated October 19, 2018 [Doc. No. 627]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion to Reject Health System Management Agreement with Integrity Healthcare, LLC [Doc. No. 382]
- 3) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order

**United States Bankruptcy Court
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CONT... **Verity Health System of California, Inc.**

Chapter 11

granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

VHS moves to reject a Health System Management Agreement (the "Management Agreement") between VHS and Integrity Healthcare, LLC ("Integrity"), pursuant to § 365(a). VHS and Integrity entered into the Management Agreement as of December 14, 2015. Integrity has not provided any services under the Management Agreement subsequent to the Petition Date.

Pursuant to the Management Agreement, Integrity provided VHS a Chief Executive Officer, Chief Operations Officer and President, a Chief Medical Officer, and Chief Financial Officer. VHS has determined that it is more cost effective to directly employ the professionals that had been provided by Integrity.

In connection with the 2015 recapitalization of VHS, the California Attorney General (the "Attorney General") imposed various conditions upon VHS (the "2015 Conditions"). Among the 2015 Conditions is the requirement that the Attorney General be given 60 days' notice of any proposed modification or rescission of the Management Agreement. VHS provided the Attorney General notice of its decision to terminate the Management Agreement on August 21, 2018.

On October 19, 2018, the Attorney General consented to VHS' termination of the Management Agreement. *See* Letter from Attorney General to VHS [Doc. No. 627].

The Official Committee of Unsecured Creditors (the "Committee") has no objection to the rejection of the Management Agreement. No opposition to the Motion is on file.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract:

In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." ...

Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best

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CONT...

Verity Health System of California, Inc.

Chapter 11

interests of the bankruptcy estate. *See Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

The Court finds that VHS has shown sufficient cause to reject the Management Agreement. It is far cheaper for VHS to directly employ the professionals whose services had previously been provided pursuant to the Management Agreement. Rejection of the Management Agreement will result in substantial savings. Because Integrity has provided no services under the Management Agreement subsequent to the Petition Date, rejection shall be effective as of the Petition Date.

Based upon the foregoing, the Motion is GRANTED in its entirety. VHS shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#15.00 Hearing

RE: [576] Motion to Reject Lease or Executory Contract Debtors Notice Of Motion And Motion To Reject, Pursuant To 11 U.S.C. § 365(A), Professional Services Agreement With All Care Medical Group, Inc. And Related Executory Contracts And Unexpired Lease Nunc Pro Tunc; Memorandum Of Points And Authorities; Declaration Of Stephen Campbell, M.D. [Filed Only To Amend Docket No. 399 In Accordance With Order Docket No. 522] (Moyron, Tania)

Docket 576

***** VACATED *** REASON: CONTNUED 12-12-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 Hearing

RE: [399] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with All Care Medical Group, Inc. and Related Executory Contracts and Unexpired Lease Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration # 6 Exhibit E (part 2) # 7 Exhibit F # 8 Exhibit G (part 1) # 9 Exhibit G (part 2)) (Moyron, Tania)

FR. 10-24-18

Docket 399

*** VACATED *** REASON: Cont'd to 12/12/2018 at 10:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#17.00 Hearing
RE: [515] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: . (Polis, Thomas)

fr. 11-5-18

Docket 515

Tentative Ruling:

11/6/2018

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 515] (the "Motion")
 - a) Holographic Signature of Declarant Neil M. Howard [Doc. No. 528]
- 2) Debtors' Response to Maria Zavala's and Florencio Zabala's Motion for Relief from the Automatic Stay [Doc. No. 620] (the "Opposition")
- 3) Movant, Maria Zavala's Reply to Debtors' Opposition Re: Motion for Relief from the Automatic Stay [Doc. No. 699] (the "Reply")
 - a) Movant, Maria Zavala's Request for Judicial Notice [Doc. No. 700]
- 4) Debtors' Surreply to Maria Zavala's Reply in Regard to Ms. Zavala's and Florencio Zabala's Motion for Relief from the Automatic Stay [Doc. No. 730] (the "Sur-Reply")
- 5) Movant, Maria Zavala's Response and Request to Strike Debtors' Unauthorized Sur-Reply Re: Movant's Stay Relief Motion to Liquidate Malpractice Claim in Los Angeles Superior Court [Doc. No. 740]
- 6) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Maria Zavala and Florencio Zabala [Doc. No. 772]

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Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

I. Facts and Summary of Pleadings

On August 31, 2018 (the “Petition Date”), Verity Health Systems of California (“VHS”) and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors’ motion for joint administration of the Debtors’ Chapter 11 cases. Doc. No. 17.

Maria Zavala and Florencio Zabala (“Movants”) seek stay-relief, pursuant to § 362(d)(1), so that they may litigate a personal injury action against Debtor St. Francis Medical Center (“St. Francis”) in the Los Angeles Superior Court (the “State Court Action”). The State Court Action asserts medical malpractice claims against St. Francis and Dr. Lucien Alexandre. In the State Court Action, the recovery Movants seek is not limited to St. Francis’ insurance, and Movants are not willing to waive any deficiency claim against St. Francis.

In Opposition, Debtors argue that the Motion should be denied without prejudice, because it is premature and would undermine the Debtors’ efforts to successfully proceed under Chapter 11. Debtors assert that allowing the State Court Action to proceed would impair their ability to pursue critical issues, such as the pending sales of two of the Debtors’ hospitals.

In Reply to the Debtors’ Opposition, Movants assert that stay-relief will not impair the Debtors’ ability to proceed under Chapter 11, because trial in the State Court Action is not scheduled to commence until April 30, 2019. Movants further contend that Debtors have submitted no admissible evidence in support of the contention that lifting the stay would disrupt Debtors’ ability to achieve their objectives under Chapter 11.

In a Sur-Reply to the Movants’ Reply, Debtors contend that the Court can take judicial notice of the extensive docket in this case as evidence of the intensity of the Debtors’ efforts to produce meaningful results in these cases. Debtors reiterate that they do not oppose stay-relief; instead, Debtors’ position is that stay-relief should not be granted at this time, so that the Debtors can focus their full attention on other issues.

Movants filed a request to strike the Debtors’ Sur-Reply, arguing that sur-replies are not authorized under the Local Bankruptcy Rules. Movants contend that granting the Motion at this time will not unduly interfere with the Debtors’ ability to proceed under Chapter 11, since any amount of Movants’ claim that exceeds applicable insurance will be in the range of between 0.25% and 0.50% of the total claims scheduled by the Debtors.

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CONT... **Verity Health System of California, Inc.**

Chapter 11

The Official Committee of Unsecured Creditors (the "Committee") argues that stay-relief would be premature, particularly given that Movants are not limiting their recovery to applicable insurance.

II. Findings and Conclusions

As a preliminary matter, the Court declines to strike the Sur-Reply filed by the Debtors. Movants are corrected that a sur-reply is not authorized under the Local Bankruptcy Rules. However, consideration of the Sur-Reply does not prejudice Movants because Movants have filed papers responding to the Sur-Reply, and the Court has considered those arguments.

Section 362(d)(1) provides that the Court "shall grant relief from the [automatic stay] ..., such as by terminating, annulling, modifying, or conditioning such stay for cause" "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir. 1986). "[I]f the relief from stay is requested at the early stages of the bankruptcy case, the burden upon the debtor is less stringent. But, if relief from stay is requested later in the case, the debtor's showing is closely scrutinized." *Sumitomo Trust & Banking Co. v. Grand Rapids Hotel, L.P.*, 140 B.R. 643, 700 (Bankr. W.D. Mich. 1992). "The longer the case goes on, the more the analysis may change and the balance of competing interests may compel a different result." *Chrysler LLC v. Plastech Engineered Prods., Inc.*, 382 B.R. 90, 109 (Bankr. E.D. Mich. 2008).

The Court finds that lifting the stay at this juncture would be premature. This case is approximately two months old and the Debtors have been required to address many urgent issues. An auction of two of the Debtors' hospitals is set to occur on December 10–11, with a hearing to approve the results of the auction set for December 19, 2018. To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the auction and subsequent hearing to approve the results of the auction. Granting stay-relief at this juncture would require the Debtors to divert their attention from issues pertaining to the sale, which would be detrimental to creditors.

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CONT... Verity Health System of California, Inc.

Chapter 11

Movants assert that the Debtors have supplied no admissible evidence supporting the contention that the case is extremely demanding upon Debtors at this point. Based upon the review of the numerous and lengthy pleadings on file so far (the docket now exceeds 700 entries), the Court finds that the case is at a critical point and that the Debtors are required to devote substantial resources to ensuring a successful outcome for creditors.

Although Debtors require some breathing space in order to achieve their objectives, the Court is also cognizant of the burden that delay poses upon Movants. Therefore, the Court will grant the Motion at this time, but will stay the effectiveness of the order granting the Motion until **January 15, 2019**. This will provide the Debtors the opportunity to consummate the sale without having to address issues posed by the State Court Action. At the same time, Movants' ability to prosecute the State Court Action will not be unduly delayed.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**. Movants shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, November 7, 2018

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10:00 AM

CONT...

Verity Health System of California, Inc.

Claude D Montgomery
Sam J Alberts

Chapter 11

**United States Bankruptcy Court
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Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#18.00

Hearing

RE: [400] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with Sports, Orthopedic and Rehabilitation Associates (SOAR) and Related Executory Contracts and Unexpired Leases Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

FR. 10-24-18

Docket 400

***** VACATED *** REASON: Cont'd to 12-12-18 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#19.00 Hearing

RE: [410] Motion to approve compromise / Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry Into New Collective Bargaining Agreements With International Union of Operating Engineers, Stationary Engineers, Local 39; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

FR. 11-6-18

Docket 410

Tentative Ruling:

11/6/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to 11 U.S.C. §§363 and 105 and Fed. R. Bankr. P. 9019 Authorizing Entry into New Collective Bargaining Agreements with International Union of Operating Engineers, Stationary Engineers, Local 39 [Doc. No. 410] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 406, 409, and 410 [Doc. No. 527]
- 2) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 626]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors O'Connor Hospital ("O'Connor"), Saint Louise Regional Hospital ("St. Louise"), and Seton Medical Center ("Seton") are parties to collective bargaining agreements (the "Existing CBAs") with the International Union of Operating

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CONT... **Verity Health System of California, Inc.**

Chapter 11

Engineers, Stationary Engineers, Local 39 (“Local 39”). Debtors move for approval of new CBAs (each, a “Successor CBA”) that have been negotiated between the Debtors and Local 39.

The engineers represented by Local 39 are responsible for maintaining life safety systems in the hospitals. Sharrer Decl. [Doc. No. 410] at ¶6. Among other things, the engineers maintain systems related to fire suppression, medical gas, climate control, and bio-medical equipment. *Id.* Most hospitals in the San Francisco Bay Area (where O’Connor, St. Louise and Seton are located) employ stationary engineers represented by Local 39. *Id.* at ¶7. No other union in the region has the same structure, assets, or resources to provide qualified engineers to hospitals. *Id.*

The Existing CBAs expired on September 30, 2018. *Id.* at ¶9. On September 20, 2018, the Debtors entered into tentative agreements with Local 39 to approve Successor CBAs, which extend and modify the Existing CBAs. *Id.* at ¶8. The members of Local 39 ratified the Successor CBAs on September 25, 2018. *Id.* Had the Debtors not negotiated the Successor CBAs, the members of Local 39 would have had the right to strike starting on September 30, 2018 (the date upon which the Existing CBAs expired). *Id.* at ¶9.

In the event that Local 39 engaged in a strike, the Debtors would have been required to hire replacement workers at greater cost. *Id.* A strike would have disrupted normal hospital operations and may have reduced patient volume, since some patients may have refused to cross a picket line to enter. *Id.*

The Successor CBAs retain many of the terms of the Existing CBAs, but provide for the following modifications:

- 1) Increased hourly wages;
- 2) Increased annual employer contributions to the Apprentice and Journeyman Training Fund; and
- 3) Increased hourly employer contribution to the Stationary Engineers Local 39 Pension Trust Fund; and
- 4) Extension of the term of the Existing CBAs to September 30, 2019.

The primary non-modified terms of the Existing CBAs preserved in the Successor CBAs are as follows:

- 1) No strike, slowdown, or other stoppage of work by Local 39 or its represented employees during the life of the Successor CBA;

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CONT... **Verity Health System of California, Inc.**

Chapter 11

- 2) No restriction on the sale, merger, or assignment of the hospital's assets, except that Local 39 must be provided (i) sixty days' notice of any transfer and (ii) an opportunity to discuss the potential impact of a transfer on personnel covered by the Successor CBA.

The Debtors assert that entry into the Successor CBAs is within the ordinary course of business. However, the Successor CBAs do not take effect unless the Debtors obtain an order confirming the Debtors' authority to enter into the Successor CBAs. The Debtors contend that if entry into the Successor CBAs does not constitute a transaction within the ordinary course of business, the Debtors are authorized to enter into the Successor CBAs pursuant to §363(b)(1) and Bankruptcy Rule 9019.

II. Findings and Conclusions

A. Entry Into the Successor CBAs is a Transaction Within the Ordinary Course of the Debtors' Business for Which Court Approval is Not Required

Section 363(c)(1) authorizes the Debtors to enter into transactions in the ordinary course of business without notice or hearing or Court approval. The Ninth Circuit applies two tests to determine whether a transaction has been conducted in the ordinary course of business: the "horizontal" test and the "vertical" or "creditor's expectation" test. *See Burlington Northern Railroad Co. v. Dant & Russell, Inc. (In re Dant & Russell, Inc.)*, 853 F.2d 700, 704 (9th Cir. 1988). The horizontal test "may be described as involving an industry-wide perspective in which the debtor's business is compared to other like businesses. In this comparison, the test is whether the postpetition transaction is of a type that other similar businesses would engage in as ordinary business." *Id.* The vertical or creditor's expectation test "views the disputed transaction 'from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit.'" *Id.* (internal citation omitted).

Here, both the horizontal and vertical tests are satisfied. In making this determination, the Court relies upon the testimony of Steven C. Sharrer, the Debtors' Chief Human Resources Officer. Mr. Sharrer has over twenty years' of human resources management experience in the healthcare industry and is therefore qualified to testify regarding standard business practices in the operation of hospitals. Sharrer Decl. at ¶2.

With respect to the horizontal test, Mr. Sharrer testifies that most hospitals in the San Francisco Bay Area enter into CBAs with Local 39 to facilitate the employment

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CONT... **Verity Health System of California, Inc.**

Chapter 11

of stationary engineers represented by Local 39. *Id.* at ¶7. Mr. Sharrer's testimony establishes that the horizontal test is satisfied.

With respect to the vertical test, "[t]he touchstone of 'ordinariness' is ... the interested parties' reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business." *Dant & Russell, Inc.*, 853 F.2d at 705. The Successor CBAs cover substantially the same services as the Existing CBAs and contain comparable provisions. Based upon its prepetition dealings with the Debtors, Local 39 could reasonably expect that the Debtors would enter into the Successor CBAs. Consequently, the vertical test is satisfied.

Because both the horizontal and vertical tests are met, entry into the Successor CBAs is a transaction in the ordinary course of business that the Debtors are authorized to consummate without notice or Court approval.

B. The Court Approves the Successor CBAs Pursuant to Bankruptcy Rule 9019

Although the Debtors are authorized to enter into the Successor CBAs in the ordinary course of business without Court approval under §363(c)(1), the Court finds it appropriate to grant the Debtors' request for approval of the Successor CBAs pursuant to Bankruptcy Rule 9019.

Bankruptcy Rule 9019 provides that the Court may approve a compromise or settlement. "In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *Martin v. Kane (In re A&C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986). "[C]ompromises are favored in bankruptcy, and the decision of the bankruptcy judge to approve or disapprove the compromise of the parties rests in the sound discretion of the bankruptcy judge." *In re Sassalos*, 160 B.R. 646, 653 (D. Ore. 1993). In approving a settlement agreement, the Court must "canvass the issues and see whether the settlement 'falls below the lowest point in the range of reasonableness.'" *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir. 1983).

The Successor CBAs do not resolve pending litigation, but can be construed as a settlement agreement given that the Debtors' entry into the Successor CBAs eliminates the risk of a strike that would harm the Debtors' business operations. Therefore, to the extent possible, the Court analyzes the Successor CBAs in

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CONT... Verity Health System of California, Inc.

Chapter 11

accordance with the *A&C Properties* factors. As set forth below, the Court finds that the Successor CBAs constitute a fair and reasonable settlement that is in the best interests of the Debtors' estates and creditors.

Here, the most salient factor is the paramount interest of creditors. Mr. Sharrer's testimony establishes that the Successor CBAs remove the possibility of a strike. A strike would require the Debtors to hire expensive replacement workers, would disrupt normal hospital operations, and would reduce patient volume. Sharrer Decl. at ¶9. Creditors would be harmed by the diversion of additional estate resources to ameliorate the negative effects of a strike. Significantly, there is no opposition to the Motion from either the Committee or any of the Debtors' fifty largest creditors.

The third *A&C Properties* factor—the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it—does not directly apply; however, the objectives which the factor seeks to vindicate are satisfied here. As discussed, the Successor CBAs eliminate the possibility of a strike which would severely disrupt the Debtors' operations. Thus, the Successor CBAs enable the Debtors to avoid considerable expense and inconvenience.

The two remaining *A&C Properties* are inapplicable.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. Notwithstanding Bankruptcy Rule 6004(h), the order on the Motion shall be effective immediately. It is appropriate for the Successor CBAs to become effective immediately because no opposition to the Motion is on file and because immediate effectiveness will avoid costs associated with uncertainty surrounding the operation of the hospitals without a labor agreement.

The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#20.00

Hearing

RE: [484] Application to Employ Dr. Tim Stacy DNP, ACNP-BC as Consultant -
[Application Of Patient Care Ombudsman To Employ Dr. Tim Stacy DNP,
ACNP-Bc As Consultant Effective As Of October 1, 2018; Declaration In
Support Thereof (POS Attached)]-

Docket 484

***** VACATED *** REASON: Per order entered on 11/2/2018**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#21.00 Hearing
RE: [483] Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P. as
Bankruptcy Counsel [Application Of Patient Care Ombudsman To Employ
Levene, Neale, Bender, Yoo & Brill L.L.P. As Bankruptcy Counsel Effective As
Of October 1, 2018; Declaration In Support Thereof (POS Attached)]-

Docket 483

*** VACATED *** REASON: Per order entered on 11/2/2018

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#22.00 Hearing
RE: [4] Debtor's Motion For An Order: (1) Authorizing Debtor Use Of Cash Collateral Pursuant To 11 U.S.C. § 363; (2) Granting Adequate Protection To Prepetition Senior CBT Pursuant To 11 U.S.C. §§ 361, 362, And 363, (3) Scheduling A Continued Hearing Pursuant To Bankruptcy Rule 4001; And (4) Granting Related Relief

FR. 7-17-18; 8-8-18; 10-10-18

Docket 4

Tentative Ruling:

11/6/2018

Hearing required.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

#100.00 APPLICANT: UNITED STATES BANKRUPTCY COURT, Clerk of the Court
Costs

Hearing re [60] and [61] re Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

11/6/2018

See Cal. No. 102, incorporated by reference.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

#101.00 APPLICANT: JEFFREY L SUMPTER, Other Professional Fees

Hearing re [60] and [61] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

See Cal. No. 102, incorporated by reference.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

#102.00 APPLICANT: Chapter 7 Trustee - TIMOTHY J YOO

Hearing re [60] and [61] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,966.67

Total Expenses: \$180

Jeffrey Sumpter: \$1,000

U.S. Bankruptcy Court: \$700

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

CONT... Tamara Nicole Gardner

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:16-17170 Tamara Nicole Gardner

Chapter 7

#103.00 APPLICANT: Attorney for Trustee - LEVENE NEALE BENDER YOO & BRILL

Hearing re [60] and [61] re Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

11/6/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$19,144.09

Expenses: \$855.91

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Tamara Nicole Gardner

Represented By
Brian J Soo-Hoo
Stella A Havkin

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

CONT... Tamara Nicole Gardner

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Carmela Pagay
Jeffrey L Sumpter

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:18-11785 Fernando F Vacas

Chapter 7

#104.00 **APPLICANT: TIMOTHY YOO, Chapter 7 Trustee**

Trustee's Final Report and Applications for Compensation Hearing

Docket 0

Tentative Ruling:

11/6/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,150.87

Total Expenses: \$5.65

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Fernando F Vacas

Represented By
Shirlee L Bliss

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#105.00 Hearing

RE: [484] Application to Employ Dr. Tim Stacy DNP, ACNP-BC as Consultant -
[Application Of Patient Care Ombudsman To Employ Dr. Tim Stacy DNP,
ACNP-Bc As Consultant Effective As Of October 1, 2018; Declaration In
Support Thereof (POS Attached)]-

Docket 484

***** VACATED *** REASON: WILL BE HEARD AT 10:00 A.M. TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 7, 2018

Hearing Room 1568

11:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#106.00 Hearing

RE: [483] Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P. as Bankruptcy Counsel [Application Of Patient Care Ombudsman To Employ Levene, Neale, Bender, Yoo & Brill L.L.P. As Bankruptcy Counsel Effective As Of October 1, 2018; Declaration In Support Thereof (POS Attached)]-

Docket 483

***** VACATED *** REASON: WILL BE HEARD AT 10:00 A.M. TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

2:17-18394 Marco Antonio Cueto

Chapter 11

#1.00 HearingRE: [119] Motion For Entry Of Discharge Of Chapter 11 Case Pursuant To 11 U.S.C. 1141(D)(5) Upon Completion Of Payments To Unsecured Creditors And Final Decree Closing Chapter 11 Case; Declaration of Marco Antonio Cueto in Support thereof

Docket 119

Tentative Ruling:

11/7/2018

For the reasons set forth below, the Motion is GRANTED and the hearing is VACATED.

Pleadings Filed and Reviewed

1. Motion for Entry of Discharge of Chapter 11 Case Pursuant to 11 U.S.C. § 1141(d)(5) Upon Completion of Payments to Unsecured Creditors and Final Decree Closing Chapter 11 Case [Doc. No. 119] (the "Motion")
2. No opposition is on file

I. Facts and Summary of Pleadings

Reorganized Debtor Marco Antonio Cueto (the "Debtor") obtained an order confirming his chapter 11 plan of reorganization (the "Plan") on June 20, 2018 [Doc. No. 103]. The Effective Date of the Plan was July 1, 2018. Under the Plan, Debtor proposed to pay general unsecured creditors 100% of their claims within 1 year of the Effective Date.

Debtor now moves for an order granting him a discharge and for entry of a final decree closing his case pursuant to 11 U.S.C. § 1141(d)(5)(A). The Debtor states that he is current on his secured creditor payments required under the Plan and has paid off all unsecured creditor claims in full.

As of the date of the preparation of this tentative ruling, no opposition is on file.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

CONT... Marco Antonio Cueto

Chapter 11

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 350(a) and Federal Rule of Bankruptcy Procedure 3022, the Court shall enter a final decree closing a Chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (B.A.P. 9th Cir. 1997) (quoting Fed. R. Bankr. P. 3022 advisory committee's notes (1991)).

The Court finds that the estate has been fully administered and that entry of a final decree and order closing the case is appropriate as follows: (1) the order confirming Debtor's Plan is now final; (2) there is no remaining property to be transferred under the Plan; (3) all payments required under the Plan have either been made in full or are proceeding consistent with the terms of the Plan; and (4) all motions, contested matters, and adversary proceedings have been finally resolved.

The Court further finds that the Debtor is entitled to entry of a discharge pursuant to 11 U.S.C. § 1141(d)(5)(C).

The Debtor shall lodge a conforming proposed order within 7 days of the hearing.

Party Information

Debtor(s):

Marco Antonio Cueto

Represented By
Onyinye N Anyama

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

CONT... Marco Antonio Cueto

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#2.00 HearingRE: [62] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement

Docket 62

Tentative Ruling:

For the reasons set forth below, the Debtor's Motion to extend the exclusive period under which it may file and solicit votes on a Plan of Reorganization is GRANTED in its entirety and the HEARING IS VACATED.

Pleadings Filed and Reviewed

1. Debtor's Notice of Motion and Motion for an Order Extending the Exclusive Periods to File Its Plan of Reorganization and Secure Acceptance of its Plan of Reorganization Pursuant to 11 U.S.C. § 1121(d) [Doc. No. 62] (the "Motion")
2. Amended Notice of Motion [Doc. No. 63]
3. No opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, Andrew's & Son Tradings Inc., dba Beston Shoes (the "Debtor") seeks an extension of the exclusive period under which it may file and solicit votes on a Plan of Reorganization (the "Plan"). The Debtor's exclusive period to file a Plan expires on November 10, 2018. The Debtor's exclusive period to solicit votes with respect to a Plan expires on January 9, 2019. The Debtor seeks an order (1) extending the exclusive period to file a Plan by ninety days, to and including February 8, 2019, and (2) extending the exclusive period to solicit votes with respect to the Plan by ninety days, to and including April 9, 2019. The foregoing extensions are without prejudice to the right to seek further extensions of the exclusivity periods.

The Debtor states that an extension of the exclusive periods is necessary because it has been busy operating its business in good faith, complying with the chapter 11 bankruptcy administrative requirements, and pursuing discussions with its creditors to maximize the value of its estate and has not had the amount of time necessary to prepare and finalize a plan of reorganization. The Debtor also believes it is

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

CONT... Andrew's & Son Tradings Inc.

Chapter 11

appropriate to extend its deadlines to file a Plan because the terms of any proposed plan are in flux as it negotiates with its creditors.

II. Findings of Fact and Conclusions of Law

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. If the debtor files a plan within the 120-day exclusivity period, §1121(c)(3) provides that exclusivity is extended for an additional 60 days to maintain exclusivity during the plan solicitation period. If the plan has not been accepted by holders of impaired claims before 180 days after the date of the order for relief, then the exclusivity period terminates, unless the debtor has obtained an extension. §1121(c)(3). Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the exclusivity periods in accordance with the Debtor's request. This case has been pending for only a short time. The Debtor continues to operate a profitable business while negotiating with its creditors towards its goal of proposing a consensual Plan. An exclusivity extension is appropriate so that the Debtor will have additional time to analyze and review its claims and continue negotiating with creditors.

The exclusive period for the Debtor to file a Plan is extended from November 10, 2018 to and including February 8, 2019. The Exclusive period for the Debtor to solicit acceptances of its Plan is extended from January 9, 2019 to and including April 9, 2019. These extensions are without prejudiced to the Debtor's ability to request further extensions of exclusivity.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 8, 2018

Hearing Room 1568

11:00 AM

CONT... Andrew's & Son Tradings Inc.

Chapter 11

Steven P Chang
David Samuel Shevitz

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:10-62208 EPD Investment Co., LLC

Chapter 7

#1.00 Hearing

RE: [1278] Motion of Trustee for Order Authorizing Abandonment and Dismissal with Prejudice of Second, Third, Fourth, Fifth and Sixth Claims for Relief to Avoid and Recover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding; Memorandum of Points and Authorities; Declaration of Jason M. Rund; and Request for Judicial Notice (Weber, Corey)

FR. 10-17-18

Docket 1278

Tentative Ruling:

11/12/2018

For the reasons set forth below, the Trustee's Abandonment Motion is DENIED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion for: Order Authorizing Abandonment and Dismissal with Prejudice of Second, Third, Fourth, Fifth and Sixth Claims for Relief to Avoid and Recover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding [Bankr. Doc. No. 1278] (the "Abandonment Motion")
 - a) Notice of Motion of Trustee for Order: (1) Approving Trustee's Abandonment of Second, Third, Fourth, Fifth and Sixth Claims for Relief to Avoid and Recover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding; and (2) Authorizing Trustee to Dismiss Such Claims for Relief with Prejudice [Bankr. Doc. No. 1279]
- 2) Opposition to Trustee's Motion to Authorize Abandonment and Dismissal of Causes of Action [Bankr. Doc. No. 1281] (the "Opposition")
- 3) Trustee's Reply to Opposition of the Bright Conscience Trust Dated September 9, 2009 and John Kirkland to Motion of Trustee for Order Authorizing Abandonment and Dismissal with Prejudice of Second, Third, Fourth, Fifth, and Sixth Claims for Relief to Avoid and REcover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding [Bankr. Doc. No.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

- 1282] (the "Reply")
- 4) Defendants' Motion to Continue Trustee's Motion to Authorize Abandonment and Dismissal of Causes of Action Due to Materially New Matter and Changed Positions in Reply Brief [Bankr. Doc. No. 1284]
 - 5) Trustee's Opposition to Motion of Bright Conscience Trust Dated September 9, 2009 and John Kirkland to Continue Trustee's Motion to Authorize Abandonment and Dismissal of Causes of Action Due to Materially New Matter and Changed Positions in Reply Brief [Bankr. Doc. No. 1286]
 - 6) Order Continuing Hearing on Trustee's Motion to Abandon from October 17, 2018 at 10:00 a.m. to November 13, 2018 at 10:00 a.m. [Bankr. Doc. No. 1287]
 - 7) Sur-Reply in Opposition to Trustee's Motion to Authorize Abandonment and Dismissal of Causes of Action [Bankr. Doc. No. 1289]

I. Facts and Summary of Pleadings

On December 7, 2010, creditors commenced an involuntary petition against EPD Investment Co., LLC ("EPD"). The Court entered an Order for Relief on February 9, 2011. On February 1, 2012, Jerrold S. Pressman ("Pressman") filed a voluntary Chapter 7 petition. On June 4, 2012, the bankruptcy cases of EPD and Pressman (collectively, the "Debtors") were substantively consolidated.

Pursuant to the operative Fourth Amended Complaint (the "Complaint") [Doc. No. 234] against John C. Kirkland and Poshow Ann Kirkland as Trustee of the Bright Conscience Trust Dated September 9, 2009 (the "BC Trust"), the Chapter 7 Trustee (the "Trustee") seeks to (1) disallow or equitably subordinate proofs of claim filed by the BC Trust and (2) avoid allegedly fraudulent transfers from the Debtors to Mr. Kirkland and the BC Trust.

A. Summary of the Complaint's Allegations

The allegations of the Complaint are as follows: Between the 1970s and June 27, 2003, EPD Investment Co. was an unincorporated sole proprietorship run by Pressman. Complaint at ¶12. On June 27, 2003, EPD was formed as a California limited liability company to provide corporate protection and to satisfy Mr. Pressman's goal of retirement. *Id.* Upon EPD's formation in 2003, the EPD sole proprietorship's assets and liabilities were transferred from Mr. Pressman to EPD. *Id.* At all times, the members and managers of EPD were Mr. Pressman and his son, Keith Pressman ("Keith"). *Id.*

EPD operated as a Ponzi scheme since its formation in 2003. *Id.* at ¶24. Between

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

CONT... EPD Investment Co., LLC

Chapter 7

2003 and mid-2009, EPD repaid existing creditors by using funds from new creditors. *Id.* EPD was balance sheet insolvent from at least December 2003, according to its tax returns, and has never been profitable. *Id.* at ¶¶20–21. Many of EPD's creditors mistakenly believed that EPD owned substantial real property assets in Tennessee, Mississippi, and elsewhere, when in fact EPD owned no real property. *Id.* at ¶16. Instead, EPD owned promissory notes secured by Mr. Pressman's assets, and it was Mr. Pressman who held an ownership interest in entities owning property in Tennessee, Mississippi, and elsewhere. *Id.*

In mid-2009, EPD could not pay creditors because the companies Mr. Pressman partially owned lacked sufficient operating cash flow, and because EPD was no longer receiving cash infusions from new investors. *Id.* at ¶25.

Mr. Kirkland was outside counsel for the Mr. Pressman, EPD, and other business entities owned by the Mr. Pressman. *Id.* at ¶28. Mr. Kirkland invested and/or loaned in excess of \$150,000 of his personal funds to EPD (Mr. Kirkland's "EPD Interests"). *Id.* at ¶29. In September 2009, after EPD had ceased making payments to most creditors, Mr. Kirkland assigned his EPD Interests to the BC Trust (his family trust), and/or to his wife Poshow Ann Kirkland as Trustee of the BC Trust, through a Notice of Assignment. The Notice of Assignment provides: "Notice is hereby given that all rights of John C. Kirkland under all such Loan Documents have been sold, transferred, and assigned to the Bright Conscience Trust Dated September 9, 2009." *Id.*

The BC Trust took the assignment subject to all claims and defenses of Mr. Kirkland, and did not take the assignment in good faith or for adequate consideration. *Id.* On September 11, 2009, the BC Trust filed and/or recorded a UCC-1 financing statement as to all assets of the Debtors. *Id.* On May 5, 2010, the BC Trust filed and/or recorded an amendment to the UCC-1 financing statement, which provided that "[t]his amendment is to clarify and confirm that the prior grant of security did not include the stock of North Hills Industrial Park, Inc., a California S-Corporation." *Id.*

Mr. Kirkland was aware that EPD operated as a Ponzi scheme. In 2005, Mr. Kirkland drafted letters to the California Franchise Tax Board which stated, among other things, that EPD's liabilities exceeded its assets, that EPD had negative cash flow, and that EPD required additional investment just to break even. *Id.* at ¶30(b)(i). Despite knowing that EPD operated as a Ponzi scheme, Mr. Kirkland took actions for the benefit of the BC Trust and to the detriment of EPD's other creditors, including:

- 1) Arranging for Mr. Pressman, through EPD, to make monthly mortgage

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 13, 2018

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10:00 AM

CONT...

EPD Investment Co., LLC

Chapter 7

- payments on the house in which Mr. Kirkland and his spouse resided. *Id.* at ¶ 30d.
- 2) Defending suits brought against EPD by its creditors absent a good-faith basis, while at the same time benefitting from payments made by EPD to his mortgage lender. *Id.* at ¶30e.
 - 3) Orchestrating transfers which he knew were fraudulent under the Bankruptcy Code, for the purpose of staving off litigation by EPD's unpaid creditors. *Id.* at ¶30f.
 - 4) Representing Plush Lounge, an entity that received significant transfers from EPD, and owed those sums to EPD, in litigation that severely depleted the assets of Plush Lounge, while simultaneously representing adverse party EPD. *Id.* at ¶30m.
 - 5) Filing false and misleading pleadings in EPD's involuntary bankruptcy proceeding, contesting that EPD owed funds to creditors.
 - 6) Contesting the EPD involuntary bankruptcy proceeding without a good-faith basis to do so, seeking to convert the proceeding to Chapter 11 without a good-faith basis to do so, and advising EPD and Mr. Pressman not to cooperate with the Trustee.

1. First Claim for Relief: Disallowance of Proofs of Claim, or, in the Alternative, Equitable Subordination of Proofs of Claim Against the BC Trust and Mr. Kirkland

On December 12, 2011, the BC Trust filed three proofs of claim in the bankruptcy case, all in the amount of \$2.672 million. *Id.* at ¶39. On February 15, 2013, the BC Trust filed a proof of claim in Mr. Pressman's bankruptcy case—which has now been substantively consolidated with the EPD case—in the amount of \$3.529 million. *Id.* All Proofs of Claim are secured claims, and were executed by Poshow Ann Kirkland as Trustee of the BC Trust. *Id.*

The BC Trust is the assignee of Mr. Kirkland's EPD Interests and the BC Trust's Proofs of Claim are based on the assignment of Mr. Kirkland's EPD Interests. *Id.* at ¶ 40. The BC Trust did not separately invest or loan funds to the Debtors; its rights are based solely on the assignment of Mr. Kirkland's EPD Interests, which assignment was orchestrated by Mr. Kirkland while he was counsel for Mr. Pressman and EPD. *Id.*

Mr. Kirkland engaged in inequitable conduct in his representation of EPD, as set forth above. The BC Trust, as Mr. Kirkland's assignee, stands in his shoes and took the assignment of the EPD Interests subject to Mr. Kirkland's actions. Accordingly,

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... EPD Investment Co., LLC

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the BC Trust's claims should be disallowed or equitably subordinated. *Id.* at ¶42–47.

2. Second through Sixth Claims for Relief: Avoidance and Recovery of Intentional and Constructive Fraudulent Transfers

Prior to the filing of the petition, the Debtors made transfers to the BC Trust evidenced by the liens in favor of the BC Trust. The transfer to the BC Trust is avoidable as actually fraudulent pursuant to §544 (applying California Civil Code §§ 3439.04(a) and 3439.07) and §548(a)(1)(A). The transfer is avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§ 3439.04(b), 3439.05, and 3439.07) because it was made without the Debtors receiving reasonably equivalent value at a time when the Debtors were (1) insolvent or (2) were engaged in a business or transaction for which any property remaining was an unreasonably small capital or (3) intended to incur debts beyond their ability to pay. For the same reasons, the transfer is avoidable as constructively fraudulent pursuant to §548(a)(1)(B).

Prior to the filing of the petition, the Debtors made transfers for the benefit of Mr. Kirkland and the BC Trust by issuing checks to a Union Bank account. Those transfers are avoidable as intentionally fraudulent pursuant to §544 (applying California Civil Code §§3439.04(a) and 3439.07) and §548(a)(1)(A). Those transfers are avoidable as constructively fraudulent pursuant to §544 (applying California Civil Code §§3439.04(b), 3439.05, and 3439.07) and §548(a)(1)(B).

All the avoidable transfers are recoverable pursuant to §550(a)(1).

B. The Bankruptcy Court's February 2018 Rulings

On February 17, 2018, the Bankruptcy Court issued a Report and Recommendation, recommending that the District Court enter final judgment, in favor of the Trustee, as to the second, third, and sixth claims for relief for avoidance and recovery of fraudulent transfers made with actual intent. Adv. Doc. No. 341. On that same date, the Court issued a Memorandum of Decision, stating that the Court intended to grant the Trustee's motion for summary adjudication disallowing the proofs of claim filed by the BC Trust. However, the Memorandum of Decision stated that the findings set forth therein would not become the order of the Court until the District Court acted upon the Report and Recommendation.

On June 25, 2018, the District Court rejected the Report and Recommendation, and denied the Trustee's motion for summary adjudication as to the second, third, and sixth claims for relief. On July 20, 2018, the Trustee moved for reconsideration of the

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District Court's rejection of the Report and Recommendation. On August 13, 2018, the District Court denied the Trustee's motion for reconsideration.

C. The Bankruptcy Court's September 2018 Order to Show Cause

On September 20, 2018, the Bankruptcy Court entered an *Order Requiring Defendant and Trustee to Show Cause Why the Court Should Not Stay Adjudication of the Claims Against the BC Trust Until the District Court Has Entered Final Judgment Against John C. Kirkland* [Adv. Doc. No. 372] (the "Order to Show Cause"). The Order to Show Cause required the parties to respond to the following *Preliminary Findings and Conclusions*:

John C. Kirkland has demanded a jury trial in this fraudulent conveyance action, has not filed a proof of claim against the estate, and does not consent to having the jury trial conducted by the Bankruptcy Court. Under these circumstances, Mr. Kirkland is entitled to a jury trial before the District Court. *See Langenkamp v. Culp*, 498 U.S. 42, 45 (1990) ("If a party does *not* submit a claim against the bankruptcy estate, however, the trustee can recover allegedly preferential transfers only by filing what amounts to a legal action to recover a monetary transfer. In those circumstances the preference defendant is entitled to a jury trial."); Bankruptcy Rule 9015(b) (stating that the Bankruptcy Court may conduct a jury trial only if the parties consent); and *Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (9th Cir. 2012) (holding that the Bankruptcy Court lacks constitutional authority to enter final judgment in a fraudulent conveyance action absent consent of the parties).

The BC Trust has filed proofs of claim against the estate. As a result, the Bankruptcy Court has jurisdiction to enter final judgment with respect to the Trustee's claims against the BC Trust. *See Langenkamp*, 498 U.S. at 45.

The claims against Mr. Kirkland and the BC Trust present common issues of fact. For example, the Trustee asserts that the BC Trust's claims against the estate should be disallowed and/or equitably subordinated based upon Mr. Kirkland's alleged inequitable conduct. The Trustee's causes of action for disallowance and/or equitable subordination are pleaded against both the BC Trust and Mr. Kirkland.

As a result of the overlap between the claims asserted against Mr. Kirkland and the claims asserted against the BC Trust, the most efficient means for this

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action to proceed would be for the District Court to first adjudicate the claims against Mr. Kirkland. Once the District Court has entered findings with respect to Mr. Kirkland, the Bankruptcy Court can then try the claims against the BC Trust. If the Bankruptcy Court tried claims against the BC Trust prior to the District Court's trial of claims against Mr. Kirkland, findings by the Bankruptcy Court with respect to common issues of fact could prejudice Mr. Kirkland. For example, Mr. Kirkland could be collaterally estopped from contesting certain issues of fact that might prove material to the adjudication of the claims against him; were that to occur, Mr. Kirkland would effectively be deprived of his right to a jury trial. *See Ross v. Bernhard*, 396 U.S. 531 (holding that "where equitable and legal claims are joined in the same action," the right to jury trial on the legal claims "must not be infringed either by trying the legal issues as incidental to the equitable ones by a court trial of a common issue existing between the claims").

Final Ruling Re: September 11, 2018 Status Conference [Adv. Doc. No. 371] at 3–4.

The Order to Show Cause also directed Mr. Kirkland to file with the District Court a motion to withdraw the reference by no later than September 25, 2018. Mr. Kirkland timely filed the motion, which was initially set to be heard on October 29, 2018. On October 23, 2018, the District Court took the hearing on the motion to withdraw the reference off calendar, pending the Bankruptcy Court's adjudication of the Abandonment Motion (defined below).

D. Summary of Papers Filed in Connection with the Trustee's Abandonment Motion

On September 25, 2018, the Trustee filed the instant *Motion for: Order Authorizing Abandonment and Dismissal with Prejudice of Second, Third, Fourth, Fifth and Sixth Claims for Relief to Avoid and Recover Actually Fraudulent Transfers and Constructively Fraudulent Transfers in Adversary Proceeding* [Bankr. Doc. No. 1278] (the "Abandonment Motion"). The Bankruptcy Court found that the Abandonment Motion mooted the October 2, 2018 hearing on the Order to Show Cause, and took the OSC hearing off calendar. Adv. Doc. No. 380.

By the Abandonment Motion, the Trustee seeks authorization to abandon the second through sixth claims for relief for avoidance and recovery of intentional and constructive fraudulent transfers (the "Fraudulent Transfer Claims"). The Trustee states that the abandonment will be effectuated "by means of a stipulation with the

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[BC Trust] and Kirkland or an ex-parte application by the Trustee in the Adversary Proceeding." Bankr. Doc. No. 1279 at 2. The Trustee argues that prosecution of the Fraudulent Transfer Claims will be unduly burdensome to the estate, because such prosecution will require the Trustee to spend hundreds of thousands of dollars in additional attorneys' fees conducting a jury trial before the District Court. Bankr. Doc. No. 1278 at 9.

The BC Trust and Kirkland (collectively, the "Defendants") oppose the Abandonment Motion. They argue that the Abandonment Motion is a bad-faith attempt by the Trustee to defeat Kirkland's right to a jury trial before the District Court. Defendants assert that the use of abandonment pursuant to §554(a) as a tactic to facilitate the dismissal of claims within a pending complaint is highly irregular, and that if the Trustee wishes to dismiss the second through sixth claims, he is required to proceed under Civil Rule 41(a)(2). Bankr. Doc. No. 1281 at 6-7.

In his reply papers (the "Reply"), the Trustee introduced new legal theories not presented in the Abandonment Motion. Whereas the Abandonment Motion had stated that abandonment would be effectuated by means of a stipulation with the Defendants or by an ex-parte application, the Reply argues that the Court should *sua sponte* dismiss the Fraudulent Transfer Claims. Bankr. Doc. No. 1282 at 20. The Trustee's theory is that once the Fraudulent Transfer Claims have been abandoned under § 554(a), the Court will lose subject matter jurisdiction over such claims, and must dismiss them pursuant to Civil Rule 12(h)(3). *Id.*

To provide Defendants an opportunity to respond to the legal theories raised for the first time in the Trustee's Reply, the Court continued the hearing on the Abandonment Motion and authorized Defendants to submit a Sur-Reply. Bankr. Doc. No. 1287. In the Sur-Reply, Defendants present the following arguments:

- 1) It is improper for the Trustee to seek dismissal of the Fraudulent Transfer Claims through the Abandonment Motion, which has been filed in the main bankruptcy case. Dismissal of the Fraudulent Transfer Claims must be litigated in the adversary proceeding.
- 2) The Trustee's attempt to manufacture a lack of subject matter jurisdiction via abandonment of the Fraudulent Transfer Claims fails, because subject matter jurisdiction is determined at the time an action is filed.
- 3) The Trustee assumes that dismissal of the Fraudulent Transfer Claims will deprive Mr. Kirkland of his right to a jury trial before the District Court. That assumption is incorrect. The Trustee's claims for disallowance and/or equitable subordination of the Proofs of Claim filed by the BC Trust are

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pleaded against both the BC Trust and Mr. Kirkland. The Trustee's theory is that the BC Trust's claims may be disallowed and/or equitably subordinated as a result of Mr. Kirkland's alleged bad-faith conduct. Mr. Kirkland has never filed a proof of claim and has not consented to the Bankruptcy Court's jurisdiction. He is entitled to adjudication of the disallowance and equitable subordination claims before an Article III court.

II. Findings and Conclusions

Section 554(a) governs the Trustee's abandonment of property of the estate, and provides in relevant part: "After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." Section 704 requires the Trustee to "collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest." "The trustee is accountable for all property received ... and has the duty to maximize the value of the estate ..." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352, 105 S.Ct. 1986, 1992, 85 L.Ed.2d 372 (1985). In accordance with the business judgment rule, the Court should "allow a trustee discretion in balancing the costs and benefits of administering an asset of the estate." *In re Moore*, 110 B.R. 924, 928 (Bankr. C.D. Cal. 1990).

Here, the Trustee seeks to abandon some, but not all, of the claims for relief asserted in litigation against Kirkland and the BC Trust. The Trustee brings the Abandonment Motion in the main bankruptcy case, not in the adversary proceeding, even though granting the Abandonment Motion would significantly affect the course of the adversary proceeding.

It is not procedurally proper for the Trustee to seek partial dismissal of the Complaint through the mechanism of abandonment, where the Trustee has not filed a motion in the adversary proceeding seeking dismissal in accordance with the applicable provisions of the Federal Rules of Civil Procedure (the "Civil Rules").

The Civil Rules contain specific provisions governing the partial dismissal of a Complaint. Where, as here, the defendants oppose partial dismissal, the Ninth Circuit has held that partial dismissal may be sought under Civil Rule 15:

[W]ithdrawals of individual claims against a given defendant are governed by Fed.R.Civ.P. 15, which addresses amendments to pleadings. *See Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir.1988). As we noted in *Ethridge*, "a plaintiff may not use Rule 41(a)(1)(i) to dismiss, unilaterally, a

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single claim from a multi-claim complaint." *Id.* at 1392. Instead, we agreed with two of our sister circuits that "Federal Rule of Civil Procedure 15(a) is the appropriate mechanism '[w]here a plaintiff desires to eliminate an issue, or one or more but less than all of several claims, but without dismissing as to any of the defendants.'" *Id.* (quoting 5 J. Moore et al., *Moore's Federal Practice* ¶ 41.06-1, at 41-83 to -84 (1987)) (alteration in original); *see also Gen. Signal Corp. v. MCI Telecomms. Corp.*, 66 F.3d 1500, 1513(9th Cir.1995) ("[W]e have held that Rule 15, not Rule 41, governs the situation when a party dismisses some, but not all, of its claims." (citing *Ethridge*, 861 F.2d at 1392)); *Gronholz v. Sears, Roebuck & Co.*, 836 F.2d 515, 518 (Fed.Cir.1987).

Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 687-88 (9th Cir. 2005).

The Trustee contends that the partial dismissal which he seeks may be obtained solely through the abandonment remedy provided in §554. The Trustee asserts that the Civil Rules are not relevant, because once the Fraudulent Transfer Claims have been abandoned, the Court will lose jurisdiction over those claims and will be required to dismiss them under Civil Rule 12(h)(3).

The Trustee's argument lacks merit. Adopting the Trustee's theory would allow the Trustee to engineer the partial dismissal of the Complaint, over the Defendants' opposition, absent compliance with the specific procedural rules that govern partial dismissal. The Court declines to construe §554 in a manner that would effectively nullify Civil Rule 15. The Trustee has not cited any authority, and the Court is aware of none, that would permit the use of abandonment in this manner. Every single case cited by the Trustee authorizes the abandonment of *all* the claims pleaded in a Complaint, and the Trustee cites no authority in which abandonment was authorized as a means of circumventing compliance with the provisions of the Civil Rules governing dismissal of an action.

Based upon the foregoing, the Abandonment Motion is DENIED.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

EPD Investment Co., LLC

Pro Se

Trustee(s):

Jason M Rund (TR)

Represented By
Corey R Weber
Robert A Hessling
Richard K Diamond
Daniel H Gill
Michael W Davis
Steven T Gubner
Ronald P Abrams

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2:17-24053 Katie May McKay

Chapter 7

**#2.00 Show Cause Hearing
RE: [34] Requiring Debtor To Appear And Show Cause Why Case Should
Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In
Installments.**

Docket 1

***** VACATED *** REASON: RESCHEDULED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Katie May McKay	Pro Se
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Trustee(s):

Edward M Wolkowitz (TR)	Pro Se
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2:18-15427 Francisco R. Gomez

Chapter 7

Adv#: 2:18-01251 Great Northern Insurance Company, a Corporation v. Gomez

#3.00 Status Hearing RE: [1] Adversary case 2:18-ap-01251. Complaint by Great Northern Insurance Company, a Corporation against Francisco R. Gomez. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Garwacki, Ray)

Docket 1

Tentative Ruling:

11/9/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) The litigation deadlines previously ordered shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **12/13/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **3/26/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **4/25/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **5/14/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **5/21/2019**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including

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hearings on discovery motions, is **5/25/2019**. (If the non-expert discovery cutoff date is not available for self-scheduling, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-scheduling.)

- g) A Pretrial Conference is set for **6/11/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.
 - iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(1)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any

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- witness shall comply with the requirements set forth in ¶(1)(h)(ii).
- i) Trial is set for the week of **6/24/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
 - 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Francisco R. Gomez

Represented By
Mark La Rosa

Defendant(s):

Francisco R. Gomez

Pro Se

Joint Debtor(s):

Claudia E. Gomez

Represented By
Mark La Rosa

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Plaintiff(s):

Great Northern Insurance Company,

Represented By

Ray Garwacki

Ray Garwacki Jr

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#4.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01260. Complaint by Joseph Amin against Kami Emein. false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)) (Berke, Michael)

Docket 1

***** VACATED *** REASON: CONTINUED TO 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Pro Se

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

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2:18-17994 Gary Finesilver

Chapter 7

**#5.00 Show Cause Hearing
RE: [20] Order Requiring Debtor To Appear And Show Cause Why Case
Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing
Fee In Installments.**

Docket 1

***** VACATED *** REASON: RESCHEDULED 11-7-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gary Finesilver

Pro Se

Trustee(s):

Sam S Leslie (TR)

Pro Se

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:16-01278 AHA 2012 LLC et al v. BENNY KO, aka BENN KO, aka TZU PING KO,

#6.00 Status Hearing re [1] Notice Of Removal Of Civil Action Under 28 U.S.C. § 1452(A)

fr: 3-21-17; 9-12-17; 3-13-18; 7-17-18

Docket 0

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

11/9/2018

The Court has entered an order continuing this Status Conference to **January 15, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford Frey

Defendant(s):

HANDING HOLDING

Pro Se

TLH REO MANAGEMENT LLC

Pro Se

BRADBURY FURLONG LLC

Pro Se

OAK RIVER ASSET

Pro Se

LIBERTY ASSET MANAGEMENT

Represented By
Jeffrey S Kwong
David B Golubchik

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CONT... Liberty Asset Management Corporation

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John-Patrick M Fritz
Eve H Karasik

PACIFIC SUNSHINE	Pro Se
TA-LIN HSU	Pro Se
SHELBY HO, aka TSAI-LUAN HO	Pro Se
VANESSA LAVENDERA, aka	Pro Se
LUCY GAO, aka XIANGXIN GAO,	Pro Se
BENNY KO, aka BENN KO, aka	Pro Se
LIBERTY CAPITAL	Pro Se

Plaintiff(s):

RICHBEST HOLDING LLC	Pro Se
FRANK LEE, Co-Trustee of THE	Represented By David S Henshaw
CHRISTOPHER D. LEE	Represented By David S Henshaw
YCJS 2012 LLC	Represented By David S Henshaw
AHA 2012 LLC	Represented By David S Henshaw

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01170 Official Committee of Unsecured Creditors of Garde v. Southland Medical

#7.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01170. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southland Medical Dialysis, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 AM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southland Medical Dialysis, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01171 Official Committee of Unsecured Creditors of Garde v. Abbott Laboratories,

#8.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01171. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Abbott Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Abbott Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01172 Official Committee of Unsecured Creditors of Garde v. US Foods, Inc. doing

#9.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01172. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against US Foods, Inc. doing business in California as U.S. Foodservice, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

US Foods, Inc. doing business in

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01173 Official Committee of Unsecured Creditors of Garde v. BETA Healthcare

#10.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01173. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against BETA Healthcare Group. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

BETA Healthcare Group

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01174 Official Committee of Unsecured Creditors of Garde v. Bio-Rad

#11.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01174. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Bio-Rad Laboratories, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Bio-Rad Laboratories, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01175 Official Committee of Unsecured Creditors of Garde v. Universal Hospital

#12.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01175. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Universal Hospital Service, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Universal Hospital Service, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01176 Official Committee of Unsecured Creditors of Garde v. Baxter Healthcare

#13.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01176. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Baxter Healthcare Corporation. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Baxter Healthcare Corporation

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01177 Official Committee of Unsecured Creditors of Garde v. UC Irvine Medical

#14.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01177. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against UC Irvine Medical Center. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

UC Irvine Medical Center

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01178 Official Committee of Unsecured Creditors of Garde v. American Red Cross

#15.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01178. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against American Red Cross of California. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 11-9-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and	Represented By
	Samuel R Maizel
	John A Moe

Defendant(s):

American Red Cross of California	Pro Se
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Plaintiff(s):

Official Committee of Unsecured	Represented By
	Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#16.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01180 Official Committee of Unsecured Creditors of Garde v. L.A. Good Samaritan

#17.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01180. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against L.A. Good Samaritan Pathology Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

L.A. Good Samaritan Pathology

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01181 Official Committee of Unsecured Creditors of Garde v. Superior Scientific,

#18.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01181. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Superior Scientific, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Superior Scientific, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01182 Official Committee of Unsecured Creditors of Garde v. Cardioimage

#19.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01182. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Cardioimage Dynamics, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Cardioimage Dynamics, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01183 Official Committee of Unsecured Creditors of Garde v. St. Vincent

#20.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01183. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against St. Vincent Anesthesia Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

St. Vincent Anesthesia Medical

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01184 Official Committee of Unsecured Creditors of Garde v. Southwest Medical

#21.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01184. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southwest Medical Resources, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southwest Medical Resources, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01185 Official Committee of Unsecured Creditors of Garde v. Carefusion

#22.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01185. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Carefusion Solutions, LLC. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Carefusion Solutions, LLC

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01186 Official Committee of Unsecured Creditors of Garde v. Southern California

#23.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01186. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Southern California Infection Control Services, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Southern California Infection

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11

Adv#: 2:18-01187 Official Committee of Unsecured Creditors of Garde v. Siemens Medical

#24.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01187. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Medical Solutions USA, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Medical Solutions USA,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01188 Official Committee of Unsecured Creditors of Garde v. James Lahana

#25.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01188. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against James Lahana. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

James Lahana

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01189 Official Committee of Unsecured Creditors of Garde v. Immucor, Inc.

#26.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01189. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Immucor, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Immucor, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01190 Official Committee of Unsecured Creditors of Garde v. Siemens Healthcare

#27.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01190. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Siemens Healthcare Diagnostics, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Siemens Healthcare Diagnostics,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01191 Official Committee of Unsecured Creditors of Garde v. J.S.E. Emergency

#28.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01191. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against J.S.E. Emergency Medical Group, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

J.S.E. Emergency Medical Group,

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01192 Official Committee of Unsecured Creditors of Garde v. Mediclean, Inc.

#29.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01192. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Mediclean, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Mediclean, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01193 Official Committee of Unsecured Creditors of Garde v. Nordian Healthcare

#30.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01193. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Nordian Healthcare Solutions, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Nordian Healthcare Solutions, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc. Chapter 11
Adv#: 2:18-01194 Official Committee of Unsecured Creditors of Garde v. Pacific Medical

#31.00 Status Hearing
RE: [1] Adversary case 2:18-ap-01194. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Pacific Medical Imaging, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Pacific Medical Imaging, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01195 Official Committee of Unsecured Creditors of Garde v. McKesson Health

#32.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01195. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against McKesson Health Solutions Holdings, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr. 8-22-18

Docket 1

Tentative Ruling:

11/9/2018

Appearances required. In the Amended Joint Status Report [Doc. No. 27] (the "Status Report"), Defendant states that it "has sent Plaintiff considerable information on its defenses and Plaintiff has not responded with any counter information or a good-faith counter proposal." Status Report at ¶5. Defendant states that it will file a motion for summary judgment asserting defenses under §547.

The Court understands that Plaintiff is prosecuting approximately thirty preference actions; nonetheless, Plaintiff's failure to meaningfully engage with the Defendant regarding a potential settlement is of concern. A negotiated resolution of this action will reduce costs and is in the best interests of all parties.

On September 13, 2018, the Court entered an order assigning this matter to formal mediation. Doc. No. 22. The parties should be prepared to discuss the status of mediation—has a mediation date been schedule? Have the parties made contact with the mediator?

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Defendant(s):

McKesson Health Solutions

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01196 Official Committee of Unsecured Creditors of Garde v. Matheson Tri-Gas,

#33.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01196. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Matheson Tri-Gas, Inc.. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Matheson Tri-Gas, Inc.

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#34.00 HearingRE: [631] Motion /Notice of Motion For Entry of Order Authorizing and Approving (I) Key Employee Incentive Plan, and (II) Key Employee Retention Plan; Memorandum of Points and Authorities In Support Thereof; Declarations of Richard G. Adcock and Christopher J. Kearns Filed Concurrently Herewith (Maizel, Samuel)

Docket 631

Tentative Ruling:

11/9/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Debtors' Motion for Entry of Order Authorizing and Approving (I) Key Employee Incentive Plan, and (II) Key Employee Retention Plan [Doc. No. 631] (the "Motion")
- 2) Order Granting Debtors' Motion for Entry of an Order Sealing Employee Information and Denying Evidentiary Objections Thereto [Doc. No. 735]
- 3) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 739]
- 4) United States Trustee Response to [Motion] [Doc. No. 769]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors seek approval of a Key Employee Retention Plan ("KERP") and Key Employee Incentive Plan ("KEIP"). On November 1, 2018, the Court entered an order authorizing the Debtors to file under seal certain information in support of the Motion. *See* Order Granting Debtors' Motion for Entry of an Order Sealing Employee Information and Denying Evidentiary Objections Thereto [Doc. No. 735] and Final Ruling Granting Debtors' Motion for Entry of an Order Sealing Employee Information [Doc. No. 721]. The information filed under seal (the "Confidential

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CONT... Verity Health System of California, Inc.

Chapter 11

Information") consists of the identity and salary of the twenty employees subject to the KERP, and the identity and salary of the twenty-five employees subject to the KEIP.

The Debtors have discussed the KERP and KEIP with the United States Trustee (the "UST") and the Official Committee of Unsecured Creditors (the "Committee"). The concerns of the Committee and the UST have been resolved through discussions and/or certain modifications that the Debtors have agreed to make to the KERP and KEIP. There are no unresolved objections to the Motion.

The KEIP is designed to incentivize key employees to obtain the maximum sales price for the Debtors' assets. KEIP participants are entitled to receive bonus payments, expressed as a percentage of their annual salary, if certain sale price benchmarks are achieved. The bonus payment structure varies depending upon each key employee's envisioned role in the sale process, and was developed in consultation with outside consultants.

Two pools of employees are eligible for the KEIP: (1) key employees of VHS (the "VHS Participants") whose assistance is required to maximize value from the sales of all of VHS' material assets, however long that may take; and (2) key employees of one of the hospitals or Verity Medical Foundation (the "Entity Participants"), whose assistance is needed to maintain operations until the sale of the particular facility in which he or she works.

If consideration for the sales is \$950 million or more, the nine KEIP VHS Participants are eligible to receive bonus payments aggregating approximately \$5.3 million (or 0.56% of the sales consideration).

KEIP Entity Participants receive bonus payments based upon (1) performance against the DIP budget and the (2) timing of the sale of their respective employers' business/assets (the longer the sale takes, the lower the bonus payment). The maximum KEIP payment for the sixteen Entity Participants is just below \$1.6 million.

The KERP is intended to facilitate the Debtors' continued operation until its assets can be sold by encouraging certain key employees to remain employed with the Debtors. The KERP is available to twenty employees and provides a maximum potential benefit of 30% of an employees' annual salary, based upon the following criteria: 6% of annual salary for retention through December 31, 2018; 6% of annual salary for retention through March 31, 2019; and 6% of annual salary for retention through June 30, 2019, plus 12% of annual salary in the event of separation by management.

The Debtors request that all amounts earned and payable under the KEIP and KERP be afforded administrative-expense priority pursuant to §§503(b), 503(c), and

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10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

507(a). Ally Bank, the DIP Lender, supports the funding of the KEIP and KERP through DIP financing proceeds.

II. Findings and Conclusions

A. The Debtor Has Shown Sufficient Business Justification for the Incentive Programs

Section 363(b)(1) authorizes the Debtors to use property of the estate, other than in the ordinary course of business, after notice and a hearing. The Debtors are required to articulate a business justification for use of estate property outside the ordinary course of business. *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Here, the Debtors have sufficiently articulated a business justification for making the bonus payments contemplated under the KEIP and KERP. The Debtors have shown that the bonus payments are required to retain key employees who are necessary to preserve the value of the Debtors' assets.

B. Application of the Dana Corp. Factors Supports Approval of the Incentive Programs

Courts have relied upon the following factors in evaluating key employee incentive and retention plans such as those at issue here:

- Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance? (emphasis added)
- Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?
- Is the scope of the plan fair and reasonable; does it apply to all employees; does it discriminate unfairly?
- Is the plan or proposal consistent with industry standards?

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Central District of California
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Tuesday, November 13, 2018

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10:00 AM

CONT...

Verity Health System of California, Inc.

Chapter 11

– What were the due diligence efforts of the debtor in investigating the need for a plan; analyzing which key employees need to be incentivized; what is available; what is generally applicable in a particular industry?

– Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation?

In re Dana Corp., 358 B.R. 567, 576–77 (Bankr. S.D.N.Y. 2006).

The factors set forth in *Dana Corp.* are met here. First, the KEIP appropriately incentivizes participants by awarding bonuses to employees only after the Debtors achieve specific sales results. Payments under the KEIP are also tied to the efficiency of the sale, and the KEIP has been structured in a way that pushes participants to close the sale in a speedy fashion.

Second, the KEIP is reasonable in the context of the Debtors' assets, liabilities, and earning potential. The maximum payment available to the nine key executives under the KEIP amounts to less than 1% of the sales price. The Court finds that the KEIP comports with industry standards.

Third, the scope of the KEIP is fair and reasonable. The KEIP applies to only those employees whose efforts are critical to ensure a successful sale of the Debtors' assets. In addition, the KEIP has been carefully crafted to award different payments to different employees, depending upon their anticipated role in the sales process.

Fourth, the exhibits filed in support of the Motion establish that the Debtors have performed extensive due diligence in developing the KEIP and KERP. The incentive plans have been developed by the Debtors in consultation with Berkeley Research Group, the Debtors' financial advisors.

C. The Incentive Programs Meet the Requirements Imposed by §503(c)(3)

Section 503(c)(3) requires that payments to a debtor's employees outside the ordinary course of business be "justified by the facts and circumstances of the case" to be allowable as an administrative expense. The majority of courts have found that this standard is no different from the business judgment standard under §363(b). *See, e.g., Global Home Prods.*, 369 B.R. at 783-84; *In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (collecting cases); *In re Nobex Corp.*, 2006 WL 4063024, 2006 Bankr. (Bankr. D. Del. Jan. 19, 2006) (court concluded that section 503(c)(3) was nothing more than a reiteration of the standard under section 363 under which courts had previously authorized transfers outside the ordinary course of business

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

based on the business judgment of the debtor).

Having found that the incentive plan payments are appropriate under §363(b)(1), the Court finds that the incentive plans also meet the standard set forth in §503(c)(3), and accordingly are allowable as an administrative expense.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#35.00 Hearing
RE: [506] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: License Bonds .

fr. 11-7-18

Docket 506

***** VACATED *** REASON: PER ORDER ENTERED 11-6-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

: **Chapter 0**
Adv#: 2:18-01221 National Union Fire Insurance Company of Pittsburgh v. Allianz Underwriters

#100.00 Status Conference
RE: [11] Motion to Change Venue/Inter-district Transfer Adversary Proceeding
to W.D. Wash. (Plevin, Mark)

fr: 8-15-18

Docket 11

Tentative Ruling:

11/9/2018

A §105 injunction entered by the Bankruptcy Court for the Western District of Washington remains in effect with respect to this proceeding. A continued Status Conference shall be held on **February 12, 2019, at 10:00 a.m.** All deadlines in this action remain tolled as long as the §105 injunction remains in effect.

By no later than fourteen days prior to the continued Status Conference, all parties shall file a Joint Status Report, which shall discuss (a) the status of the appeal of the Settlement Orders (as that term is defined in the *Motion by Century Indemnity Company to Transfer Venue to the Debtor's Home Court, the Western District of Washington* [Doc. No. 11] and (b) any events occurring in the Chapter 11 bankruptcy case of *Fraser's Boiler Service, Inc.*, Case No. 18-41245-BDL (Bankr. W.D. Wash.) that are relevant to the disposition of this action.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT...

Chapter 0

Defendant(s):

Allianz Underwriters Insurance	Pro Se
Century Indemnity Company	Represented By Mark D Plevin
Certain Underwriters at Lloyd's, Hartford Accident And Indemnity	Pro Se Represented By Philip E Smith
The Travelers Indemnity Company	Pro Se
Zurich American Insurance Co.	Pro Se

Plaintiff(s):

National Union Fire Insurance	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#101.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate).
Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other))

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Pobeda Services, Inc.	Pro Se
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#102.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 6-12-18; 9-11-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Hakop Azatian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#103.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr. 6-12-18; 3-7-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#104.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 9-11-18

Docket 1

***** VACATED *** REASON: STATUS CONFERENCE 12-11-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Henry A. Hakopian

Pro Se

Tel Expo, a Sole Proprietorship

Pro Se

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT...

Friendly Adult Day Healthcare Center, Inc.

Paul R Shankman

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#105.00 Pretrial

RE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott)

fr. 2-21-18; 9-11-18; 10-16-18

Docket 1

Tentative Ruling:

The *Joint Pre-Trial Conference Statement* (the "Pretrial Statement") submitted by the parties will be entered as the Pretrial Order and shall govern the course of trial of this cause, unless modified to prevent manifest injustice. Trial is set for **Monday, November 26, 2018**, commencing at 9:00 a.m. The deadline for the submission of trial briefs, exhibits, and other materials described in the *Order Re: Courtroom Procedures* [Doc. No. 55] is **November 16, 2018**.

The parties estimate that trial of this action will require five days. Based upon its review of the Pretrial Statement, the Court believes that this matter can be tried in one day.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Joven C Cabasag

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Joven C Cabasag

Chapter 7

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#106.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

FR. 7-17-18; 9-11-18

Docket 1

*** VACATED *** REASON: AMENDED COMPLAINT FILED 6-26-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT...

Timothy M Rosen

Sonia Singh

Chapter 7

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#107.00 Pre-Trial Conference
RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) filed by Plaintiff Brad D. Krasnoff, Chapter 7 Trustee). (Lomeli, Lydia R.)

Docket 48

***** VACATED *** REASON: CONTINUED 1-15-19 AT 11:00 A.M**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Timothy M Rosen

Chapter 7

Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#108.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 9-11-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#109.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 9-11-18

Docket 1

*** VACATED *** REASON: DISMISSED 7-13-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#110.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Renato Ferrer

Represented By
Joshua R Engle

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Antony Thekkek

Represented By
Hamid R Rafatjoo

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Felicidad Ferrer

Chapter 7

Prema Thekkek

Represented By
Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Represented By
Varand Gourjian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#111.00 Pre-Trial Conference

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

fr. 9-11-18

Docket 1

*** VACATED *** REASON: Cont'd to 1/15/2019 at 10:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-22344 Jihee Byun

Chapter 7

Adv#: 2:18-01010 Travelers Express Company, Inc nka Moneygram Payme v. Byun

#112.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01010. Complaint by Travelers Express Company, Inc. against Jihee Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jihee Byun

Represented By
Kelly K Chang

Defendant(s):

Jihee Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-22345 Youngjae Byun

Chapter 7

Adv#: 2:18-01011 Travelers Express Company, Inc nka Moneygram Payme v. Youngjae Byun

#113.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01011. Complaint by Travelers Express Company, Inc. against Youngjae Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

fr: 9-11-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Youngjae Byun

Represented By
Kelly K Chang

Defendant(s):

Youngjae Byun aka Young Jae Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC. et al

#114.00 Pre-Trial Conference
RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

Docket 1

***** VACATED *** REASON: CONTINUED 1-15-19 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

United States Department Of

Pro Se

Navient Solutions, LLC.

Pro Se

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#115.00 Pretrial
RE: [1] Adversary case 2:17-ap-01533. Complaint by Robin Williams against Darren James Searle. false pretenses, false representation, actual fraud))
(Anaya, Alana)

fr. 2-21-18; 9-11-18

Docket 1

***** VACATED *** REASON: Status conference set for 12/11/2018 at 10:00 a.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#116.00 Hearing
RE: [30] Motion/ Defendant Darren Searle dba Stonecraft Masonry's Motion in
Limine;

Docket 30

***** VACATED *** REASON: Per order entered on 11/2/2018**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

Darren James Searle

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:18-19418 Eva Diaz

Chapter 7

#117.00 Hearing
RE: [14] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Roger A. Martinez and Centro Hispano (Maroko, Ron)

Docket 14

***** VACATED *** REASON: WITHDRAWAL OF MOTION FILED ON
11-8-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eva Diaz

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:10-12765 Abram Tavera

Chapter 11

Adv#: 2:16-01555 Mastan v. Tavera et al

#118.00 Pretrial

RE: [1] Adversary case 2:16-ap-01555. Complaint by Peter J Mastan against Abram Tavera, Ruth Tavera. (Charge To Estate). Complaint for Breach of Contract and Declaratory Judgment Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)) (Ekvall, Lei Lei)

fr. 2-21-2018; 5-15-18

Docket 1

Tentative Ruling:

11/9/2018

This hearing is VACATED. The Court has entered an order approving a stipulated dismissal of this action.

Party Information

Debtor(s):

Abram Tavera

Represented By
Robert M Yaspan
David J Richardson

Defendant(s):

Abram Tavera

Represented By
Robert M Yaspan

Ruth Tavera

Represented By
Robert M Yaspan

Joint Debtor(s):

Ruth Tavera

Represented By
Robert M Yaspan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Abram Tavera

Chapter 11

Plaintiff(s):

Peter J Mastan

Represented By
Lei Lei Wang Ekvall

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#119.00 Pre-Trial Conference
RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-14-18

Docket 1

***** VACATED *** REASON: CONTINUED 3-12-19 at 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Johanna Arias Bhatia

Represented By
Giovanni Orantes

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:18-20281 Ronelio Garcia

Chapter 11

#120.00 HearingRE: [31] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 31

Tentative Ruling:

11/9/2018

For the reasons set forth below, the Motion is GRANTED and the case is CONVERTED to chapter 7.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with Order Directing Payment of Quarterly Fees and For Judgment Thereon [Doc. No. 31] (the "Motion")
 - a. Declaration of Maria A. Ramos
2. Debtor's Response to Motion to Dismiss, Declaration of Ronelio Garcia [Doc. No. 43] ("Debtor's Response")
3. No reply is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, Ronelia Garcia (the "Debtor"), filed this voluntary chapter 11 case on September 4, 2018 (the "Petition Date"). The Office of the United States Trustee (the "UST") filed a Motion to Convert, Dismiss or Appoint a Chapter 11 Trustee pursuant to § 1112(b) (the "Motion"). The UST recommends that the case be converted to a case under chapter 7 based upon the following:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed
- ii. Debtor has not filed:
 - a. Schedules G and I
 - b. Statement of Financial Affairs
 - c. Notice of Setting/Increasing Insider Compensation

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT...

Ronelio Garcia

Chapter 11

- d. Application to Employ Attorney
- e. Declaration of Debtor Regarding Compliance with U.S. Trustee Guidelines and Requirements for Chapter 11 Debtors In Possession (the "Chapter 11 Compliance Declaration")
- f. Real Property Questionnaire(s)
- g. Sufficient evidence of closing of all pre-petition bank accounts including:
 - 1. Closing bank statements; and/or
 - 2. Bank account information in the Chapter 11 Compliance Declaration
- h. Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts (general, payroll and tax) including: (1) a copy of the "debtor-in-possession" check for each account.
- i. Sufficient evidence of current insurance coverage including:
 - 1. The Declaration page for each policy; and/or
 - 2. Insurance information in the Chapter 11 Compliance Declaration
- j. Proof of required certificates and/or applicable licenses in the Chapter 11 Compliance Declaration
- k. A list of insiders as defined at 11 U.S.C. § 101(31) in the Chapter 11 Compliance Declaration
- l. Financial Statement information in the Chapter 11 Compliance Declaration
- m. A projected cash flow statement for the first ninety (90) days of operation under chapter 11
- n. A conformed copy(ies) of the recording of the Debtor's bankruptcy petition in each county in which real property is owned
- o. A Statement of Major Issues and Timetable Report
- p. Copies of the preceding two years of state and federal income tax returns and the most recent payroll and sales tax returns at the Initial Debtor Interview
- q. An employee Benefit Plan Questionnaire
- iii. Provide monthly operating reports since filing
- iv. Pay quarterly fees since filing

See Declaration of Maria A. Ramos.

In addition to the foregoing, the UST states that this is the Debtor's third bankruptcy filing and that conversion appears to be in the best interest of creditors because there are real property assets that a trustee can evaluate and administer in a chapter 7 case. *See In re Ronelio Garcia*, Case No. 2:10-bk-50600-ER (Chapter 11

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Central District of California
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Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT...

Ronelio Garcia

Chapter 11

case, Plan confirmed 9/24/2012 [Doc. No. 122], discharge entered 7/1/2014 [Doc. No. 174]); *In re Ronelio Garcia*, Case No. 2:15-bk-18379-NB, Chapter 13 case, dismissed 6/22/2015); *In re Theresa Garcia*, Case No. 2:18-bk-17661-VZ, Chapter 13 case filed by Debtor's spouse, dismissed 7/23/2018).

Debtor opposes conversion and instead requests that the Court dismiss his case. In support, Debtor states (i) that he filed this case to try to stop a foreclosure of his home and to reorganize the debts on his home; (ii) he and his wife have decided they need to sell their home because it costs too much to keep it up and they will be better off if they downsize; (iii) in their previous case, the debtor and his wife hired a bookkeeper to do their monthly operating reports, handle collections of rents and, as a result, they were able to comply with the UST requirements; however, Debtors can no longer afford to pay a bookkeeper. Debtor requests that the Court dismiss the case so that he can pay his creditors directly and he will take the risk that his home is foreclosed before he can sell it, as the amount of equity is small and the cost of keeping the house is too great.

As of the preparation of this tentative ruling, the UST has not filed a reply.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Ronelio Garcia

Chapter 11

Based upon the long list of deficiencies identified above, the Court finds that "cause" exists to convert this case to a case under chapter 7 pursuant to § 1112(b). The Debtor has, among other things, failed to provide multiple required documents and disclosures and has failed to pay quarterly fees to the UST as described above.

The Court also notes that the Debtor's current position that the "amount of equity [in his residence] is small" conflicts with the Debtor's prior representations in his opposition to Motion for Relief From the Automatic Stay in which Debtor states that there is \$225,000 in equity in the Debtor's residence. *See* Doc. No. 38. The Debtor's inconsistent positions, coupled with the Debtor and his wife's history of bankruptcy filings, do not give this Court any confidence that the Debtor will sell his house and pay off his creditors.

Therefore, the Court finds that conversion to chapter 7 is in the best interest of the estate and the Debtor's creditors and will increase the likelihood that creditors will receive a distribution.

III. Conclusion

For the reasons set forth above, the UST Motion is GRANTED and the case is CONVERTED to chapter 7.

The UST is directed to upload a conforming order within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Ronelio Garcia

Chapter 11

Debtor(s):

Ronelio Garcia

Represented By
Dennis E McGoldrick

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#121.00 HearingRE: [129] U.S. Trustee Motion to dismiss or convert under 11 U.S.C. Section 1112(b), Declaration of Bankruptcy Analyst; Proof of Service . (Law, Dare)

Docket 129

Tentative Ruling:

11/9/2018

For the reasons set forth below, the Motions are DENIED without prejudice.

Pleadings Filed and Reviewed

1. Rideshare Port Management Inc. [2:17-bk-22974-ER]:

- A. Notice of Motion and Motion Under 11 U.S.C. §1112(b)(1) to Convert, Dismiss, or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgement Thereon [Doc. No. 129] (the "Rideshare MTD")
 - i. Declaration of Gary Baden
- B. Opposition of Debtor and Debtor In Possession to Motion of the United States Trustee Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 134] (the "Rideshare Opposition")
- C. No reply is on file

2. Red Booth, Inc. [2:17-bk-22975-ER]:

- A. Notice of Motion and Motion Under 11 U.S.C. §1112(b)(1) to Convert, Dismiss, or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgement Thereon [Doc. No. 135] (the "Red Booth MTD")
- B. Opposition of Debtor and Debtor In Possession to Motion of the United States Trustee Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee [Doc. No. 140] (the "Red Booth Opposition")
- C. No reply is on file

I. Facts and Summary of Pleadings

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, November 13, 2018

Hearing Room 1568

11:00 AM

CONT... Rideshare Port Management, LLC

Chapter 11

Rideshare Port Management, LLC ("Rideshare") (Case No. 2:17-bk-22974-ER) and Red Booth, Inc. (Case No. 2:17-bk-22975-ER) ("Red Booth," and together with Rideshare, the "Debtors"), filed separate petitions for relief under chapter 11 on October 23, 2017. The Debtors have not moved for substantive consolidation or joint administration but state that they have a working relationship and their businesses are codependent.

On February 9, 2018, the Debtors filed a joint disclosure statement and plan [Rideshare Doc Nos. 53, 54; Red Booth Doc Nos. 69, 70]. At a hearing on April 5, 2018, the Court found that the joint disclosure statement did not contain adequate information, directed the Debtors to file an amended joint disclosure statement and amended plan, and set a deadline of July 24, 2018 for the Debtors to obtain confirmation and approval of the amended pleadings. *See* Rideshare Doc. No. 76; Red Booth Doc No. 103.

On May 11, 2018, the Debtors filed their first amended joint disclosure statement and first amended plan [Rideshare Doc. Nos. 94, 95; Red Booth Doc Nos. 114, 115]. The Court conducted a hearing on the adequacy of the first amended joint disclosure statement on July 5, 2018. In advance of the hearing, the Court posted a tentative ruling indicating the Court's intent to deny the motion for approval of the first amended joint disclosure statement with prejudice based upon the Court's determination that the first amended joint disclosure statement still lacked adequate information and the first amended joint plan was patently unconfirmable. *See* Rideshare Doc. No. 114; Red Booth Doc No. 132.

Counsel for the Debtors appeared at the hearing and asked whether the tentative ruling precluded the Debtors from amending the disclosure statement and plan and trying to get the outstanding issues resolved. Audio transcript, 11:16:32 a.m. – 11:16:40 a.m. The Court stated on the record that it was persuaded to reconsider setting a hearing on an Order to Show Cause why the cases should not be dismissed, "to allow [the Debtors] an opportunity to negotiate further and get to a confirmable plan." Audio transcript, 11:16:41 a.m. – 11:17:02 a.m.

The Court notes that the amended tentative ruling only reflects that it was "amended after hearing to remove date for Order To Show Cause previously referenced in the tentative ruling" [Rideshare Doc. No. 114; Red Booth Doc No. 132],

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11:00 AM

CONT... Rideshare Port Management, LLC

Chapter 11

and that the order denying approval of the first amended joint disclosure statement in the Rideshare case states that such denial is with prejudice [Rideshare Doc. No. 124]. **[Note 1]** However, it was and remains the Court's intention to permit the Debtors to file a second amended joint disclosure statement and joint plan.

UST's Motions to Convert, Dismiss or Appoint a Chapter 11 Trustee

The Office of the United States Trustee (the "UST") filed separate *Motions to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon* in both Debtors' cases. The UST recommends that the cases be dismissed based upon the following:

- Rideshare:
 - An order denying the adequacy of debtor's Disclosure Statement was entered on 7/16/18 (PACER Dkt. #124)
 - The Debtor has failed to provide sufficient evidence of worker's compensation insurance. Debtor's previously submitted proof of worker's compensation insurance showed an expiration date of 7/2/18
 - Third quarter UST fees for 2018 are fully accrued and must be paid no later than 10/31/18
 - Debtor owns no real property and at the time of filing, listed only \$5,631.98 in cash. Debtor had no accounts receivables and no inventory. Additionally, the last filed Monthly Operating Report ("MOR") for the period ending August 2018 shows a total of \$2,157 in three accounts consisting of \$1,574.39 in the general DIP account, \$358.51 in the payroll account, and \$224.10 in the tax account. Debtor has not filed its September MOR which was due no later than October 15, 2018. Thus, the Debtor's schedules do not list any meaningful assets that a trustee can administer, so based on the evidence currently available, conversion would not appear to benefit creditors.
- Red Booth:
 - The Court denied the adequacy of debtor's Disclosure Statement with prejudice on 7/12/18 (PACER Dkt. #132)
 - The Debtor has failed to provide sufficient evidence of worker's compensation insurance. Debtor's previously submitted proof of worker's

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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11:00 AM

CONT...

Rideshare Port Management, LLC

Chapter 11

compensation insurance showed an expiration date of 8/13/18

- Third quarter UST fees for 2018 are fully accrued and must be paid no later than 10/31/18
- Debtor owns no real property and at the time of filing, listed only \$199.62 in cash. Debtor had no accounts receivables and no inventory. Additionally, the last filed Monthly Operating Report ("MOR") for the period ending August 2018 shows a total of \$209.07 in three accounts consisting of \$69.09 in the general DIP account, \$7.94 in the payroll account, and \$129.04 in the tax account. Debtor has not filed its September MOR which was due no later than October 15, 2018. Thus, the Debtor's schedules do not list any meaningful assets that a trustee can administer, so based on the evidence currently available, conversion would not appear to benefit creditors.

Debtors' Oppositions

Rideshare

Debtors state that since denial of the first amended joint disclosure statement, the Debtors have been diligent in their reorganizational efforts and should be afforded the opportunity to confirm a plan. The Debtors have engaged in ongoing settlement negotiations with their principals and objecting creditors Kaushaal Laxmee ("Laxmee"), Gary Oganessian, Alex Lichtenman and Howard Miller (collectively, the Objecting Creditors") respecting a consensual plan and consensual treatment of the claims. The parties believed they had reached consensual terms and were in the process of documenting the settlement and revising the plan but discovered a material misunderstanding that requires further negotiations. The Debtors cannot assure the Court, UST or parties in interest that the open issues will be resolved, but assert that it is in the best interest of Debtors' creditors to allow the Debtors additional time to negotiate. Therefore, Debtors request that the Court set a January 31, 2019 deadline for them to file a further amended joint disclosure statement and plan.

In the meantime, Rideshare states that it is in compliance with the deficiencies identified by the UST as follows: (i) proof of current Worker's Compensation insurance is attached to the Declaration of Rattan Joesa (the "Roesa Decl.") as Exhibit 1; (ii) Rideshare has paid its 3rd quarter UST fees and proof of payment is attached to

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the Roea Decl. as Exhibit 2; and (iii) a copy of its September MOR is attached to the Roea Decl. as Exhibit 3.

Debtors also submit that they are viable and profitable businesses that were forced to file for bankruptcy because of pending litigation and the resulting financial drain. The Debtors are otherwise current on all obligations and believe they can become more profitable in the future. Further, the Debtors' value stems from their ability to operate as a going concern and any liquidation value is not significant. If the Debtors are forced to liquidate, they will be forced to fire employees and creditors will receive little if anything. The Debtors also highlights that no creditors have joined in on the UST's request to dismiss. The Debtors submit that appointing a chapter 11 trustee is not in the best interest of the estate because it will only lead to further administrative claims and costs. The Debtors highlight that the UST has not alleged any fraud, dishonesty, or mismanagement.

Red Booth

Red Booth's opposition is substantially similarly to Rideshare's. However, in addition to the foregoing arguments, Red Booth states that it is in compliance with the deficiencies identified by the UST as follows: (i) Red Booth no longer has any employees and therefore does not maintain Worker's Compensation insurance; (ii) Red Booth has paid its 3rd quarter UST fees and proof of payment is attached to the Roea Decl. as Exhibit 1; and (iii) a copy of its September MOR is attached to the Roea Decl. as Exhibit 2.

UST's Replies

As of the preparation of this tentative ruling, the UST has not filed replies.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause" including, among other things: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(E) failure to comply with an order of the court;" "(F) unexcused failure to satisfy

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timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001)).

Here, the Debtors submit that they have cured any outstanding deficiencies identified by the UST with respect to insurance, quarterly fees, and monthly operating reports. Further, it appears the ambiguous record led the UST to believe that the Debtors could not file a joint amended disclosure statement and, as a result, no further purpose was served by keeping these cases in bankruptcy. However, because this Court orally modified its ruling denying the first amended joint disclosure statement, to remove the portion of the ruling contemplating denial with prejudice, the Court finds it appropriate to permit the Debtors a *final* opportunity to propose an amended joint disclosure statement as set forth below.

The Debtors are directed to remain in *timely* compliance with applicable filing and reporting requirements in future.

III. Conclusion

For the reasons stated above, the Motions are DENIED without prejudice. The Debtors shall have until no later than **January 31, 2019** to file a second amended joint disclosure statement and plan.

The Court will conduct a hearing on the adequacy of the second amended joint disclosure statement on **March 19, 2019 at 10:00 a.m.**

If the Court does not approve the adequacy of the disclosure statement at that hearing, the Court will issue an order after the hearing dismissing these cases pursuant to 1112(b)(4)(A) and (J) without further notice or hearing.

The Debtors are directed to lodge conforming proposed orders incorporating this

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tentative ruling by reference within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: There is no order denying the motion for approval of the first amended joint disclosure statement in the Red Booth case because no proposed order has ever been lodged.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

Chapter 11

#122.00 HearingRE: [135] U.S. Trustee Motion to dismiss or convert under 11 U.S.C. Section 1112(b). Declaration of Bankruptcy Analyst; Proof of Service . (Law, Dare)

Docket 135

Tentative Ruling:

11/9/2018

See Calendar No. 121, incorporated herein by this reference.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

**United States Bankruptcy Court
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10:00 AM

2:17-20585 Leesa L. McLachlan

Chapter 7

#1.00 Reaffirmation Hearing Date Set
RE: [13] Reaffirmation Agreement Between Debtor and Ford Motor Credit
Company LLC (2016 Ford F150)

fr. 1-25-18; 4-11-18

Docket 13

Party Information

Debtor(s):

Leesa L. McLachlan

Represented By
Joseph L Pittera

Trustee(s):

Elissa Miller (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-10922 Katia M Pena

Chapter 7

#2.00 Reaffirmation Agreement Between Debtor and
Ford Motor Credit Company LLC (2015 Ford Edge)

fr. 5-29-18

Docket 14

Party Information

Debtor(s):

Katia M Pena

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

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10:00 AM

2:18-12183 Larry Paul Lewis

Chapter 7

#3.00 Reaffirmation Hearing Date Set RE: [22] Reaffirmation Agreement Between Debtor and Ten Minute Title Loans Holdings, LLC

Docket 22

Party Information

Debtor(s):

Larry Paul Lewis

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-14128 Thelma Bethune

Chapter 7

#4.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and OneMain Financial

Docket 8

Party Information

Debtor(s):

Thelma Bethune

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-16281 Tatiana Margarita Escalante Ulloa

Chapter 7

#5.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Golden 1 Credit Union

Docket 8

Party Information

Debtor(s):

Tatiana Margarita Escalante Ulloa

Represented By
Omar Zambrano

Trustee(s):

Carolyn A Dye (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-16364 Karla Orellana Luna

Chapter 7

#6.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC (2015 Ford Explorer)

Docket 10

Party Information

Debtor(s):

Karla Orellana Luna

Represented By
Harry Holmes

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-16506 Charlotte E Redmond

Chapter 7

#7.00 Reaffirmation Hearing Date Set RE: [41] Pro se Reaffirmation Agreement Between Debtor and TD Auto Finance LLC (2014 Kia Rio)

Docket 41

Party Information

Debtor(s):

Charlotte E Redmond

Represented By
Britney L. Mark

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-16628 Carlos Abraham Aldana and Maribel Aldana

Chapter 7

#8.00 Reaffirmation Hearing Date Set RE: [19] Motion for Approval of Reaffirmation Agreement with Ally Bank Lease Trust

Docket 19

Party Information

Debtor(s):

Carlos Abraham Aldana

Represented By
Stephen S Smyth

Joint Debtor(s):

Maribel Aldana

Represented By
Stephen S Smyth

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-16628 Carlos Abraham Aldana and Maribel Aldana

Chapter 7

#9.00 Reaffirmation Hearing Date Set RE: [18] Motion for Approval of Reaffirmation Agreement with Ally Bank

Docket 18

Party Information

Debtor(s):

Carlos Abraham Aldana

Represented By
Stephen S Smyth

Joint Debtor(s):

Maribel Aldana

Represented By
Stephen S Smyth

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-16903 Claribel Vasquez

Chapter 7

#10.00 Reaffirmation Hearing Date Set RE: [9] Reaffirmation Agreement Between Debtor and Los Angeles Federal Credit Union

Docket 9

Party Information

Debtor(s):

Claribel Vasquez

Represented By
Steven A Wolvek

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17145 Mark Cameron Pfof

Chapter 7

#11.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and San Diego County Credit Union

Docket 9

Party Information

Debtor(s):

Mark Cameron Pfof

Represented By
Gary S Saunders

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17195 Luis M Sillas Jacuinde

Chapter 7

#12.00 Reaffirmation Hearing Date SetRE: [13] Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A. (Pleasant, Joseph)

Docket 13

Party Information

Debtor(s):

Luis M Sillas Jacuinde

Represented By
Daniel King

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17196 Jacqueline Caballero Caballero

Chapter 7

#13.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 11

Party Information

Debtor(s):

Jacqueline Caballero Caballero Pro Se

Trustee(s):

Elissa Miller (TR) Pro Se

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Hearing Room 1568

10:00 AM

2:18-17244 Felicito Salinas

Chapter 7

#14.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 10

Party Information

Debtor(s):

Felicito Salinas

Represented By
Lauren M Foley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17269 Elida A. Chua Rodas

Chapter 7

#15.00 Reaffirmation Hearing Date Set RE: [11] Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation

Docket 11

Party Information

Debtor(s):

Elida A. Chua Rodas

Represented By
Lauren M Foley

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-17329 Ramona Monique Esqueda

Chapter 7

#16.00 Reaffirmation Hearing Date Set RE: [14] Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 14

Party Information

Debtor(s):

Ramona Monique Esqueda

Represented By
Mihail Kantchev

Trustee(s):

Peter J Mastan (TR)

Pro Se

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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-17696 Charisse Magsby

Chapter 7

#17.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Daimler Trust

Docket 11

Party Information

Debtor(s):

Charisse Magsby

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-17838 Adrian Burga

Chapter 7

#18.00 Reaffirmation Hearing Date SetRE: [15] Reaffirmation Agreement Between Debtor and WESCOM CENTRAL CREDIT UNION

Docket 15

Party Information

Debtor(s):

Adrian Burga

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
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Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-17981 Doris Amanda Brown

Chapter 7

#19.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Bank, N.A.

Docket 8

Party Information

Debtor(s):

Doris Amanda Brown

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18048 Manuel Rangel Reyes and Ruth Hernandez Rocha

Chapter 7

#20.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Alaska USA Federal Credit Union

Docket 11

Party Information

Debtor(s):

Manuel Rangel Reyes

Represented By
Lauren M Foley

Joint Debtor(s):

Ruth Hernandez Rocha

Represented By
Lauren M Foley

Trustee(s):

Sam S Leslie (TR)

Pro Se

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Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-18079 Corey LaMont Ward

Chapter 7

#21.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Auto

Docket 8

Party Information

Debtor(s):

Corey LaMont Ward

Pro Se

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18082 Dario Valenzuela and Rosana Valenzuela

Chapter 7

#22.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 10

Party Information

Debtor(s):

Dario Valenzuela

Represented By
Carlos A Delgado Ibarcena

Joint Debtor(s):

Rosana Valenzuela

Represented By
Carlos A Delgado Ibarcena

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18082 Dario Valenzuela and Rosana Valenzuela

Chapter 7

#23.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Kinecta Federal Credit Union

Docket 9

Party Information

Debtor(s):

Dario Valenzuela

Represented By
Carlos A Delgado Ibarcena

Joint Debtor(s):

Rosana Valenzuela

Represented By
Carlos A Delgado Ibarcena

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18342 Roberto Alcaraz Garcia and Lupe B Alcaraz

Chapter 7

#24.00 Reaffirmation Hearing Date SetRE: [12] Pro se Reaffirmation Agreement Between Debtor and Cab West, LLC (2017 Ford Fusion)

Docket 12

Party Information

Debtor(s):

Roberto Alcaraz Garcia

Represented By
Lauren M Foley

Joint Debtor(s):

Lupe B Alcaraz

Represented By
Lauren M Foley

Trustee(s):

Wesley H Avery (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18346 Sergio Salgado

Chapter 7

#25.00 Reaffirmation Hearing Date Set RE: [10] Motion for Approval of Reaffirmation Agreement with Americredit Financial Services, Inc. Dba GM Financial

Docket 10

Party Information

Debtor(s):

Sergio Salgado

Represented By
Lauren M Foley

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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10:00 AM

2:18-18409 Kenverly Joana Herrera

Chapter 7

#26.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 9

Party Information

Debtor(s):

Kenverly Joana Herrera

Represented By
Marshall S Tierney

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-18549 Cathy Williams

Chapter 7

#27.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and Nissan Motor Acceptance Corporation

Docket 9

Party Information

Debtor(s):

Cathy Williams

Represented By
Jennifer Ann Aragon

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18635 Maria Lourdes Cabrerros-Lorenzana

Chapter 7

#28.00 Reaffirmation Hearing Date Set
RE: [12] Reaffirmation Agreement Between Debtor and Ford Motor Credit
Company LLC (2016 Ford Focus)

Docket 12

***** VACATED *** REASON: CONVERTED TO CHAPTER 13 ON
10/26/2018**

Party Information

Debtor(s):

Maria Lourdes Cabrerros-Lorenzana

Represented By
Brian J Soo-Hoo

Trustee(s):

David M Goodrich (TR)

Pro Se

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10:00 AM

2:18-18780 Brendin A Moore and Nichole D Moore

Chapter 7

#29.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 11

Party Information

Debtor(s):

Brendin A Moore

Represented By
Hale Andrew Antico

Joint Debtor(s):

Nichole D Moore

Represented By
Hale Andrew Antico

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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10:00 AM

2:18-18782 Edward Herman Carbajal and Melanie Carbajal

Chapter 7

#30.00 Reaffirmation Hearing Date SetRE: [10] Reaffirmation Agreement Between Debtor and JPMorgan Chase Bank, N.A. (Pleasant, Joseph)

Docket 10

Party Information

Debtor(s):

Edward Herman Carbajal

Represented By
Hale Andrew Antico

Joint Debtor(s):

Melanie Carbajal

Represented By
Hale Andrew Antico

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18813 Ronnie Adrias Penales

Chapter 7

#31.00 Reaffirmation Hearing Date SetRE: [11] Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC (2014 Ford Mustang)

Docket 11

Party Information

Debtor(s):

Ronnie Adrias Penales

Represented By
William J Smyth

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:18-18814 Zacarias Delos Santos Duante, Jr.

Chapter 7

#32.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Zacarias Delos Santos Duante Jr.

Represented By
Edgardo M Lopez

Trustee(s):

Jason M Rund (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-18842 Jeremy N Fuller

Chapter 7

#33.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 9

Party Information

Debtor(s):

Jeremy N Fuller

Represented By
Gregory Grigoryants

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
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Hearing Room 1568

10:00 AM

2:18-18846 Christine Brooke Peeples

Chapter 7

#34.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Kia Motors Finance

Docket 8

Party Information

Debtor(s):

Christine Brooke Peeples

Represented By
R Grace Rodriguez

Trustee(s):

Jason M Rund (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18930 Behrooz Bruce Rahrovi

Chapter 7

#35.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Behrooz Bruce Rahrovi

Pro Se

Trustee(s):

John J Menchaca (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18998 Jose De Jesus Amaral and Maria Ismaela Villicana Ruiz

Chapter 7

#36.00 Reaffirmation Hearing Date SetRE: [12] Pro se Reaffirmation Agreement Between Debtor and Ford Motor Credit Company LLC (2017 Ford Focus)

Docket 12

Party Information

Debtor(s):

Jose De Jesus Amaral

Represented By
Lauren M Foley

Joint Debtor(s):

Maria Ismaela Villicana Ruiz

Represented By
Lauren M Foley

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:18-19069 Kimmy M Song

Chapter 7

#37.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Auto

Docket 8

Party Information

Debtor(s):

Kimmy M Song

Represented By
Philomena N Nzegge

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19218 John Freeman Fish

Chapter 7

#38.00 Reaffirmation Hearing Date SetRE: [12] Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 12

Party Information

Debtor(s):

John Freeman Fish

Pro Se

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19247 Felipe Avila Cabrera

Chapter 7

#39.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Kia Motors Finance

Docket 11

Party Information

Debtor(s):

Felipe Avila Cabrera

Represented By
Marlin Branstetter

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19322 Luis Raul Berrales Avalos

Chapter 7

#40.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Santander Consumer USA Inc.

Docket 8

Party Information

Debtor(s):

Luis Raul Berrales Avalos

Represented By
Carlos A Delgado Ibarcena

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19454 Maximino A Custodio Jr

Chapter 7

#41.00 Reaffirmation Hearing Date SetRE: [14] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 14

Party Information

Debtor(s):

Maximino A Custodio Jr

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19483 Michael Chiong

Chapter 7

#42.00 Reaffirmation Hearing Date SetRE: [9] Reaffirmation Agreement Between Debtor and American Honda Finance Corporation

Docket 9

Party Information

Debtor(s):

Michael Chiong

Represented By
Daniel King

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19490 Ester Elomina

Chapter 7

#43.00 Reaffirmation Hearing Date Set RE: [10] Pro se Reaffirmation Agreement Between Debtor and Capital One Auto Finance, a division of Capital One, N.A.

Docket 10

Party Information

Debtor(s):

Ester Elomina

Represented By
Peter L Lago

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19494 Jose M Orozco and Olga P Orozco

Chapter 7

#44.00 Reaffirmation Hearing Date SetRE: [10] Pro se Reaffirmation Agreement Between Debtor and Wells Fargo Auto

Docket 10

Party Information

Debtor(s):

Jose M Orozco

Represented By
Peter L Lago

Joint Debtor(s):

Olga P Orozco

Represented By
Peter L Lago

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19529 Farzad Omarai- Hamedani

Chapter 7

#45.00 Reaffirmation Hearing Date Set
RE: [14] Motion for Approval of Reaffirmation Agreement with Andigo Credit Union

Docket 14

***** VACATED *** REASON: AMENDED REAFFIRMATION
AGREEMENT FILED WITH DEBTOR'S ATTORNEY'S SIGNATURE
[D.E. 17[]].**

Party Information

Debtor(s):

Farzad Omarai- Hamedani

Represented By
Marjan Alitalaei

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19656 William Joseph Schultz and Elizabeth Ann Schultz

Chapter 7

#46.00 Reaffirmation Hearing Date SetRE: [9] Pro se Reaffirmation Agreement Between Debtor and Cab West, LLC (2018 Ford Fusion)

Docket 9

Party Information

Debtor(s):

William Joseph Schultz

Represented By
Mark J Markus

Joint Debtor(s):

Elizabeth Ann Schultz

Represented By
Mark J Markus

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19690 Kim McClintock

Chapter 7

#47.00 Reaffirmation Hearing Date Set RE: [16] Reaffirmation Agreement Between Debtor and Los Angeles Federal Credit Union

Docket 16

Party Information

Debtor(s):

Kim McClintock

Pro Se

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19751 Guadalupe Herrera

Chapter 7

#48.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Ally Bank

Docket 9

Party Information

Debtor(s):

Guadalupe Herrera

Represented By
Omar Zambrano

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19822 Christopher Arquitola Gose and Windell Marquez Gose

Chapter 7

#49.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Christopher Arquitola Gose	Pro Se
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Joint Debtor(s):

Windell Marquez Gose	Pro Se
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Trustee(s):

Howard M Ehrenberg (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19822 Christopher Arquitola Gose and Windell Marquez Gose

Chapter 7

#50.00 Reaffirmation Hearing Date Set
RE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor
Credit Corporation (Rafferty, John)

Docket 8

*** VACATED *** REASON: DUPLICATE OF NO. 49

Party Information

Debtor(s):

Christopher Arquitola Gose Pro Se

Joint Debtor(s):

Windell Marquez Gose Pro Se

Trustee(s):

Howard M Ehrenberg (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19823 Inki Kim

Chapter 7

#51.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Inki Kim

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19937 Cori Lynn Campbell

Chapter 7

#52.00 Reaffirmation Hearing Date SetRE: [7] Reaffirmation Agreement Between Debtor and Golden 1 Credit Union

Docket 7

Party Information

Debtor(s):

Cori Lynn Campbell

Represented By
Bradley J Yourist

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-19954 Sean Michael Rischar and Michele Kathryn Rischar

Chapter 7

#53.00 Reaffirmation Hearing Date Set RE: [11] Pro se Reaffirmation Agreement Between Debtor and Logix Federal Credit Union

Docket 11

Party Information

Debtor(s):

Sean Michael Rischar

Represented By
Barry E Borowitz

Joint Debtor(s):

Michele Kathryn Rischar

Represented By
Barry E Borowitz

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20092 Jasmin Diana Mentado and Erick Mentado Vazquez

Chapter 7

#54.00 Reaffirmation Hearing Date Set RE: [9] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 9

Party Information

Debtor(s):

Jasmin Diana Mentado

Represented By
Daniela P Romero

Joint Debtor(s):

Erick Mentado Vazquez

Represented By
Daniela P Romero

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20121 Austin Douglas Carel

Chapter 7

#55.00 Reaffirmation Hearing Date SetRE: [7] Reaffirmation Agreement Between Debtor and CarMax Auto Finance

Docket 7

Party Information

Debtor(s):

Austin Douglas Carel

Represented By
Omar Zambrano

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20166 Karla Patricia Lemus

Chapter 7

#56.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and OneMain Financial

Docket 8

Party Information

Debtor(s):

Karla Patricia Lemus

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20204 Bernard Antoine Kash and Lisa Kay Kash

Chapter 7

#57.00 Reaffirmation Hearing Date SetRE: [11] Reaffirmation Agreement Between Debtor and Fifth Third Bank (Rafferty, John)

Docket 11

Party Information

Debtor(s):

Bernard Antoine Kash

Represented By
Louis J Esbin

Joint Debtor(s):

Lisa Kay Kash

Represented By
Louis J Esbin

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20348 Laura Ortiz Reyes

Chapter 7

#58.00 Reaffirmation Hearing Date Set RE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 8

Party Information

Debtor(s):

Laura Ortiz Reyes

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20348 Laura Ortiz Reyes

Chapter 7

#59.00 Reaffirmation Hearing Date SetRE: [7] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 7

Party Information

Debtor(s):

Laura Ortiz Reyes

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-21186 Maria Luisa Sotelo

Chapter 7

#60.00 Reaffirmation Hearing Date Set RE: [7] Pro se Reaffirmation Agreement Between Debtor and LBS Financial Credit Union

Docket 7

Party Information

Debtor(s):

Maria Luisa Sotelo

Represented By
Lauren M Foley

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-18040 Sonia Lopez

Chapter 7

#61.00 Reaffirmation Hearing Date SetRE: [11] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 11

Party Information

Debtor(s):

Sonia Lopez

Represented By
Michael A Rivera

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20841 Sergio Isidro Anzaldo and Liliana Anzaldo

Chapter 7

#62.00 Reaffirmation Hearing Date Set
RE: [10] Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation (Rafferty, John)

Docket 10

***** VACATED *** REASON: CONTINUED 12-3-18 AT 10:00 A.M.
BEFORE JUDGE BRAND.**

Party Information

Debtor(s):

Sergio Isidro Anzaldo

Represented By
Daniel King

Joint Debtor(s):

Liliana Anzaldo

Represented By
Daniel King

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20683 Fabricio R Mejia Rivera

Chapter 7

#63.00 Reaffirmation Hearing Date SetRE: [8] Pro se Reaffirmation Agreement Between Debtor and Toyota Motor Credit Corporation

Docket 8

Party Information

Debtor(s):

Fabricio R Mejia Rivera

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Wednesday, November 14, 2018

Hearing Room 1568

10:00 AM

2:18-20196 Emily Lomeli

Chapter 7

#64.00 Reaffirmation Hearing Date Set RE: [9] Pro se Reaffirmation Agreement Between Debtor and Eagle Community Credit Union

Docket 9

Party Information

Debtor(s):

Emily Lomeli

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 15, 2018

Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#1.00 HearingRE: [171] Motion to Reject Lease or Executory Contract 3265 W. Shaw Avenue, Fresno, CA, 15385 Main St., Hesperia, CA, and 11150 Olympic Boulevard, Suite 600, Los Angeles, CA

Docket 171

Tentative Ruling:

11/14/2018

For the reasons set forth below, the Motion is GRANTED in its entirety. There being no opposition to the Motion, the Court finds that this matter is suitable for disposition without oral argument. The hearing on the Motion is VACATED.

Pleadings Filed and Reviewed:

- 1) Debtor's Motion for Order Approving Rejection of Unexpired Leases of Non-Residential Real Property Located at (A) 3265 W. Shaw Avenue, Fresno, CA, (B) 15385 Main St., Hesperia, CA, and (C) 11150 Olympic Boulevard, Suite 600, Los Angeles, CA [Doc. No. 171] (the "Motion")
 - a) Notice of Hearing on [Motion] [Doc. No. 172]
 - b) Proof of Service [Doc. No. 179]
- 2) Wells Fargo Bank's Statement of Position in Response to Debtor's Motion for Order Approving Rejection of Unexpired Leases of Nonresidential Real Property [Doc. No. 190]

I. Facts and Summary of Pleadings

Sultan Financial Corporation (the "Debtor") commenced a voluntary Chapter 11 petition on July 13, 2018 (the "Petition Date"). As of the Petition Date, the Debtor operated sixteen Aaron's Sales & Lease Stores.

The Debtor moves to reject unexpired leases of nonresidential real property located at 3265 W. Shaw Avenue, Fresno, CA 93711 (the "Shaw Ave. Lease"), 153855 Main St., Hesperia, CA (the "Hesperia Lease"), and 11150 Olympic Boulevard, Suite 600, Los Angeles, CA (the "Headquarters Lease"). The Debtor is the lessee under all three leases.

On October 24, 2018, the Court approved a compromise between the Debtor,

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 15, 2018

Hearing Room 1568

10:00 AM

CONT... Sultan Financial Corporation

Chapter 11

Aaron's, Inc. ("Aaron's"), and various other parties, pursuant to which Aaron's will purchase all of the Debtor's business locations, other than those locations subject to the Shaw Ave. Lease and Hesperia Lease. *See* Doc. No. 181 (the "Settlement and Sale Order"). Accordingly, the Debtor seeks to reject both the Shaw Ave. Lease and the Hesperia Lease, effective as of the closing date of the Aaron's sale (projected to be November 12, 2018). In addition, the Debtor seeks to reject the Headquarters Lease, effective as of December 31, 2018, because the Debtor no longer needs the leased space.

Wells Fargo Bank, N.A. ("Wells Fargo") asserts a lien in the property subject to the Shaw Ave. Lease. Wells Fargo does not oppose rejection of the Shaw Ave. Lease, provided that any order approving the Motion state that rejection of the Shaw Ave. Lease occurs concurrently with the closing of the sale of the Debtor's assets to Aaron's.

II. Findings and Conclusions

Section 365(a) provides that the Debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In *Agarwal v. Pomona Valley Med. Grp. (In re Pomona Valley Med. Grp., Inc.)*, the Ninth Circuit explained the standard the Bankruptcy Court must apply in determining whether to approve the rejection of an executory contract:

In making its determination, a bankruptcy court need engage in "only a cursory review of a [debtor-in-possession]'s decision to reject the contract. Specifically, a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision." ...

Thus, in evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate. *See Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir.2001); *FDIC v. Casterter*, 184 F.3d 1040, 1043 (9th Cir.1999); *see also In re Chi-Feng Huang*, 23 B.R. at 801 ("The primary issue is whether rejection would benefit the general unsecured creditors."). It should approve the rejection of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be "advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice."

Pomona Valley, 476 F.3d 665, 670 (9th Cir. 2007).

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 15, 2018

Hearing Room 1568

10:00 AM

CONT... Sultan Financial Corporation

Chapter 11

The Debtor has shown sufficient cause to reject the Shaw Ave. Lease, the Hesperia Lease, and the Headquarters Lease. Once the transactions contemplated by the Sale and Settlement Order have closed, the Debtor will no longer conduct business at the Shaw Ave. and Hesperia locations. As a result of the sale of most of its assets, after December 31, 2018, the Debtor will no longer need the space furnished under the Headquarters Lease.

For these reasons, the Motion is GRANTED in its entirety. The order on the Motion should contain language providing that the rejection of the Shaw Ave. Lease is effective as of the date of the closing of the sale of the Debtor's assets to Aaron's. The order on the Motion shall be endorsed as to form by Wells Fargo, pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C). The order should also incorporate this tentative ruling by reference, and shall be submitted within seven days of the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 15, 2018

Hearing Room 1568

10:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#2.00 Hearing

RE: [289] Ex parte application EX PARTE APPLICATION for Order to Continue Trial until December 19, 2018, or to a Date Thereafter Convenient for the Court, in the Alternative, Ex Parte Application for Order Shortening Time to Hear Motion; Memorandum of Points and Authorities; Declarations of Ariel Neuman and Timothy L. Neufeld (MikoLevine, Jennifer)

Docket 289

***** VACATED *** REASON: PER ORDER ENTERED 11-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Stephen F Biegenzahn
Jennifer B MikoLevine

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
John S Purcell

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, November 15, 2018

Hearing Room 1568

10:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, November 16, 2018

Hearing Room 1568

9:00 AM

2:13-27702 Morad Javedanfar

Chapter 7

Adv#: 2:15-01363 JL AM Plus, LLC v. Neman et al

#1.00 Trial Date Set RE: [68] **Amended Complaint** FIRST AMENDED COMPLAINTY FOR (1) AVOIDANCE AND RECOVERY OF FRAUDULENT TRANSFERS; (2) AVOIDANCE AND RECOVERY OF PREFERENTIAL TRANSFERS; AND (3) UNJUST ENRICHMENT by Duane Kumagai on behalf of Interested Party against all defendants.

FR. 7-31-17, 9-25-17; 1-29-18; 3-26-18; 5-29-18; 7-30-18; 9-12-18; 10-9-18; 10-30-18

Docket 0

*** VACATED *** REASON: PER ORDER ENTERED 11-13-18

Party Information

Debtor(s):

Morad Javedanfar

Represented By
Andre A Khansari

Defendant(s):

Morad Neman

Represented By
Yuriko M Shikai
Timothy L Neufeld

MBN Real Estate Investments, LLC

Represented By
Jerome Bennett Friedman

Joint Debtor(s):

Yaffa Javedanfar

Represented By
Andre A Khansari

Plaintiff(s):

JL AM Plus, LLC

Represented By
Duane Kumagai

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Friday, November 16, 2018

Hearing Room 1568

9:00 AM

CONT... Morad Javedanfar

Chapter 7

Trustee(s):

Timothy Yoo (TR)

Represented By
Anthony A Friedman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 19, 2018

Hearing Room 1568

10:00 AM

2:18-10922 Katia M Pena

Chapter 7

#1.00 HearingRE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2013 Honda Accord, VIN 1HGCR2F5XDA220877 . (Wang, Jennifer)

Docket 26

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 19, 2018

Hearing Room 1568

10:00 AM

CONT... Katia M Pena

Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Katia M Pena

Pro Se

Trustee(s):

Howard M Ehrenberg (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 19, 2018

Hearing Room 1568

10:00 AM

2:18-19897 Tigran Mkrtchian

Chapter 7

#2.00 HearingRE: [17] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1039 E. Spazier Avenue # D, Burbank CA 91502 with Exhibits "A" through "D" and proof of service.

Docket 17

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on September 25, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this

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CONT... Tigran Mkrtchian

Chapter 7

bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Tigran Mkrtchian

Represented By
Asbet A Issakhanian

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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2:18-20362 Homero Aguilar

Chapter 7

#3.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2007 Porsche 911, VIN WP0AB29977S732555 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Homero Aguilar

Represented By
Jennifer Ann Aragon

Trustee(s):

Elissa Miller (TR)

Pro Se

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10:00 AM

2:18-20889 Mario Erick Davila and Norma Davila

Chapter 7

#4.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2014 Nissan Sentra, VIN 3N1AB7AP4EY207932 . (Wang, Jennifer)

Docket 10

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Mario Erick Davila and Norma Davila

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Mario Erick Davila

Represented By
Lauren M Foley

Joint Debtor(s):

Norma Davila

Represented By
Lauren M Foley

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:18-21035 David Manzanarez

Chapter 7

#5.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Dodge Ram 4500, VIN 3C7WRKBL2GG104355 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

David Manzanarez

Represented By
Frank J Alvarado

Trustee(s):

Jason M Rund (TR)

Pro Se

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2:18-21385 James E Brien

Chapter 7

#6.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Mercedes-Benz C300, VIN WDDWJ4JB1JF731958 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

James E Brien

Represented By
Lindsey B Green

Trustee(s):

Elissa Miller (TR)

Pro Se

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 HearingRE: [582] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Noble Williams v St Vincent Medical Center, et al., BC683258 .

Docket 582

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 582] (the "Motion")
- 2) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Nobel Williams [Doc. No. 776]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Noble Williams [Doc. No. 824]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Noble Williams ("Movant") seeks stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action (the "State Court Action") against Debtor St. Vincent Medical Center ("St. Vincent"). Movant seeks recovery only from applicable insurance, and waives any deficiency or other claim against the estate. The State Court Action asserts claims for negligence and premises liability, based upon injuries Movant sustained when he fell stepping out of an elevator at St. Vincent Medical Center. In support of the Motion, Movant contends that the claims asserted in the State Court Action (the "State Court Claims") are nondischargeable. Doc. No. 582 at ¶4.d.

Because Movant waives any deficiency claim and seeks recovery only against applicable insurance, Debtors do not oppose stay-relief. However, Debtors dispute

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Movant's contention that the State Court Claims are nondischargeable. Debtors point out that nondischargeability under §523(a)(6) is limited "to those situations in which the debtor possesses subjective intent to cause harm or knowledge that harm is substantially certain to result from his actions," *Carillo v. Su (In re Su)*, 290 F.3d at 1145 (9th Cir. 2002), and argue that the State Court Action's negligence claims do not meet this standard.

The Official Committee of Unsecured Creditors (the "Committee") does not oppose the Motion, also based upon the fact that Movant seeks recovery only from applicable insurance. The Committee agrees with the Debtors' position regarding nondischargeability.

II. Findings and Conclusions

Section 362(d)(1) provides that the Court "shall grant relief from the [automatic stay] ..., such as by terminating, annulling, modifying, or conditioning such stay for cause" "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir. 1986).

The Motion is GRANTED pursuant to §362(d)(1). The State Court is best suited to adjudicate the personal injury claims which arise under non-bankruptcy law.

The Court makes no findings as to whether the State Court Claims are non-dischargeable. The Motion is granted only because the State Court Claims can be tried more expeditiously by the State Court—regardless of whether those claims are non-dischargeable.

The automatic stay remains in effect with respect to the enforcement of any judgment against the Debtors or estate property. Movants are permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estates.

Because Debtors do not oppose stay-relief, the order granting the Motion shall take effect immediately upon entry, notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3). Movant's request that the order be binding and effective in any bankruptcy case commenced by or against the Debtors for a period of 180 days is DENIED.

Movant shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. **[Note 1]**

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.10 HearingRE: [696] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Robles v. St. Francis Medical Center, Case No. BC697012 .

Docket 696

Tentative Ruling:

11/16/2018

For the reasons set forth below, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 696] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Josefina Robles [Doc. No. 777]
- 3) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Josefina Robles By and Through Her Conservator Sergio Robles [Doc. No. 791]
- 4) Reply of Josefina Robles to: (1) Debtors' Response to Motion for Relief from Stay; and (2) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay [Doc. No. 823]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Josefina Robles, by and through her conservator, Sergio Robles ("Movant"), seeks stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action against Debtor St. Francis Medical Center ("St. Francis") in the Los Angeles Superior Court (the "State Court Action"). The State Court Action asserts claims

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against St. Francis and various other third-party defendants. In the State Court Action, the recovery Movant seeks is not limited to applicable insurance, and Movant is not willing to waive any deficiency claim against St. Francis.

Debtors argue that the Motion should be denied without prejudice, because it is premature and would undermine the Debtors' efforts to successfully proceed under Chapter 11. Debtors assert that allowing the State Court Action to proceed would impair their ability to pursue critical issues, such as the pending sales of two of the Debtors' hospitals. Debtors further oppose the Motion on the ground that Movant is not willing to limit her recovery to applicable insurance. The Official Committee of Unsecured Creditors (the "Committee") opposes the Motion for the same reasons.

Movant makes the following arguments in reply to the opposition of the Debtors and the Committee:

- 1) The Debtors' assertion that the granting of the Motion would interfere with the case by distracting the Debtors' professionals with personal injury litigation is disingenuous. As soon as stay-relief is granted, defense of the State Court Action will be assigned to litigation and/or coverage counsel. In e-mail communications with the Movant, Debtors have already identified the lawyer who will ultimately defend against the State Court Action.
- 2) Movant has sustained horrific injuries as a result of the negligence of the doctors and nurses at St. Francis, and should not be required to wait to seek redress.

II. Findings and Conclusions

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis*

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factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;
- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

The primary disagreement between Movant and the Debtors is the extent to which allowing the State Court Action to proceed would interfere with the case. Movant asserts that lifting the stay would have very little impact on the ability of the Debtors' professionals to attend to other pressing matters; the Debtors dispute this contention.

The Court finds that although it certainly would be possible for the Debtors to defend against the State Court Action at this time, requiring them to do so would nonetheless interfere with the case by distracting the Debtors' professionals from other pressing matters. The State Court Action alleges that Movant suffered extremely serious injuries as a result of the alleged malpractice of physicians employed by Debtor St. Francis. If these allegations are proven, the damages would be substantial. While it is true that primary responsibility for the Debtors' defense could be assigned to special litigation counsel, the Debtors' general bankruptcy counsel would still be

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required to monitor the litigation, given the seriousness of the allegations. Contrary to Movant's contention, Debtors' general bankruptcy counsel cannot simply assign the State Court Action to special litigation counsel and then forget about it.

An auction of two of the Debtors' hospitals is set to occur on December 10–11, with a hearing to approve the results of the auction set for December 19, 2018. To successfully prosecute the case for the benefit of creditors, Debtors will be required to devote substantial resources to the auction and the subsequent hearing to approve the results of the auction. Granting stay-relief at this juncture would require the Debtors to divert their attention from issues pertaining to the sale, which would be detrimental to creditors.

In view of the findings set forth above, *Curtis* factors two, five, seven, and eleven weigh against granting stay-relief at this time. However, after the December 19 auction has concluded, application of the *Curtis* factors will yield a different result. Although the relevant *Curtis* factors do not warrant stay-relief now, stay-relief will be warranted as of **January 15, 2019**.

Granting stay-relief now would interfere with the bankruptcy case by distracting the Debtors' professionals from other pressing matters (the second *Curtis* factor). With respect to factor five, the damages sought in the State Court Action are substantial; Movant has not agreed to limit her recovery to applicable insurance; and it is therefore not known whether available insurance proceeds will be sufficient to cover any judgment Movant may obtain. Factor five therefore weighs against granting immediate stay-relief. The litigation's interference with the case has the potential to reduce creditor recoveries; therefore, factor seven weighs against granting immediate stay-relief. The State Court Action has not reached the trial stage, so factor eleven also weighs against granting immediate stay-relief.

Factor twelve—the balance of the hurt—is neutral. As discussed, granting immediate stay-relief will harm the Debtors by distracting the Debtors' professionals from other pressing matters. On the other hand, Movant has sustained serious injuries and is prejudiced by the inability to pursue legal redress.

To the extent that they apply, the remaining *Curtis* factors weigh in favor of immediate stay-relief. The State Court Action will completely resolve the issues (factor one); the State Court is the tribunal best suited to hear the Movant's claims (factor three); and lifting the stay would result in a more expeditious determination of the State Court Action (factor ten). Nonetheless, these factors are outweighed by the harm that immediate stay-relief would impose upon the Debtors.

As noted, the *Curtis* factors are not the exclusive guideposts for assessing the

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appropriateness of stay-relief. Particularly relevant to this case is the reasoning of *Sumitomo Trust & Banking Co. v. Grand Rapids Hotel, L.P.*, 140 B.R. 643, 700 (Bankr. W.D. Mich. 1992), wherein the court held:

[I]f the relief from stay is requested at the early stages of the bankruptcy case, the

burden upon the debtor is less stringent. But, if relief from stay is requested later in the case, the debtor's showing is closely scrutinized.

Sumitomi Trust, 140 B.R. at 700. *See also Chrysler LLC v. Plastech Engineered Prods., Inc.*, 382 B.R. 90, 109 (Bankr. E.D. Mich. 2008) ("The longer the case goes on, the more the analysis may change and the balance of competing interests may compel a different result.").

Movant's attempts to distinguish *Sumitomi Trust* and *Plastech Engineered Prods.* are unavailing. Movant notes that *Sumitomo Trust* addressed stay-relief under §362(d)(2)(B), whereas the present Motion was filed under §362(d)(1). That is a distinction without a difference. Movant notes that the facts of *Plastech Engineered Prods.* were considerably different from the facts of this case. Those differences are immaterial. *Plastech Engineered Prods.* stands for the general proposition that at the outset of the case, a stay-relief motion should be closely scrutinized to further the Bankruptcy Code's objective of providing debtors breathing space to reorganize. That general proposition is valid regardless of the type of business that the debtor conducts.

Having considered the applicable *Curtis* factors and the principles set forth in *Sumitomo Trust* and *Plastech Engineered Prods.*, the Court finds that Movant is entitled to stay-relief, effective as of **January 15, 2019**. This result gives the Debtors some breathing space to achieve their objectives, while at the same time delaying Movant's ability to proceed with the State Court Action by only two months.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED; however, the order granting the Motion shall not take effect until **January 15, 2019**. Movants shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing. **[Note 1]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

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CONT... Verity Health System of California, Inc.

Chapter 11

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20151 Verity Health System of California, Inc.

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#7.20 HearingRE: [704] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Medical Malpractice Claim against O'Connor Hospital.

Docket 704

Tentative Ruling:

11/16/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 704] (the "Motion")
- 2) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Refugio Estrada and Marquez Estrada [Doc. No. 775]
- 3) Official Committee of Unsecured Creditors' Response to Motion for Relief from Stay (Non-Bankruptcy Forum) Filed by Refugio Estrada and Livier Marquez Estrada [Doc. No. 825]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Refugio Estrada and Livier Marquez Estrada ("Movants") seek stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action against Debtor O'Connor Hospital ("O'Connor"). Movants seek recovery only from applicable insurance, and waive any deficiency or other claim against the estate.

Because Movants waive any deficiency claim and seek recovery only against applicable insurance, Debtors do not oppose the Motion. The Official Committee of Unsecured Creditors does not oppose the Motion for the same reason.

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II. Findings and Conclusions

Section 362(d)(1) provides that the Court “shall grant relief from the [automatic stay] ..., such as by terminating, annulling, modifying, or conditioning such stay for cause” “Because there is no clear definition of what constitutes ‘cause,’ discretionary relief from the stay must be determined on a case by case basis.” *In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir. 1986).

The Motion is GRANTED pursuant to §362(d)(1). The State Court is best suited to adjudicate the personal injury claims which arise under non-bankruptcy law.

The automatic stay remains in effect with respect to the enforcement of any judgment against the Debtors or estate property. Movants are permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estates.

Because there is no opposition to the Motion, the order granting the Motion shall take effect immediately upon entry, notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

Movant shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. **[Note 1]**

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movants’ proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors’ endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

Party Information

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CONT... Verity Health System of California, Inc.

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#8.00 Hearing
RE: [7] Debtor's Emergency Motion For Authority To: (A) Use Cash Collateral On An Interim Basis Pending A Final Hearing; (B) Grant Replacement Liens; And (C) Set Final Hearing

fr: 10-15-18

Docket 7

Tentative Ruling:

For the reasons set forth below, the Debtor is authorized to use cash collateral through and including **February 13, 2019**. A hearing on the further interim use of cash collateral shall take place on **February 13, 2019**. The Financing Motion is GRANTED on a final basis.

Pleadings Filed and Reviewed

- 1) Cash Collateral Motion:
 - a) Emergency Motion for Authority to: (A) Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Grant Replacement Liens; and (C) Set Final Hearing [Doc. No. 7] (the "Cash Collateral Motion")
 - i) Declaration of Charles DeBus In Support of First-Day Motions [Doc. No. 15] (the "DeBus Declaration" or "DeBus Decl.")
 - ii) Amended Order Setting Hearing on First Day Motions [Doc. No. 18]
 - iii) Declaration of Tatyana Mencachian re Service of Emergency Motions and Order Setting Hearing on First Day Motions [Doc. No. 25]
 - b) Order (A) Authorizing Debtor to Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Granting Replacement Liens; and (C) Setting Final Hearing [Doc. No. 43] (the "Interim Cash Collateral Order")
 - c) Notice of Hearing on (1) Debtor's Motion for Continued Use of Cash Collateral; and (2) To Borrow Money and to Grant Administrative Priority to Lender [Doc. No. 38]
 - d) Declaration of Troy Finfrock Re Value of Debtor's Business and Equipment [Doc. No. 55] (the "Finfrock Decl.")
 - e) Supplemental Declaration of Charles Debus in Support of Cash Collateral

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Motion [Doc. No. 54] (the "Supp. DeBus Decl.")

2) Financing Motion:

- a) Emergency Motion of Debtor for Interim and Final Orders to Borrow Money and to Grant Administrative Priority to Lender as Described Herein [Doc. No. 11] (the "Financing Motion")
- b) Notice of Hearing on (1) Debtor's Motion for Continued Use of Cash Collateral; and (2) To Borrow Money and to Grant Administrative Priority to Lender [Doc. No. 38]

I. Facts and Summary of Pleadings

On October 18, 2018, the Court entered interim orders granting the Debtor's first-day motions (1) seeking authorization to use cash collateral (the "Cash Collateral Motion") and (2) seeking authorization to enter into a revolving credit agreement (the "Financing Motion"). *See* Order (A) Authorizing Debtor to Use Cash Collateral on an Interim Basis Pending a Final Hearing; (B) Granting Replacement Liens; and (C) Setting Final Hearing [Doc. No. 43] (the "Interim Cash Collateral Order") and Interim Order on Emergency Motion of Debtor for Interim and Final Orders to Borrow Money and to Grant Administrative Priority to Lender [Doc. No. 45] (the "Interim Financing Order"). This is a continued hearing on the Cash Collateral and Financing Motions. No opposition to either motion is on file.

A. Background

F.A.S.S.T., LLC (the "Debtor" or "FASST") owns and operates a training facility/gymnasium that is open to the public doing business as Velocity Sports Club. The Debtor was established in 2010 as a franchisee of Velocity Sports Performance ("VSP"). The Debtor subsequently became an affiliate of VSP and pays for the use of the name and a listing on the VSP website.

Prior to November 2016, VSP heavily marketed for its franchisees and affiliates. In November 2016, the VSP franchisor changed ownership and, unbeknownst to the Debtor, stopped providing the same level of marketing. The diminished marketing efforts resulted in a decline in membership which, in turn, caused a 25% drop in the Debtor's receivables.

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By the time the Debtor learned of the reduced marketing efforts, it had already fallen behind on its monthly rent obligations and was forced to obtain loans from predatory lenders with high interest rates and to incur sizeable credit card obligations. The Debtor has taken steps to create its own website and establish a greater social media presence and, as a result, has seen an increase in membership and profitability. Nevertheless, the Debtor now seeks bankruptcy protection to restructure its debt load, restore profitability, and preserve the value of its assets.

B. The Cash Collateral Motion

The Debtor seeks authorization to use cash collateral to pay the ordinary expenses of operating its business. According to the Debtor, the present amount of total allegedly secured debt is \$190,000; however, the Debtor is still investigating the validity of the security interests asserted by various creditors and has been unable to definitively ascertain the amount and priority of secured indebtedness. The Debtor states that it is aware of the following potential secured creditors:

- 1) Cash Capital, a factor who asserts an ownership interest in 12% of the Debtor's receivables, based upon a loan.
- 2) WebBank/Can Capital Asset Servicing, Inc. ("WebBank"), which asserts secured indebtedness of approximately \$140,000.
- 3) Three unspecified creditors who have recorded UCC-1 financing statements. The Debtor contests the validity of the asserted security interests based upon the fact that the financing statements were filed under the name of Corporation Servicing Company as "representative" of the creditors.
- 4) Cryo Center, which has also recorded a UCC-1 financing statement. The Debtor contends that it has paid off Cryo Center's indebtedness.

At the first-day hearing on the Cash Collateral Motion, the Court stated that the evidentiary showing that the Debtor had made in support of the use of cash collateral would likely not be sufficient to support the continued use of cash collateral beyond November 19. The Court explained:

In particular, notwithstanding the fact that under §363(p) it is creditors who have the burden of proof regarding the validity, priority, and extent of a security interest, the minimal and conclusory evidence supplied by the Debtor

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in support of its challenge to the validity of the security interests at issue here is not sufficient to excuse the Debtor from complying with its adequate protection obligations. With respect to those adequate protection obligations, it is of substantial concern to the Court that the Debtor has failed to supply meaningful evidence (1) regarding the value of its business or (2) regarding the contention that its business is not declining in value.

Final Ruling Authorizing Interim Use of Cash Collateral [Doc. No. 30] at 5–6.

The Debtor has submitted the following additional evidence as to the value of its business: (1) a declaration from Troy Finfrock, a consultant on gym operations who currently operates seven gyms in the State of Oregon and who has owned gyms over the past thirty years in Oregon, California, Arizona, and New Mexico (the "Finfrock Decl.") and (2) an updated six-month income projection and for the Debtor (the "Updated Income Projection").

Mr. Finfrock conducted an on-site inspection of the gym and spent several hours talking with management. He reaches the following conclusions regarding the gym's value:

- 1) The gym consists of approximately 12,000 square feet of rented space. Operational profit for a gym of this size should be in the range of \$150,000 to \$250,000 per year. The Debtor's budget projects annual profit of only \$80,000 per year. The primary reason for the shortfall is because the rent is too high. Rent for this size of a gym should be approximately 22% of revenue; the Debtor's rent is approximately 43% of revenue. There are only three ways to increase the Debtor's profit: raise gross revenue, decrease the rent, or do some combination of both.
- 2) Using the current projected profit of \$80,000 per year, the gym is worth approximately \$365,000. This valuation is based on multiplying EBITDA by four (a standard multiple for this type of business) (here, \$80,000 x 4 = \$320,000), subtracting customer prepaid liability (approximately \$15,000), and adding the value of the used equipment (approximately \$60,000).
- 3) The gym's value is not declining because it is expected to be at least somewhat profitable.

Finfrock Decl. at ¶¶3–10.

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The Debtor's position is that it should be authorized to use cash collateral without making any adequate protection payments to secured creditors, because (1) the gym is not declining in value and (2) the Debtor is still investigating the validity of the security interests asserted by secured creditors. No secured creditors have opposed the Cash Collateral Motion. The Debtor asserts that any secured creditors are adequately protected by (1) the continued operation of the Debtor's business and by (2) replacement liens to be granted to any secured creditors.

C. The Financing Motion

The Debtor makes the following arguments and representations in support of the Financing Motion:

The Debtor seeks authorization to borrow up to the sum of \$35,000 on a revolving basis from Robert Renae (the "Lender") to supplement the Debtor's ongoing cash flow needs during the pendency of this bankruptcy case. The terms of the proposed loan ("Loan") are as follows:

- i. **Amount to be Borrowed:** \$35,000, on a revolving basis, as needed.
- ii. **Interest Rate:** 6% per annum, payable, and paid, at the end of each month on outstanding balances.
- iii. **Due Date:** Variable, i.e., as funds are available. However, the Loan will become completely due and payable on the occurrence of any of the following events: (a) the conversion of this Chapter 11 proceeding to a proceeding under Chapter 7 of the Bankruptcy Code; (b) the dismissal of the case; or (c) the appointment of a Chapter 11 Trustee.
- iv. **Security:** None.
- v. **Priority of repayment:** The Loan shall be granted an administrative priority equal to all other "priority one chapter 11 expenses of administration," provided however, that Lender's claim will be subject to a "carve out" for (i.e., a priority position subordinate to), the following: (a) aggregate unpaid and allowed fees and costs payable under sections 330 and 331 of the Bankruptcy Code to professionals retained by Debtor, including those incurred by General Counsel to Debtor (the Law Offices of Robert M. Yaspan); and (b) the unpaid fees of the Clerk of the Bankruptcy Court and the United States Trustee pursuant to 28 U.S.C. section 1930(a).

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The Debtor states that it sought such financing from banking institutions on both a secured and unsecured basis, but its attempts have been unavailing. The Debtor further states that without the Loan, it is concerned that it will not be able to pay its expenses after October 20, 2018.

II. Findings of Fact and Conclusions of Law

A. Cash Collateral

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions of 11 U.S.C. § 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

Having reviewed the Finfrock Decl. and the Updated Income Projection, the Court finds that the Debtor has established that the gym is not declining in value. The Court finds that the secured creditors' interest in cash collateral is adequately protected by (1) the proposed replacement liens and by (2) the replacement income generated by the continued operation of the Debtor's business. *See In re Megan-Racine Associates, Inc.*, 202 B.R. 660, 663 (Bankr. S.D.N.Y. 1996) (concluding that "[a]s long as there was a continuous income stream being generated by the Debtor, the fact that the Debtor consumed a portion of those monies to operate and maintain the facility each month did not diminish the value of the [secured creditor's] interest in the [cash collateral]").

The Court authorizes the further interim use of cash collateral through and including **February 13, 2019**. A further interim hearing on the continued use of cash

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collateral shall take place on **February 13, 2019, at 10:00 a.m.** The Debtor shall provide notice of the further interim hearing, and shall file a proof of service so indicating, by no later than **November 26, 2018**. The Debtor shall submit additional evidence in support of the continued use of cash collateral by no later than **January 23, 2019**. Such additional evidence shall include, at a minimum, updated financial projections as well as a discussion of the results of the Debtor's efforts to improve the profitability of the gym. The Debtor shall also submit information regarding the results of its investigation as to the validity of the security interests asserted by the secured creditors.

Any opposition to the use of cash collateral beyond February 13, 2019 shall be submitted by no later than **January 30, 2019**. The Debtor's reply, if any, shall be submitted by no later than **February 6, 2019**.

B. DIP Financing

Section 364 provides in relevant part:

- (b) The court, after notice and a hearing, may authorize the trustee to obtain unsecured credit or to incur unsecured debt other than under subsection (a) of this section, allowable under section 503(b)(1) of this title as an administrative expense.

11 U.S.C. § 364(b).

Having reviewed the declaration submitted by Charles DeBus, the Debtor's managing member (the "DeBus Decl."), the Court finds that the terms of the proposed Loan are reasonable and that the Debtor was unable to obtain financing on more favorable terms than those proposed by the Lender. DeBus Decl., ¶ 49. The Court approves the Loan on a final basis.

III. Conclusion

For the reasons set forth above, the Debtor is authorized to use cash collateral through and including **February 13, 2019**. A hearing on the further interim use of cash collateral shall take place on **February 13, 2019**. The Financing Motion is GRANTED on a final basis. The Debtor shall submit an order, incorporating this

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tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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2:18-21828 F.A.S.S.T. LLC

Chapter 11

#9.00 Hearing
RE: [11] Emergency Motion Of Debtor For Interim And Final Orders To Borrow Money And To Grant Administrative Priority To Lender; And Order Setting A Final Hearing

fr: 10-15-18

Docket 11

Tentative Ruling:

See Cal. No. 8, above, incorporated in full by reference.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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2:18-20020 Jorge Gonzalez and Martha Elba Gonzalez

Chapter 7

#10.00 HearingRE: [12] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Nissan Altima; VIN: 1NAL3AP3HC495576 .

Docket 12

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend

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CONT... Jorge Gonzalez and Martha Elba Gonzalez Chapter 7

to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Jorge Gonzalez

Represented By
Francis Guilardi

Joint Debtor(s):

Martha Elba Gonzalez

Represented By
Francis Guilardi

Trustee(s):

Peter J Mastan (TR)

Pro Se

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10:00 AM

2:18-21517 James J Kim

Chapter 7

#11.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Toyota Corolla .

Docket 10

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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James J Kim

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No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

James J Kim

Pro Se

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#12.00 HearingRE: [1356] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Los Angeles Superior Court Lead Case No: BC534466 with Proof of Service.

Docket 1356

Tentative Ruling:

11/16/2018

The Movant and the Liquidating Trustee have agreed upon the form of an order (the "Stipulated Order") resolving the Motion. The Court will enter the Stipulated Order.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 1356]
 - a) Declaration of Regina Lotardo in Support of Motion for Relief from the Automatic Stay [Doc. No. 1357]
 - b) Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay [Doc. No. 1358]
- 2) Response of Michael Lane, Liquidating Trustee of the Gardens Regional Hospital and Medical Center Liquidating Trust, to Motion for Relief from Stay [Doc. No. 1370]

I. Facts and Summary of Pleadings

Manuel Ramirez ("Movant") seeks stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action (the "State Court Action") against the Debtor.

On September 18, 2018, the Court entered an order confirming the Debtor's *Joint Chapter 11 Plan of Liquidation* [Doc. No. 1274] (the "Plan"). *See* Findings of Fact, Conclusions of Law and Order Approving Joint Chapter 11 Plan of Liquidation [Doc. No. 1327] (the "Confirmation Order"). The Confirmation Order appoints Michael R. Lane as the Liquidating Trustee, who is charged with liquidating the Debtor's

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CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

remaining assets. Confirmation Order at ¶62.

The Liquidating Trustee's counsel has been in communication with Movant's counsel subsequent to the filing of the Motion. The Liquidating Trustee does not oppose the Motion, provided that the order on the Motion contains the following language (which has been agreed upon by the Liquidating Trustee and the Movant):

Pursuant to the Joint Chapter 11 Plan of Liquidation [Docket No. 1274] (the "Plan"), confirmed by the Court on September 18, 2018 [Docket No. 1327], "[a]ll injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date[.]" Plan, Section XI(A) (emphasis added). The Effective Date of the Plan occurred on October 10, 2018 [Docket No. 1351]. As such, the automatic stay under section 362 of the Bankruptcy Code is no longer in effect.

Further, pursuant to section IV(B)(5) of the Plan:

Holders of Litigation Claims may proceed to a final judgment or settlement with respect to such Litigation Claims provided that any Holder of a Litigation Claim may only recover on such judgment or in connection with any such settlement solely by collecting upon available insurance in accordance with applicable nonbankruptcy law or from any non-Debtor Person co-liable with the Debtor in connection with any such Litigation Claim (the "Third-Party Recovery Claims"). Holders of Third-Party Recovery Claims may not pursue any deficiency Claim or any other Claim against the Debtor, property of the Estate or property of the Liquidating Trust Estate and any such Claims shall be forever barred pursuant to section VI(F).

Except with respect to Third-Party Recovery Claims, each Holder of a Litigation Claim is enjoined from continuing on or filing any future Claims or causes of action arising out of or related to any Litigation Claim against the Debtor in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum.

Plan, Section (IV)(B)(5) (emphasis added).

The Movant is entitled to relief consistent with sections XI(A) and IV(B)(5) of the Plan. Nothing herein shall be deemed to amend, modify or alter in any way any provisions of the Plan, all of which shall continue to remain in full force and

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CONT... Gardens Regional Hospital and Medical Center, Inc.
effect.

Chapter 11

Doc. No. 1371, Ex. A.

II. Findings and Conclusions

The Court finds that the Stipulated Order, which resolves the Motion, is consistent with the Plan and Confirmation Order. The Court will enter the Stipulated Order. Movant shall submit the Stipulated Order, via the Court's Lodged Order Upload (LOU) system, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#13.00 HearingRE: [1353] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Los Angeles Superior Court Lead Case No: BC534466 with Proof of Service.

Docket 1353

Tentative Ruling:

11/16/2018

The Movant and the Liquidating Trustee have agreed upon the form of an order (the "Stipulated Order") resolving the Motion. The Court will enter the Stipulated Order.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 (the "Motion") [Doc. No. 1353]
 - a) Declaration of Maisie C. Sokolove in Support of Motion for Relief from the Automatic Stay [Doc. No. 1354]
 - b) Request for Judicial Notice in Support of Motion for Relief from the Automatic Stay [Doc. No. 1355]
- 2) Response of Michael Lane, Liquidating Trustee of the Gardens Regional Hospital and Medical Center Liquidating Trust, to Motion for Relief from Stay [Doc. No. 1371]

I. Facts and Summary of Pleadings

Nelson Fermaint ("Movant") seeks stay-relief, pursuant to §362(d)(1), for the purpose of litigating a personal injury action (the "State Court Action") against the Debtor.

On September 18, 2018, the Court entered an order confirming the Debtor's *Joint Chapter 11 Plan of Liquidation* [Doc. No. 1274] (the "Plan"). *See* Findings of Fact, Conclusions of Law and Order Approving Joint Chapter 11 Plan of Liquidation [Doc. No. 1327] (the "Confirmation Order"). The Confirmation Order appoints Michael R. Lane as the Liquidating Trustee, who is charged with liquidating the Debtor's remaining assets. Confirmation Order at ¶62.

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CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

The Liquidating Trustee's counsel has been in communication with Movant's counsel subsequent to the filing of the Motion. The Liquidating Trustee does not oppose the Motion, provided that the order on the Motion contains the following language (which has been agreed upon by the Liquidating Trustee and the Movant):

Pursuant to the Joint Chapter 11 Plan of Liquidation [Docket No. 1274] (the "Plan"), confirmed by the Court on September 18, 2018 [Docket No. 1327], "[a]ll injunctions or stays provided for in the Chapter 11 Case under Sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date[.]" Plan, Section XI(A) (emphasis added). The Effective Date of the Plan occurred on October 10, 2018 [Docket No. 1351]. As such, the automatic stay under section 362 of the Bankruptcy Code is no longer in effect.

Further, pursuant to section IV(B)(5) of the Plan:

Holders of Litigation Claims may proceed to a final judgment or settlement with respect to such Litigation Claims provided that any Holder of a Litigation Claim may only recover on such judgment or in connection with any such settlement solely by collecting upon available insurance in accordance with applicable nonbankruptcy law or from any non-Debtor Person co-liable with the Debtor in connection with any such Litigation Claim (the "Third-Party Recovery Claims"). Holders of Third-Party Recovery Claims may not pursue any deficiency Claim or any other Claim against the Debtor, property of the Estate or property of the Liquidating Trust Estate and any such Claims shall be forever barred pursuant to section VI(F).

Except with respect to Third-Party Recovery Claims, each Holder of a Litigation Claim is enjoined from continuing on or filing any future Claims or causes of action arising out of or related to any Litigation Claim against the Debtor in any forum whatsoever, including any state, federal, or non-U.S. court or any administrative or arbitral forum.

Plan, Section (IV)(B)(5) (emphasis added).

The Movant is entitled to relief consistent with sections XI(A) and IV(B)(5) of the Plan. Nothing herein shall be deemed to amend, modify or alter in any way any provisions of the Plan, all of which shall continue to remain in full force and effect.

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CONT... Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Doc. No. 1371, Ex. A.

II. Findings and Conclusions

The Court finds that the Stipulated Order, which resolves the Motion, is consistent with the Plan and Confirmation Order. The Court will enter the Stipulated Order. Movant shall submit the Stipulated Order, via the Court's Lodged Order Upload (LOU) system, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

2:18-20960 Juan F Avalos

Chapter 7

#14.00 HearingRE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C1F7 0GH6 50188 .

Docket 7

Tentative Ruling:

11/16/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that, after deducting costs of sale, there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Juan F Avalos

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Juan F Avalos

Represented By
Peter L Lago

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Hearing Room 1568

10:00 AM

2:18-22654 Ernestine Josephine Thibodeaux and Schaun Carleton

Chapter 7

#15.00 HearingRE: [8] Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate Personal Residence, Personal Property (Vehicles / Bank Accounts / Wages) with Memorandum of Points and Authorities, Declarations of Debtors and Current Counsel Sevan Gorginian, with Proof of Service.

Docket 8

Tentative Ruling:

11/16/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate [Doc. No. 8] (the "Motion")
 - a. Amended Notice of Motion [Doc. No. 11]
2. No opposition is on file

I. Facts and Summary of Pleadings

On June 5, 2018, Ernestine J. Thibodeaux ("Ms. Thibodeaux") filed a voluntary petition under chapter 7 [Case No. 2:18-bk-16487-BR] (the "Prior Case"). On September 17, 2018, the Chapter 7 Trustee, United States Trustee, and Ms. Thibodeaux's counsel filed a stipulation to dismiss the case based upon a number of identified deficiencies with the case commencement documents [Doc. No. 29] (the "Stipulation"). Pursuant to the Stipulation, Ms. Thibodeaux's counsel agreed to return any monies received for preparing and filing the petition and schedules to Ms. Thibodeaux and to assist Ms. Thibodeaux and her husband with filing a joint chapter 7 petition free of charge. *Id.* On September 20, 2018, the Court entered an order approving the Stipulation and dismissing the case [Doc. No. 30].

On October 28, 2018, Ms. Thibodeaux and Schaun Carleton Clark (together, the "Debtors") filed this voluntary joint chapter 7 case. Debtors now move to continue

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CONT... Ernestine Josephine Thibodeaux and Schaun Carleton Chapter 7

the automatic stay as to all creditors pursuant to § 362(c)(3)(B). [Note 1] Debtors state that the Prior Case was dismissed through no fault of theirs and that they filed this case in good faith.

As of the date of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 362(c)(3)(A) provides that the automatic stay terminates by its own terms thirty days after a debtor's bankruptcy filing, when the debtor has filed a prior bankruptcy case that was dismissed within one year of the second bankruptcy filing. However, pursuant to § 362(c)(3)(B), the debtor or any other interested party may seek to continue the automatic stay beyond the thirty-day period. The movant must demonstrate that the case was filed "in good faith as to the creditors to be stayed." 11 U.S.C. § 362(c)(3)(B). Under certain circumstances, a presumption of bad faith arises that the movant may rebut only by presenting clear and convincing evidence of the debtor's good faith. *See* 11 U.S.C. § 362(c)(3)(C)(i) – (ii).

Based upon a review of the Stipulation and order entered in the Prior Case, the Court does not find that any of the factors triggering the presumption of bad faith exist. The Court further finds that Debtors have established by a preponderance of the evidence that this case was filed in good faith. The Debtors state that they spent several hours with their current counsel to gather information necessary to file complete and accurate case commencement documents in this case. Motion, pdf p. 13:15-16. The Debtors also state that they each work two jobs and that they filed this case to get a fresh start from their unsecured debts to allow them an opportunity to raise and care for their ten-member family. *Id.* at pdf p. 13:17-19; 14:24-25.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

Debtors are directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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CONT... Ernestine Josephine Thibodeaux and Schaun Carleton Chapter 7

intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: Debtors incorrectly checked the boxes (i) requesting an order *imposing* the automatic stay as to all creditors; and (ii) requesting relief under § 362(c)(4); however, since there has only been one bankruptcy filing within the one-year period prior to the petition date, the automatic stay is in effect for the first thirty-days of this bankruptcy case, through November 27, 2018, pursuant to § 362(c)(3)(B). Therefore, the Debtors should only have checked the boxes requesting an order *continuing* the automatic stay beyond the thirty-day period pursuant to § 362(c)(3)(B).

Party Information

Debtor(s):

Ernestine Josephine Thibodeaux

Represented By
Sevan Gorginian

Joint Debtor(s):

Schaun Carleton Clark

Represented By
Sevan Gorginian

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-19855 Lux Beauty Group, Inc.

Chapter 7

#16.00 HearingRE: [15] Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Motion of Chapter 7 Trustee, Jason M. Rund, for Order: (1) Authorizing Sale of Certain Assets of the Estate; (2) Authorizing Sale of Assets Free and Clear of Liens, if Any; (3) Approving Bidding Procedures; and (4) Determining that Buyer is Entitled to Protections of 11 U.S.C. § 363(m); Memorandum of Points and Authorities and Declaration of Jason M. Rund in Support Thereof. (Weil, Diane)

Docket 15

Tentative Ruling:

For the reasons set forth below, the Sale Motion is GRANTED to the extent set forth herein.

Key Sale Terms:

- 1) Proposed purchaser: Kahn Financial Group LLC
- 2) Property for Sale: The Debtor's Intellectual Property (defined below) and various other assets, including finished cosmetic goods and two metal tubing machines
- 3) Purchase price: \$45,000
- 4) Overbids: Minimum overbid is \$5,000 with all subsequent overbids to be in increments of \$1,000 (subject to adjustment by the Court to facilitate bidding)
[Note 1]

Pleadings Filed and Reviewed:

- 1) Motion of Chapter 7 Trustee, Jason M. Rund, for Order: (1) Authorizing Sale of Certain Assets of the Estate; (2) Authorizing Sale of Assets Free and Clear of Liens, if Any; (3) Approving Bidding Procedures; and (4) Determining that Buyer is Entitled to Protections of §363(m) [Doc. No. 15] (the "Sale Motion")
 - a) Notice of Sale of Estate Property [Doc. No. 17]
- 2) Opposition to Motion for Order Authorizing Sale of Certain Assets of the Estate Free and Clear of Liens [Doc. No. 18] (the "Opposition")
- 3) Kahn Financial Group, LLC's Reply to Act Lab's Opposition to Sale Motion [Doc. No. 21]

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10:00 AM

CONT... Lux Beauty Group, Inc.

Chapter 7

I. Facts and Summary of Pleadings

Lux Beauty Group, Inc. (the "Debtor") commenced a voluntary Chapter 7 petition on August 24, 2018 (the "Petition Date"). Prior to the Petition Date, the Debtor contracted with Unique Formulation Research, Inc. dba Act Labs ("Act Labs") for the manufacture, packaging, and shipping of cosmetics and related products. The Debtor scheduled Act Labs as a general unsecured creditor owed \$169,000.

The Chapter 7 Trustee (the "Trustee") moves to sell certain of the estate's assets to Kahn Financial Group, LLC ("Kahn"), free and clear of liens, claims, interests and encumbrances. The assets to be sold (the "Assets") consist of all of the Debtors' patents, trademarks, trade secrets, and copyrights (the "Intellectual Property"); two metal tube filling machines currently in the possession of Act Labs; and certain other cosmetic products, also in the possession of Act Labs. Douglas Kahn, the manager of the proposed purchaser Kahn, owns 3,334 shares of the Debtor, which is less than 1% of the Debtor's outstanding shares. The proposed purchase price is \$45,000, and the sale is subject to overbids.

Act Labs asserts a possessory lien on the finished cosmetic goods that are among the Assets being sold. Act Labs does not consent to sale of the Assets free and clear of liens. Act Labs consents to the sale, provided that the sale order state that the sale is without prejudice to Act Lab's ability to assert its possessory lien, and that any such lien shall attach to the sale proceeds.

Kahn, the proposed purchaser, contends that Act Labs' Opposition should be overruled for a lack of evidence. Noting that Act Labs' possessory lien can attach only to finished goods, Kahn argues that Act Labs has failed to sufficiently identify the finished goods subject to its possessory lien, and has failed to quantify the value of its services giving rise to that lien. In the alternative, Kahn asserts that any possessory lien must be limited to only the finished cosmetic goods, not the Intellectual Property. Kahn states that its primary interest is in the Intellectual Property, and that it is buying the finished goods only to protect the Intellectual Property by ensuring that no other party can sell the finished goods under the trademarks it is purchasing. Kahn argues that if the Court is not willing to overruled the Opposition based on a lack of evidence, the Court should allocate a nominal portion of the purchase price to Act Labs' asserted lien, which can later by litigated by the Trustee and Act Labs after the sale closes.

The Trustee has not responded to Act Labs' Opposition.

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CONT... **Lux Beauty Group, Inc.**

Chapter 7

II. Findings and Conclusions

Section 363(b) permits the Trustee to sell estate property out of the ordinary course of business, subject to court approval. The debtor must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

The Trustee has demonstrated sufficient business justification for the sale. The Trustee has a statutory obligation to liquidate the estate's assets; the sale furthers such obligation.

Section 363(f) provides that estate property may be sold free and clear of liens, claims, and interests, providing one of the following conditions is satisfied:

- 1) Applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- 2) Such entity consents;
- 3) Such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- 4) Such interest is in bona fide dispute; or
- 5) Such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

The Court approves the sale, free and clear of the lien asserted by Act Labs. The lien asserted by Act Labs shall attach to the sale proceeds with the same validity and priority as such lien had prepetition. The Court declines Kahn's request to allocate a portion of the purchase price to which Act Labs' asserted lien attaches. Although Kahn is correct that the possessory lien asserted by Act Labs cannot attach to the Intellectual Property, the present record does not contain sufficient evidence to permit the Court to determine how much of the purchase price is attributable to the Intellectual Property versus the finished cosmetic goods.

Having reviewed the declaration submitted by the Trustee, the Court finds that the sale to Kahn was negotiated at arms-length, and that Kahn is entitled to the protections of §363(m). In the event that an overbidder prevails at the auction, the Court will take testimony from such overbidder to determine whether §363(m) protections are warranted.

The proposed breakup fee of \$5,000 is approved. The Court finds that the breakup fee was necessary to induce Kahn to enter into the Asset Purchase Agreement.

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CONT... Lux Beauty Group, Inc.

Chapter 7

Notwithstanding Bankruptcy Rule 6004(f), the order approving the sale shall take effect immediately upon entry.

Auction Procedures

In the event that any qualified overbidders are present, the Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$5,000, with subsequent overbids to be increments of \$1,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

III. Conclusion

Based upon the foregoing, the Sale Motion is GRANTED. The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

Note 1

The Trustee requested a minimum overbid of \$10,000 and subsequent overbids of \$5,000. An overbid of \$10,000 would chill bidding given the sales price of \$45,000.

Party Information

Debtor(s):

Lux Beauty Group, Inc.

Represented By
Anthony A Friedman
Kurt Ramlo

Trustee(s):

Jason M Rund (TR)

Represented By
Diane C Weil

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Hearing Room 1568

10:00 AM

2:18-19433 Rafael Antonio Granados

Chapter 7

#17.00 Hearing

RE: [11] Amended Motion [9] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 1610 W. Gardena Blvd., Gardena, CA 90247 . filed by Interested Party Champery Real Estate 2015, LLC)

Docket 11

Tentative Ruling:

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with this Judge's procedures. Oppositions, if any, will be considered at the hearing.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Debtor continues to occupy the property after a foreclosure sale held on August 16, 2018. The Movant filed an unlawful detainer action on September 4, 2018 and obtained a judgment in its favor on September 19, 2018.

This Motion has been filed to allow the Movant to proceed with enforcement of its unlawful detainer judgment in accordance with state law.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The stay is annulled retroactive to the petition date, so that enforcement actions taken by Movant, if any, before receipt of notice of the automatic stay will not be deemed to have been voided by the automatic stay. The 14-day stay prescribed by

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CONT... Rafael Antonio Granados

Chapter 7

FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Antonio Granados

Represented By
Nicholas M Wajda

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:18-16133 M & A Enterprises, LLC

Chapter 7

#18.00 HearingRE: [220] Motion -Trustee's Notice of Motion and Motion for Approval of Cash Disbursements by Trustee; Memorandum of Points and Authorities, Declaration of Rosendo Gonzalez, and Request for Judicial Notice in Support Thereof; proof of service (de Leest, Aaron)

Docket 220

Tentative Ruling:

11/16/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion for Approval of Cash Disbursements by Trustee [Doc. No. 220] (the "Motion")
 - a) Application for Order Setting Hearing on Shortened Notice [Doc. No. 221]
 - b) Order Granting Application and Setting Hearing on Shortened Notice [Doc. No. 222]
 - c) Notice of Hearing on Trustee's Motion for Approval of Cash Disbursements By Trustee [Doc. No. 225]
 - d) Declaration of Aaron E. De Leest Re Notice and Service [Doc. No. 227]
- 2) Notice of Non-Opposition [filed by Luis Munoz dba San Bernardino Apartments] [Doc. No. 224]
- 3) Notice of Lodgment of Debtor's Order in Response to the Trustee's Proposed Order Re Dismissal Filed Per Doc. 214; Additional Language to be Incorporated Within Trustee's Order [Doc. No. 217]

I. Facts and Summary of Pleadings

M&A Enterprises, LLC (the "Debtor") commenced a voluntary Chapter 7 petition on May 29, 2018. The Debtor owns two adjacent apartment buildings, located at 2936 North Loma Avenue and 2935 North Mountain Avenue, San Bernardino, CA (the "Properties").

On September 10, 2018, the Court entered an order authorizing the Chapter 7 Trustee (the "Trustee") to operate the Properties and to employ a property

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Monday, November 19, 2018

Hearing Room 1568

10:00 AM

CONT... M & A Enterprises, LLC

Chapter 7

management company. *See* Order Granting Trustee’s Motion for Order Authorizing Trustee to: (1) Operate Real Property; (2) Use Cash Collateral Rents; and (3) Employ Property Manager and Enter into Property Management Agreement [Doc. No. 109] (the “Operations Order”). The Operations Order authorizes the Trustee to use rents from the Properties to operate the Properties in accordance with a six month budget (the “Budget”). The Budget authorizes the Trustee to spent \$9,000 per month for repairs and maintenance.

The Trustee has received bills for repair and maintenance services totaling \$34,740. Repair and maintenance expenses were higher than anticipated by the Budget as a result of a large number of emergency repairs. For example, on November 6, 2018, emergency repairs were necessary to remediate a flood involving raw sewage. The Trustee seeks authorization to pay the repair and maintenance bills to the extent that such bills exceed the amounts allowed by the Budget.

No opposition to the Motion is on file.

II. Findings and Conclusions

A. The Motion is Granted

The Court has previously authorized the Trustee to operate the Properties, pursuant to §721. The Court finds that the additional expenses which the Trustee seeks to pay in connection with various emergency repairs are necessary and appropriate. The Motion is GRANTED in its entirety.

B. The Court is Prepared to Approve the Debtor’s Proposed Amendment to the Dismissal Order

On October 30, 2018, the Court entered an *Order (1) Dismissing Debtor’s Bankruptcy Case and (2) Denying Emergency Motion of Louis Munoz to Re-Set Motion for Relief from Stay and Compel Trustee to Make Monthly Payments* [Doc. No. 215] (the “Dismissal Order”). The Dismissal Order provides that the case shall be dismissed, effective as of November 23, 2018 (the “Effective Order”). The Dismissal Order further provides that if there is a projected surplus of funds held by the Trustee after making all distributions and payments, the Trustee shall deliver such surplus funds to the Debtor.

The Debtor requests that the Dismissal Order be amended to include the following language:

If Debtor does not procure a closed refinance of its choosing by the Effective

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CONT...

M & A Enterprises, LLC

Chapter 7

Date, at Debtor's sole option, escrow shall immediately return to Debtor all monies provided by the Chapter 7 Trustee (\$2.3 million) and any additional cash provided by Debtor ("total cash"). If Debtor opts for a return of its total cash, this amount shall be reduced only by actual costs incurred by the escrow company to the Effective Date and approved by Debtor.

The only change to the Dismissal Order sought by the Debtor is the inclusion of the language excerpted above. Subject to any comments by the Trustee, the Court is prepared to approve the proposed language and enter an Amended Dismissal Order.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. Subject to any comments by the Trustee, the Court is prepared to enter an Amended Dismissal Order containing the additional language proposed by the Debtor.

The Trustee shall immediately submit (a) an order on the Motion and (b) an Amended Dismissal Order containing the additional language proposed by the Debtor.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

M & A Enterprises, LLC

Represented By
John H Bauer
John H Bauer

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Brad Krasnoff

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CONT... M & A Enterprises, LLC

Aaron E de Leest

Chapter 7

**United States Bankruptcy Court
Central District of California
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Courtroom 1568 Calendar**

Wednesday, November 21, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#1.00 Hearing
RE: [406] Motion By Debtor and Debtor-in-Possession for Nunc Pro Tunc Order
Estimating and Temporarily Allowing the Claim of Carlos Mosquera and Juan
Francisco Rodriguez on behalf of Themselves and all Other Similarly Situated
for the Purpose of Voting on the Plan of Reorganization; With Proof of Service

Docket 406

***** VACATED *** REASON: WITHDRAWN 11-19-18**

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:16-24224 Joven C Cabasag

Chapter 7

Adv#: 2:17-01034 Gano Excel USA, Inc. v. Cabasag et al

#1.00 Trial

RE: [1] Adversary case 2:17-ap-01034. Complaint by Gano Excel USA, Inc. against Joven C Cabasag, Ma Carmelita Cabrera. (d),(e)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)) (Wellman, Scott)

fr. 2-21-18; 10-29-18

Docket 1

Tentative Ruling:

11/22/2018:

Hearing required.

Party Information

Debtor(s):

Joven C Cabasag

Represented By
David S Hagen

Defendant(s):

Joven C Cabasag

Represented By
David S Hagen

Ma Carmelita Cabrera

Represented By
David S Hagen

Joint Debtor(s):

Ma Carmelita Cabrera

Represented By
David S Hagen

Plaintiff(s):

Gano Excel USA, Inc.

Represented By
Scott W Wellman

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9:00 AM

CONT... Joven C Cabasag

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#2.00 Trial Date Set

RE: [48] Amended Complaint / First Amended Complaint (originally filed as Ex. 1 to Doc. No. 34; pursuant to Doc. No. 47, deemed to be filed on June 26, 2018) by Eric P Israel on behalf of Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church . (RE: related document(s)1 Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)

fr. 11-26-18

Docket 48

***** VACATED *** REASON: CONTINUED 1-28-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Represented By
Steven R Fox
David C Gibbs Jr

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By

**United States Bankruptcy Court
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Hearing Room 1568

9:00 AM

CONT... Timothy M Rosen

Chapter 7

Sonia Singh
Eric P Israel
George E Schulman

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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Hearing Room 1568

9:00 AM

2:16-24731 Timothy M Rosen

Chapter 7

Adv#: 2:17-01491 Krasnoff, Chapter 7 Trustee v. Lancaster Baptist Church

#3.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01491. Complaint by Brad D. Krasnoff, Chapter 7 Trustee against Lancaster Baptist Church. (Charge To Estate). Trustees Complaint For Avoidance And Recovery Of Transfers Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)) (Singh, Sonia)

FR. 7-30-18; 9-24-18

Docket 1

***** VACATED *** REASON: AMENDED COMPLAINT FILED 6-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Defendant(s):

Lancaster Baptist Church

Pro Se

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Plaintiff(s):

Brad D. Krasnoff, Chapter 7 Trustee

Represented By
Sonia Singh
Eric P Israel

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel

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CONT...

Timothy M Rosen

Sonia Singh

Chapter 7

**United States Bankruptcy Court
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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01567 Rund v. Hakobyan

Chapter 7

#4.00 Trial Date Set
RE: [1] Adversary case 2:17-ap-01567. Complaint by Jason M. Rund against Arsine Hakobyan. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 9-24-18

Docket 1

*** VACATED *** REASON: DISMISSED 7-13-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Arsine Hakobyan

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:17-10897 Christopher Kim Kay
Adv#: 2:17-01569 Rund v. Zhang

Chapter 7

#5.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01569. Complaint by Jason M. Rund against Lucy Zhang. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)) (Casey, Thomas)

FR. 9-24-18

Docket 1

***** VACATED *** REASON: DISMISSED 7-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Kim Kay

Represented By
Sanaz S Bereliani

Defendant(s):

Lucy Zhang

Pro Se

Plaintiff(s):

Jason M. Rund

Represented By
Thomas H Casey

Trustee(s):

Jason M Rund (TR)

Represented By
Thomas H Casey

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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:17-13256 Felicidad Ferrer

Chapter 7

Adv#: 2:17-01334 Thekkek et al v. Ferrer et al

#6.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01334. Complaint by Prema Thekkek, Antony Thekkek against Felicidad Ferrer, Renato Ferrer. (a)(4), and (a)(6)]; and (III) for Denial of Discharge [11 U.S.C. § 727(a)(4)(A), and (a)(7)] (Attachments: # 1 Adversary Cover Sheet) Nature of Suit: (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(41 (Objection / revocation of discharge - 727(c),(d),(e))) (Rafatjoo, Hamid)

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 10-26-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Defendant(s):

Felicidad Ferrer

Represented By
Joshua R Engle

Renato Ferrer

Represented By
Joshua R Engle

Joint Debtor(s):

Renato Ferrer

Represented By
Joshua R Engle

Plaintiff(s):

Prema Thekkek

Represented By
Hamid R Rafatjoo

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9:00 AM

CONT... Felicidad Ferrer

Chapter 7

Antony Thekkek

Represented By
Hamid R Rafatjoo

Trustee(s):

Wesley H Avery (TR)

Represented By
Varand Gourjian

**United States Bankruptcy Court
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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:17-16996 Paul William Martin

Chapter 7

Adv#: 2:17-01587 Hunter v. Martin DBA Veronica Rose Productions, Inc

#7.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01587. Complaint by Kevin Hunter against Paul William Martin. (62 (Dischargeability - 523(a)(2), false pretenses, false representation, actual fraud)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Brock, Robert)

fr. 9-24-18

Docket 1

*** VACATED *** REASON: Cont'd to 1/28/2019 at 9:00 a.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Paul William Martin

Represented By
Matthew D Resnik

Defendant(s):

Paul William Martin DBA Veronica

Pro Se

Plaintiff(s):

Kevin Hunter

Represented By
Robert A Brock

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:17-22344 Jihee Byun

Chapter 7

Adv#: 2:18-01010 Travelers Express Company, Inc nka Moneygram Payme v. Byun

#8.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01010. Complaint by Travelers Express Company, Inc. against Jihee Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

fr: 9-24-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jihee Byun

Represented By
Kelly K Chang

Defendant(s):

Jihee Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

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Hearing Room 1568

9:00 AM

2:17-22345 Youngjae Byun

Chapter 7

Adv#: 2:18-01011 Travelers Express Company, Inc nka Moneygram Payme v. Youngjae Byun

#9.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01011. Complaint by Travelers Express Company, Inc. against Youngjae Byun. (d),(e)),(67 (Dischargeability - 523(a)(4), fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)) (Rentto, Robert)

fr: 9-24-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-10-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Youngjae Byun

Represented By
Kelly K Chang

Defendant(s):

Youngjae Byun aka Young Jae Byun

Pro Se

Plaintiff(s):

Travelers Express Company, Inc nka

Represented By
Robert L Rentto

Trustee(s):

Jason M Rund (TR)

Pro Se

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Hearing Room 1568

9:00 AM

2:17-23038 Margaret Tully Imhoff

Chapter 7

Adv#: 2:18-01029 Imhoff v. Navient Solutions, LLC. et al

#10.00 Trial Date Set

RE: [1] Adversary case 2:18-ap-01029. Complaint by Margaret Tully Imhoff against Navient Solutions, LLC. . (Fee Not Required). Nature of Suit: (63 (Dischargeability - 523(a)(8), student loan)) (Fierro, Viridiana)

Docket 1

***** VACATED *** REASON: DISMISSED 8-22-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Margaret Tully Imhoff

Represented By
John Asuncion

Defendant(s):

United States Department Of

Pro Se

Navient Solutions, LLC.

Pro Se

Plaintiff(s):

Margaret Tully Imhoff

Pro Se

Trustee(s):

Timothy Yoo (TR)

Pro Se

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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:10-12765 Abram Tavera

Chapter 11

Adv#: 2:16-01555 Mastan v. Tavera et al

#11.00 Trial
RE: [1] Adversary case 2:16-ap-01555. Complaint by Peter J Mastan against Abram Tavera, Ruth Tavera. (Charge To Estate). Complaint for Breach of Contract and Declaratory Judgment Nature of Suit: (14 (Recovery of money/property - other)),(91 (Declaratory judgment)) (Ekvall, Lei Lei)

fr. 2-21-2018; 5-15-18

Docket 1

*** VACATED *** REASON: PER ORDER ENTERED 11-9-18

Tentative Ruling:

5/14/2018

Plaintiff commenced this action on December 15, 2016. On January 3, 2018, this action was reassigned from the Hon. Deborah J. Saltzman to the undersigned Judge. The Court set a Status Conference for February 21, 2018, at 10:00 a.m. On February 7, 2018, the Court approved the parties' stipulation to continue the Status Conference to May 15, 2018. The parties represented that they were engaged in settlement negotiations and stated that they needed additional time to see if they could reach a settlement agreement.

On May 2, 2018, the Court issued an *Order to Comply with Local Bankruptcy Rule 7016-1 Re: Status Conference* [Doc. No. 28] (the "Order to Comply"), based upon the parties' failure to timely file a Joint Status Report as ordered by the Court. In response to the Order to Comply, the parties filed a Joint Status Report, as well as a stipulation seeking a further continuance of the Status Conference. *See* Doc. No. 30 (the "Stipulation"). In the Stipulation, the parties again represented that they were continuing to discuss settlement and need additional time to see if they can reach an agreement.

On May 7, 2018, the Court entered an *Order Disapproving Stipulation for Further Continuance of Status Conference* [Doc. No. 32]. The Court explained:

The parties have failed to establish that they are making significant progress toward settlement. Absent such a showing, a further continuance of the Status Conference will result only in additional delay. The Court is obligated to

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9:00 AM

CONT...

Abram Tavera

Chapter 11

ensure the speedy determination of every action.

In the Court's experience, settlements are most likely to be achieved against the backdrop of litigation deadlines. Therefore, having reviewed the Joint Status Report filed by the parties, the Court HEREBY ORDERS as follows:

- 1) The following dates shall apply to this action:
 - a) The last day to amend pleadings and/or join other parties is **6/14/2018**.
 - b) The last day to disclose expert witnesses and expert witness reports is **8/28/2018**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **9/27/2018**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **10/16/2018**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-calendaring.)
 - e) The last day for dispositive motions to be heard is **10/23/2018**. (If the motion cutoff date is not available for self-calendaring, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendaring.)
 - f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **10/27/2018**. (If the non-expert discovery cutoff date is not available for self-calendaring, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendaring.)
 - g) A Pretrial Conference is set for **11/13/2018 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
 - h) Trial is set for the week of **11/26/2018**. The trial day commences at 9:00

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Monday, November 26, 2018

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9:00 AM

CONT...

Abram Tavera

Chapter 11

a.m. The exact date of the trial will be set at the Pretrial Conference.

Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.

- 2) The matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will enter a Scheduling Order. Plaintiff shall submit the order assigning this matter to mediation within fifteen days of the hearing, as set forth in ¶2, above.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Cameron Schlagel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Abram Tavera

Represented By
Robert M Yaspan
David J Richardson

Defendant(s):

Ruth Tavera

Represented By
Robert M Yaspan

Abram Tavera

Represented By
Robert M Yaspan

Joint Debtor(s):

Ruth Tavera

Represented By

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9:00 AM

CONT... Abram Tavera

Robert M Yaspan

Chapter 11

Plaintiff(s):

Peter J Mastan

Represented By
Lei Lei Wang Ekvall

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Hearing Room 1568

9:00 AM

2:14-31703 Ravinder Kumar Bhatia

Chapter 11

Adv#: 2:17-01536 Bhatia et al v. Ramirez et al

#12.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01536. Complaint by Ravinder Kumar Bhatia, Johanna Arias Bhatia against Fidel Ramirez. (Fee Not Required). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Orantes, Giovanni)

fr: 8-27-18

Docket 1

***** VACATED *** REASON: CONTINUED 3-25-19 AT 9:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

Defendant(s):

Fidel Ramirez

Pro Se

DOES 1 through 10, inclusive

Pro Se

Joint Debtor(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Plaintiff(s):

Johanna Arias Bhatia

Represented By
Giovanni Orantes

Ravinder Kumar Bhatia

Represented By
Giovanni Orantes

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Monday, November 26, 2018

Hearing Room 1568

9:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

Adv#: 2:17-01525 Official Unsecured Creditors Committee for Liberty v. Tsang et al

#13.00 Trial Date Set

RE: [1] Adversary case 2:17-ap-01525. Complaint by Official Unsecured Creditors Committee for Liberty Asset Management Corporation against Steven Tsang, Cathy Tsang, ELSV LLC. (14 (Recovery of money/property - other)) (Greenwood, Gail)

fr. 8-27-18

Docket 1

***** VACATED *** REASON: DISMISSED 9-13-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Defendant(s):

Steven Tsang

Pro Se

Cathy Tsang

Pro Se

ELSV LLC

Pro Se

David Tsang

Pro Se

Plaintiff(s):

Official Unsecured Creditors

Represented By

Gail S Greenwood

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Monday, November 26, 2018

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#100.00 Hearing
RE: [187] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Fiat 500X .

Docket 187

***** VACATED *** REASON: CONTINUED TO 12-17-18 at 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, November 26, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#101.00 HearingRE: [717] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Medical Negligence. (Danielyan, Mariam)

Docket 717

Tentative Ruling:

11/22/2018:

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. §362 [Doc. No. 717] (the "Motion")
- 2) Debtors' Response to Motion for Relief from the Automatic Stay Filed on Behalf of Aida Iniguez and Francisco Iniguez [Doc. No. 811]
- 3) Reply of Movants Aida Iniguez and Francisco Iniguez to Debtors' Response to Motion for Relief from the Automatic Stay [Doc. No. 843] (the "Reply")

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Aida Iniguez and Francisco Iniguez ("Movants") seek stay-relief, pursuant to § 362(d)(1), for the purpose of litigating a medical malpractice action against Debtor St. Francis Medical Center ("St. Francis"). Movants commenced the action, captioned *Aida Iniguez et al. v. Domingo C. Barrientos, St. Francis Medical Center, et al.* (the "State Court Action"), on May 4, 2016. The State Court Action alleges that had St. Francis and its doctors properly diagnosed Movant Aida Iniguez, it would not have been necessary for Ms. Iniguez to have undergone the amputation of both her legs.

A status conference in the State Court Action is set for December 12, 2018. Prior to the commencement of the Debtors' bankruptcy cases, trial in the State Court Action

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was set for October 9, 2018. Movants seek recovery only from applicable insurance, and waive any deficiency or other claim against the estate.

Debtors oppose the Motion, arguing that being required to defend against the State Court Action would be disruptive to the Debtors' operations and would distract the Debtors from aggressively pursuing sales of the Debtors' hospitals.

Movant makes the following arguments in reply to the Debtors' opposition:

- 1) There is no merit to the contention that Debtors would be distracted from prosecuting the bankruptcy cases if the State Court Action proceeded. St. Francis is represented by insurance counsel and Movants seek recovery only from applicable insurance. Insurance counsel has been defending against the State Court Action for more than two years.
- 2) Debtors have taken inconsistent and contradictory positions in response to similar stay-relief motions. In another non-bankruptcy action also involving a tort claims against St. Francis, Debtors stated that they would consider stipulating to stay-relief if Movant sought recovery only from insurance. Here, Movants seek recovery only from insurance, yet Debtors oppose the Motion.

II. Findings and Conclusions

As explained by the Ninth Circuit Bankruptcy Appellate Panel in *Kronemyer v. American Contractors Indemnity Co. (In re Kronemyer)* (internal citations omitted): "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis. Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court, ... as well as prejudice to the parties and whether exclusively bankruptcy issues are involved." 405 B.R. 915, 921. The factors articulated in *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984) and adopted by the bankruptcy court in *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc)*, 311 B.R. 551, 559-60 (Bankr. C.D. Cal. 2004) are also "appropriate, nonexclusive factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *Kronemyer*, 405 B.R. at 921. The *Curtis* factors are as follows:

- 1) Whether the relief will result in a partial or complete resolution of the issues;
- 2) The lack of any connection with or interference with the bankruptcy case;

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- 3) Whether the foreign proceeding involves the debtor as a fiduciary;
- 4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- 5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- 6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- 7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- 8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
- 9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
- 10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- 11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
- 12) The impact of the stay on the parties and the "balance of hurt."

Plumberex, 311 B.R. at 599.

Having considered the applicable *Curtis* factors, the Court finds that immediate stay-relief is appropriate. The Court's conclusion is driven primarily by the fact that Movants seek recovery only from applicable insurance and waive any deficiency or other claim against the Debtors or property of the estates (the fifth *Curtis* factor). The Court is cognizant of the reality that Debtors' bankruptcy counsel and its professionals may be required to devote some attention to the litigation, even though it is being defended by insurance counsel. However, having reviewed the the State Court Complaint, the Court finds that allowing the State Court Action to go forward at this time will not unduly distract the Debtors from pursuing other pressing matters in these bankruptcy cases. Requiring Movants to wait for stay-relief until the Debtors have made further progress selling the hospitals would mean that the trial, initially scheduled to go forward in October 2018, would likely be delayed until March 2019 or even later. In view of Movants' agreement to limit recovery to applicable insurance, the "balance of hurt" (factor twelve) warrants granting stay-relief now.

The remaining *Curtis* factors likewise support immediate stay-relief. Allowing the State Court Action to proceed will result in a complete resolution of the issues (factor

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one). The State Court is the tribunal best suited to adjudicate the litigation (factor three). The parties are at an advanced stage of the litigation (factor eleven). Stay-relief will facilitate the expeditious determination of the State Court Action (factor ten). Finally, given the Court's finding that allowing the State Court Action to proceed will not unduly distract the Debtors from other pressing matters, stay-relief will not prejudice the interests of creditors by interfering with the case and reducing creditor recoveries (factor seven).

Movants' request that the order granting stay-relief be binding and effective in any bankruptcy case commenced by or against the Debtors for a period of 180 days is DENIED. So that the status conference set for December 12, 2018 in the State Court Action may proceed, the order granting stay-relief shall be effective immediately upon entry, notwithstanding Bankruptcy Rule 4001(a)(3). Movants are permitted to enforce any final judgment only by collecting upon available insurance in accordance with applicable nonbankruptcy law. Movants may not pursue any deficiency claim or any other claim against the Debtors or property of the estates. The stay shall remain in effect with respect to the enforcement of any judgment against the Debtors or property of the Debtors' estates.

Movants shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. **[Note 1]**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

To ensure that the Debtors have the opportunity to review Movants' proposed order as to form, Movants shall either (a) submit a *Notice of Lodgment* of the proposed order in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(A) or, in the alternative, shall (b) obtain Debtors' endorsement as to the form of the proposed order pursuant to the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

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CONT... Verity Health System of California, Inc.

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Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#102.00 HearingRE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1258 North Virgil Avenue, Los Angeles, CA 90029 . , creditor c/o Seterus, Inc. (Attachments: # 1 Request for Judicial Notice) (Ryan, Timothy) WARNING: Matter is not on calendar for 11-29-18 at 10:00 A.M. See docket entry #[27] for corrective action; Modified on 10/31/2018 (Evangelista, Maria).

Docket 26

Tentative Ruling:

11/22/2018:

The Motion is CONTINUED to **December 17, 2018 at 10:00 a.m.** for proper notice. The Motion was not served on all lienholders in a manner authorized by Fed. R. Bankr. P. ("FRBP") 7004 or on the 20 largest creditors as required by FRBP 4001(a)(1) and 1007(d). The Movant is directed to re-serve the Motion and a notice of continued hearing upon all lienholders in a manner authorized by FRBP 7004 and on the 20 largest creditors by **November 26, 2018** and to file a proof of service reflecting service in accordance with this ruling.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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Hearing Room 1568

10:00 AM

2:18-18022 Andrew's & Son Tradings Inc.

Chapter 11

#103.00 Hearing
RE: [66] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2011 FORD F-650 Vin 3FRNF6FC1BV052582) with Proof of Service. (Barasch, Adam)

Docket 66

***** VACATED *** REASON: PER ORDER ENTERED 11-20-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrew's & Son Tradings Inc.

Represented By
Christopher J Langley
Steven P Chang
David Samuel Shevitz

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Hearing Room 1568

10:00 AM

2:18-21828 F.A.S.S.T. LLC

Chapter 11

#104.00 HearingRE: [52] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: Fitness equipment per the attached invoices .

Docket 52

Tentative Ruling:

11/22/2018:

For the reasons set forth below, the Motion is DENIED, provided the Debtor makes monthly adequate protection payments of \$815.85.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property) [Doc. No. 52] (the "Motion")
- 2) Debtor's Opposition to Motion for Relief from Stay Filed by CIT Bank N.A. [Doc. No. 60] (the "Opposition")
- 3) CIT Bank, N.A.'s Reply to Debtor's Opposition to Notice of Motion and Motion for Relief from Automatic Stay [Doc. No. 64] (the "Reply")

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, F.A.S.S.T., LLC (the "Debtor") filed a voluntary chapter 11 petition on October 9, 2018 (the "Petition Date"). The Debtor owns and operates a public training facility/gymnasium that does business under the name Velocity Sports Club.

Summary of the Motion

CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to certain fitness equipment identified in invoices attached to the Motion (the "Property") pursuant to §§ 362(d)(1) and (d)(2). Movant states that it holds a security interest in the Property pursuant to a security agreement (Ex. 1) and UCC-1 financing statement (Ex. 3). Movant asserts that cause exists to grant it relief from the automatic stay because (i) postpetition arrears are \$815.85; (ii) Movant's interest is not adequately protected by an equity cushion because Movant's \$26,562.58 claim is equal to the fair

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CONT... F.A.S.S.T. LLC

Chapter 11

market value of the Property; and (iii) proof of insurance has not been provided to Movant.

Movant asserts that the Property is worth \$26,562.58. In support of its claimed valuation, Movant submits a declaration by Brian Knox, who is employed by the Movant as a Senior Legal Recovery Specialist. Mr. Knox testifies that the \$26,562.58 valuation was determined as follows:

Movant has an Asset Management group that routinely re-markets equipment of the make, model, and year at issue herein in this industry. Movant's Asset Management group bases its valuation of the equipment on its original price, age and forecast of current market values, its conversations with outside vendors and experience in equipment financing and leasing.

Declaration of Brian Knox ("Knox Declaration"), ¶ 10(d).

Summary of the Debtor's Opposition

Debtor opposes the Motion on the grounds that Movant has failed to provide any admissible evidence in support of the Property's fair market value and, as a result, failed to carry its burden of proof to establish a lack of equity under §§ 362(d)(1) or (d)(2). With respect to § 362(d)(1), Debtor asserts that the only evidence presented is inadmissible because Movant's custodian of records, Mr. Knox, is unqualified to testify regarding the Property's value. Debtor also asserts that Movant has not presented any evidence to establish that its interest is not adequately protected or that the Property is declining in value. Debtor intends to bring its own separate motion to determine the value of Movant's security interest in the collateral and to request to strip down Movant's interest to that value.

With respect to the relief requested under § 362(d)(2), Debtor contends that in addition to its failure to submit admissible evidence regarding Debtor's lack of equity in the Property, Movant has failed to demonstrate that the gym equipment is not necessary for the Debtor's effective reorganization.

Debtor also states that Movant has not introduced any evidence to support its contentions regarding the Debtor's insurance coverage. Debtor attaches a copy of its existing insurance policy to the Declaration of Charles Debus as Exhibit A.

Finally, Debtor states that notwithstanding Movant's failure to carry its burden of proof, the Debtor is willing to make adequate protection payments in the amount of the monthly payment due under the note (\$815.85) for the period of time it takes the

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CONT... F.A.S.S.T. LLC

Chapter 11

Debtor to determine the value of Movant's security, its allowed claim, and other related issues or until Debtor's plan is confirmed, whichever is earlier. However, Debtor is willing to make the proposed adequate protection payments only if any overpayments are subject to disgorgement once the value of the Property has been adjudicated.

Summary of Movant's Reply in Support of the Motion

Movant asserts that the Debtor has failed to establish that the Property is insured as required by the Master Equipment Finance Agreement between Debtor and Movant. According to Movant, the insurance policy produced by the Debtor is inadequate because it does not name either Movant or the Office of the United States Trustee as additional insured parties. Movant disputes Debtors' contention that Mr. Knox is not qualified to testify as to the Property's value. Movant states that Debtors' proposal to make adequate protection payments only if such payments are subject to disgorgement is nonsensical because adequate protection payments cannot, by definition, be subject to disgorgement.

II. Findings of Fact and Conclusions of Law

Mr. Knox is Qualified to Testify as to the Value of the Property

The Debtor's objection to Mr. Knox's testimony in support of the Property's valuation is **OVERRULED**. Mr. Knox is employed by Movant as a Senior Legal Recovery Specialist. In the course of his job duties, Mr. Knox is required to assess the value of collateral. As such, he is qualified to offer expert valuation testimony. *See* Federal Rule of Evidence ("FRE") 702 (providing that an expert may be qualified by "experience"); *see also Stanziale v. Southern Steel & Supply, LLC (In re Conex Holdings, LLC*, 518 B.R. 269, 286 (Bankr. D. Del. 2014) (stating that witnesses who have worked in the industry at issue "may be prime candidates for providing relevant testimony").

Mr. Knox explains that he arrived at his conclusions regarding the Property's value by consulting with Movant's Asset Management Group, which routinely markets equipment similar to the Property. As an expert qualified to offer valuation testimony, Mr. Knox is entitled to rely upon the conclusions of the Asset Management Group in forming his opinion.

Section 362(d)(1)

Under § 362(d)(1), the court shall grant relief "for cause, including the lack of

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adequate protection of an interest in property of such party in interest." Generally, what constitutes cause for purposes of § 362(d) "has no clear definition and is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990); *see also Little Creek Dev. Co. v. Commonwealth Mortgage Corp. (In the Matter of Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986) (relief from the automatic stay may "be granted 'for cause,' a term not defined in the statute so as to afford flexibility to the bankruptcy courts"). However, cause under § 362(d)(1) expressly includes a lack of adequate protection. Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). The Ninth Circuit has established that an equity cushion of 20% constitutes adequate protection for a secured creditor. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984); *see also Downey Sav. & Loan Ass'n v. Helionetics, Inc. (In re Helionetics, Inc.)*, 70 B.R. 433, 440 (Bankr. C.D. Cal. 1987) (holding that a 20.4% equity cushion was sufficient to protect the creditor's interest in its collateral).

Charles DeBus, the Debtor's managing member, states that he has "not yet sorted out and formed an opinion as to the value of the equipment covered by Movant's financing." DeBus Decl. at ¶2. Mr. Knox's declaration is the only valuation evidence before the Court. For purposes of this Motion only, the Court finds, based upon Mr. Knox's testimony, that the Property is worth \$26,562.58.

Because Movant's claim is also \$25,562.58, Movant's interest in the Property is not adequately protected. To avoid stay-relief, the Debtor must make monthly adequate protection payments to Movant in the amount of \$815.18 (which is the amount due under the note). The adequate protection payments shall not be subject to disgorgement once the value of the Property has been adjudicated, as proposed by the Debtor. The Debtor's proposal is fundamentally inconsistent with the concept of adequate protection. By definition, adequate protection payments cannot be subject to disgorgement; otherwise, such payments would not protect the secured creditor's interest in its collateral.

Section 362(d)(2)

Section 362(d)(2) requires the Court to grant stay-relief if the Debtor lacks equity in the property and if the property is not necessary to an effective reorganization.

As discussed above, for purposes of this Motion only, the Court finds that the

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CONT... F.A.S.S.T. LLC

Chapter 11

Debtor lacks equity in the Property. However, the Property is necessary for an effective reorganization. Obviously the Debtor cannot continue to operate its gym without exercise equipment. The Court declines to grant stay-relief under §362(d)(2).

III. Conclusion

Based upon the foregoing, the Motion is DENIED, provided that the Debtor makes monthly adequate protection payments of \$815.18.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

F.A.S.S.T. LLC

Represented By
Robert M Yaspan

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Monday, December 3, 2018

Hearing Room 1568

10:00 AM

2:18-20048 Wendy Martinez

Chapter 7

#1.00 HearingRE: [11] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Ford F150 Super Cab .

Docket 11

Tentative Ruling:

11/29/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

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CONT... Wendy Martinez

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Wendy Martinez

Represented By
Hale Andrew Antico

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#2.00 HearingRE: [187] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Insurance proceeds only.

Docket 187

Tentative Ruling:

11/29/2018

For the reasons set forth below, the Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the non-bankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or estate property.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 187] (the "Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Sultan Financial Corporation dba Aaron's Sales and Lease (the "Debtor") filed this voluntary chapter 11 case on July 13, 2018. On October 29, 2018, Ollie Driver ("Movant") filed a "Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) [Doc. No. 187] (the "Motion").

As set forth in the Motion, Movant seeks stay relief pursuant to § 362(d)(1) to proceed to final judgment in the nonbankruptcy action captioned *Ollie Driver v. Sultan Financial Corporation, et al* (Case No. MC026148) pending in the Superior Court of California, North District (the "State Court Action"). Movant commenced the State Court Action on May 3, 2017 by filing a complaint for (1) premises liability and (2) negligence stemming from Movant's slip and fall accident. Movant states that

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the parties to the State Court Action have agreed to mediate and discovery is nearly complete.

Movant asserts that cause exists to grant stay relief because (i) Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate; and (ii) Movant's claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum. Movant seeks to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. Movant also requests waiver of the 14-day stay prescribed by FRBP 4001(a)(3).

II. Findings of Fact and Conclusions of Law

As a preliminary matter, a motion for relief from the automatic stay is a summary proceeding that does not involve an adjudication of the merits of the underlying claims. As recognized by the Ninth Circuit Bankruptcy Appellate Panel in *In re Luz Int'l, Ltd.*:

Given the limited grounds for obtaining a motion for relief from stay, read in conjunction with the expedited schedule for a hearing on the motion, most courts hold that motion for relief from stay hearings should not involve an adjudication of the merits of claims, defenses, or counterclaims, but simply determine whether the creditor has a colorable claim to the property of the estate. *See In re Johnson*, 756 F.2d 738, 740 (9th Cir.), *cert. denied*, 474 U.S. 828, 106 S.Ct. 88, 88 L.Ed.2d 72 (1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

219 B.R. 837, 842 (9th Cir. BAP 1998) (citation omitted). In a summary proceeding, the court's discretion is broad. *In re Santa Clara Cty. Fair Ass'n, Inc.*, 180 B.R. 564, 566 (B.A.P. 9th Cir. 1995).

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CONT... Sultan Financial Corporation

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The automatic stay of 11 U.S.C. § 362(a) stays all action involving the following, in pertinent part:

(1) the commencement or continuation, including the issuance or employment of process of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title.

11 U.S.C. § 362(a)(1).

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, to the extent the automatic stay applies under the circumstances described above, the Court finds that the causes of actions in the state court complaint attached to the Motion involve nonbankruptcy law and are within the expertise of the state court. Allowing the Movant to continue the State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, to the extent the automatic stay applies, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable non-bankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect

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CONT... Sultan Financial Corporation

Chapter 11

with respect to enforcement of any judgment against the Debtors or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§523 or 727 (to the extent applicable). This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

Movant shall upload a conforming order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:18-18021 Sultan Financial Corporation

Chapter 11

#3.00 HearingRE: [193] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Notice of Motion and Motion for Relief from the Automatic Stay - Action in Non-Bankruptcy Forum.

Docket 193

Tentative Ruling:

11/29/2018

The Motion is DENIED without prejudice for lack of proper service. The Motion was not served upon the 20 largest creditors as required by Fed. R. Bankr. P. ("FRBP") 4001(a)(1) and 1007(d). Movant may refile the Motion with service upon the 20 largest creditors in a manner consistent with FRBP 4001(a)(1) and 1007(d) and all other parties required to be served.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown
David A Warfield
Mark S Horoupian
Richard G Reinis

**United States Bankruptcy Court
Central District of California
Los Angeles
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Monday, December 3, 2018

Hearing Room 1568

10:00 AM

2:18-20960 Juan F Avalos

Chapter 7

#4.00 Hearing

RE: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 HONDA CIVIC, VIN: 2HGF C1F7 0GH6 50188 .

fr: 11-19-18

Docket 7

Tentative Ruling:

11/29/2018

Hearing required. This matter was continued from November 19, 2018 at 10:00 a.m. to allow time for Movant to confirm receipt of Debtor's purported cure payments. The parties are directed to appear (in person or telephonically) to update the Court on the status of Movant's review.

Party Information

Debtor(s):

Juan F Avalos

Represented By
Peter L Lago

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:11-62696 Ted Kim

Chapter 7

#1.00 APPLICANT: Trustee: Edward M Wolkowitz

Hearing re [138] & [139] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,147.99 approved, but only \$615.92 to be paid pursuant to the Trustee's voluntary reduction

Total Expenses: \$267.07

U.S. Bankruptcy Court: \$293.00

Office of the U.S. Trustee: \$650.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ted Kim

Pro Se

**United States Bankruptcy Court
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CONT... Ted Kim

Chapter 7

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh
Ashton R Watkins

**United States Bankruptcy Court
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10:00 AM

2:11-62696 Ted Kim

Chapter 7

#2.00 APPLICANT: Attorney for Trustee: Levene Neale Bender Yoo & Brill

Hearing re [138] & [139] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$30,170.50 approved, but only \$8,645.96 to be paid

Expenses: \$1,896.61

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ted Kim

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh

**United States Bankruptcy Court
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CONT... Ted Kim

Ashton R Watkins

Chapter 7

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Hearing Room 1568

10:00 AM

2:11-62696 Ted Kim

Chapter 7

#3.00 APPLICANT: Accountant for Trustee: Donald T Fife

Hearing re [138] & [139] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

On September 10, 2018, this Court entered an order approving the Trustee's request to employ Applicant as a tax preparer and to pay a \$1,000 flat fee [Doc. No. 131]. Those fees are approved on a final basis.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ted Kim

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh
Ashton R Watkins

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2:11-62696 Ted Kim

Chapter 7

#4.00 Charges: U.S. Bankruptcy Court

Hearing re [138] & [139] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Ted Kim

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh
Ashton R Watkins

**United States Bankruptcy Court
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2:11-62696 Ted Kim

Chapter 7

#5.00 Other: United States Trustee

Hearing re [138] & [139] Trustee's Final Report and Applications for
Compensation

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 1, incorporated by reference.

Party Information

Debtor(s):

Ted Kim

Pro Se

Trustee(s):

Edward M Wolkowitz (TR)

Represented By
Juliet Y Oh
Ashton R Watkins

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

#6.00 APPLICANT: Trustee - Howard M. Ehrenberg

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$639,818.39

Total Expenses: \$3,142.12

U.S. Bankruptcy Court charges: \$350.00

Bond Payments to International Sureties, Ltd.: \$17,435.98 (this amount has already been paid)

Fees for Special Litigation Counsel, the Law Offices of Ira Benjamin Katz:
\$2,790,000.00 (these fees were allowed on a final basis on December 19, 2017 [Doc. No. 907] and have already been paid)

Expenses for Special Litigation Counsel, the Law Offices of Ira Benjamin Katz:
\$4,106.84 (these expenses were allowed on a final basis on December 19, 2017 [Doc. No. 907] and have already been paid)

Fees for Special Litigation Counsel, the Law Offices of Robert A. Weinberg:
\$3,000,000.00 (these fees were allowed on a final basis on December 19, 2017 [Doc. No. 907] and have already been paid)

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Expenses for Special Litigation Counsel, the Law Offices of Robert A. Weinberg: \$25,748.14 (these expenses were allowed on a final basis on December 19, 2017 [Doc. No. 907] and have already been paid)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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Hearing Room 1568

10:00 AM

2:15-21624 Harry Roussos

Chapter 7

#7.00 APPLICANT: Attorney for Trustee - SulmeyerKupetz

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below. Fees and expenses previously awarded on an interim basis are now confirmed as final, except that the \$801,164.50 in fees awarded on an interim basis on December 28, 2017 [Doc. No. 915] is reduced to \$792,097 as requested by applicant, on account of \$9,067.50 mistakenly billed to the estate.

Fees: \$931,743.50 (consisting of \$801,164.50 previously awarded on an interim basis (but now reduced to \$792,097 at applicant's request), and \$139,646.50 sought in connection with this application) [**Note 1**]

Expenses: \$16,704.09 (consisting of \$14,598.29 previously awarded on an interim basis, and \$2,105.80 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Note 1

Although applicant was awarded and paid \$801,164.50 on an interim basis for the period from July 30, 2015 through and including October 31, 2017 [Doc. No. 915], applicant is seeking an award of only \$792,097 on a final basis for this period, on account of certain time entries totaling \$9,067.50 which should not have been billed to the estates. Since the full amount of \$801,164.50 was paid to applicant, the

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Trustee will deduct the sum of \$9,067.50 from the amount to be paid to applicant in connection with this application. Therefore, although applicant is being awarded \$139,646.50 in fees in connection with this application, applicant will be paid only \$130,579.00 (\$139,646.50 less \$9,067.50).

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:15-21624 Harry Roussos

Chapter 7

#8.00 Charges, U.S. Bankruptcy Court

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Harry Roussos

Represented By
David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:15-21624 Harry Roussos

Chapter 7

#9.00 Bond Payments - International Sureties, LTD.

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Harry Roussos

Represented By
David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:15-21624 Harry Roussos

Chapter 7

#10.00 APPLICANT: Attorney for Trustee (Other Firm) - Law Offices of Ira Benjamin Katz

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Harry Roussos

Represented By
David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:15-21624 Harry Roussos

Chapter 7

#11.00 APPLICANT: Law Offices of Robert A. Weinberg

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Harry Roussos

Represented By
David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg
Asa S Hami

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2:15-21624 Harry Roussos

Chapter 7

#12.00 APPLICANT: Accountant for Trustee - Grobstein Teeple LLP

Hearing re [971] Amended Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$38,746.50

Expenses: \$480.10

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Harry Roussos

Represented By

David Burkenroad - DISBARRED -
Jonathan Shenson

Trustee(s):

Howard M Ehrenberg (TR)

Represented By

Daniel A Lev
Steven Werth
Ira Benjamin Katz
Robert A Weinberg

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Harry Roussos

Asa S Hami

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**United States Bankruptcy Court
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2:15-28725 Margarita Cherri

Chapter 7

#13.00 APPLICANT: Trustee: ROSENDO GONZALEZ

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$3,573.36

Total Expenses: \$138.78

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Margarita Cherri

Represented By
Michael E Clark

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Larry D Simons
Frank X Ruggier

**United States Bankruptcy Court
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10:00 AM

2:15-28725 Margarita Cherri

Chapter 7

#14.00 APPLICANT: Attorney for Trustee: LAW OFFICES OF LARRY D. SIMONS

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,450.00

Expenses: \$118.29

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Margarita Cherri

Represented By
Michael E Clark

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Larry D Simons

**United States Bankruptcy Court
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CONT... Margarita Cherri

Frank X Ruggier

Chapter 7

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2:15-28725 Margarita Cherri

Chapter 7

#15.00 APPLICANT: Accountant for Trustee Fees: KARL T ANDERSON, CPA INC.

Hearing re [71] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$3,075.00

Expenses: \$246.56

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Margarita Cherri

Represented By
Michael E Clark

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Larry D Simons

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Frank X Ruggier

Chapter 7

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Hearing Room 1568

10:00 AM

2:17-23106 Esther Zepeda

Chapter 7

#16.00 Status Hearing RE: [33] Notice of Trustee's Final Report and Applications for Compensation (BNC-PDF) 32). (united states trustee (pg))

Docket 33

Tentative Ruling:

12/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$2,050.00

Total Expenses: \$70.57

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Esther Zepeda

Pro Se

Trustee(s):

Peter J Mastan (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-12694 Henry Pete Amaya, Jr. and Magdalena Lopez

Chapter 7

#17.00 APPLICANT: Trustee, Fees - Elissa Miller

Hearing re [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$1,133.25

Total Expenses: \$0.00

International Sureties, LTD: \$0.22

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Henry Pete Amaya Jr.

Represented By
Nicholas W Gebelt

Joint Debtor(s):

Magdalena Lopez

Represented By

**United States Bankruptcy Court
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CONT... Henry Pete Amaya, Jr. and Magdalena Lopez
Nicholas W Gebelt

Chapter 7

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
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2:18-12694 Henry Pete Amaya, Jr. and Magdalena Lopez

Chapter 7

#18.00 Bond Payments - International Sureties, LTD

Hearing re [27] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

12/3/2018

See Cal. No. 17, incorporated by reference.

Party Information

Debtor(s):

Henry Pete Amaya Jr.

Represented By
Nicholas W Gebelt

Joint Debtor(s):

Magdalena Lopez

Represented By
Nicholas W Gebelt

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-18238 Steven Zane Rothschild

Chapter 7

#19.00 Show Cause Hearing re [15] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

***** VACATED *** REASON: PAYMENT MADE 11-7-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven Zane Rothschild

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-21646 Michael Andre Walker

Chapter 7

#20.00 Show Cause Hearing re [13] Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 0

Tentative Ruling:

12/3/2018

The case is dismissed based on the Debtor's failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$315.00.

Pleadings Filed and Reviewed:

- 1) Order on Application to Pay Filing Fee in Installments (the "Fee Installment Order") [Doc. No. 10]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 13]
 - a) Certificate of Notice [Doc. No. 17]

On October 4, 2018, the Court entered an order requiring Michael Andre Walker ("Debtor") to pay the filing fee according to the following schedule:

- First installment payment: \$20.00 on or before 10/4/2018;
- Second installment payment: \$78.75 on or before 10/18/2018;
- Third installment payment: \$78.75 on or before 11/1/2018; and
- Final installment payment: \$157.50 on or before 11/29/2018.

See Fee Installment Order.

The Debtor made the first installment payment, but failed to make any of the remaining installment payments. Fees are delinquent in the amount of \$315.00.

On September 26, 2018, the Court issued an *Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments* (the "OSC"). The OSC ordered the Debtor to make the delinquent installment payments by no later than one week prior to the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

CONT... Michael Andre Walker

Chapter 7

The Debtor has not made the delinquent payment and has not responded to the OSC.

Bankruptcy Rule 1017(b)(1) provides: "If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case."

The Debtor's case is dismissed based on the Debtor's failure to comply with the Court's Fee Installment Order and OSC. The Court will enter an order dismissing the case.

Party Information

Debtor(s):

Michael Andre Walker

Pro Se

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#21.00 HearingRE: [816] Motion RE: Objection to Claim Number 4 by Claimant AHA 2012 LLC. / Plan Administrator's Limited Objection to Claim Number 4-1 filed by AHA 2012 LLC; Declaration of Gail Greenwood in Support Thereof (Greenwood, Gail)

Docket 816

Tentative Ruling:

12/3/2018

See Cal. No. 27.1, below, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#22.00 HearingRE: [818] Motion RE: Objection to Claim Number by Claimant Jean Hung. /
Plan Administrator's Objection to Claim Number 26-1 filed by Jean Hung; Declaration of
Gail Greenwood in Support Thereof

Docket 818

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is
SUSTAINED, and Claim No. 26 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 26-1 Filed by Jean Hung [Doc.
No. 818] (the "Claim Objection")
 - a) Notice of Motion for: Plan Administrator's Objection to Claim Number 26-1
Filed by Jean Hung [Doc. No. 817]
 - b) [Amended] Notice of Objection to Claim [Doc. No. 824]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary
Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017,
the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case
was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property
using a combination of its own cash, cash from investors, and bank loans. Real
property acquired by Liberty was not titled in the name of Liberty or its investors, but
instead was purchased in the name of various limited liability companies. At all times
since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole
shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and
identifying real properties for purchase and sale.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

CONT... Liberty Asset Management Corporation

Chapter 11

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 26-1, Asserted by Jean Hung

On October 28, 2016, Jean Hung filed Proof of Claim No. 26-1 ("Claim 26"). Claim 26 seeks \$750,000, based upon a settlement entered into between Ms. Hung, on the one hand, and Gold River Valley LLC ("Gold River") and Liberty Gardens LLC ("Liberty Gardens"), on the other hand. Claim 26 further alleges that "Liberty subsequently agreed to repay the \$750,000 under a promissory note" secured by property located at 544 San Antonio Road, Mountain View, CA 94040 (the "544 San Antonio Property"). Claim 26 includes an installment note dated May 28, 2014, payable to Ms. Hung personally by 544 San Antonio Road LLC ("544 San Antonio") through its managing member, Tsai Luan Ho aka Shelby Ho.

D. Summary of the Plan Administrator's Objection to Claim 38

The Plan Administrator asserts that Claim 26 must be disallowed for the following reasons:

- 1) Claim 26 is based upon a settlement agreement with Gold River and Liberty Gardens (the "Settlement Agreement"). The Settlement Agreement contains an integration clause. Because Liberty is not a party to the Settlement Agreement, it is not enforceable against Liberty.
- 2) Claim 26 includes a \$750,000 promissory note signed by Ms. Ho and 544 San Antonio. Apparently, Ms. Hung attached this note to Claim 26 to implicitly argue that the note was issued by Liberty and that Liberty had agreed to pay the debt that was left unsecured after the property that had been secured by the note was sold. The promissory note does not establish the validity of the claim. The Settlement Agreement requires a written modification. Even assuming that the promissory note constituted a written modification of the Settlement Agreement, it was not signed by Liberty.

No opposition to the Claim Objection is on file.

**United States Bankruptcy Court
Central District of California
Los Angeles
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CONT... **Liberty Asset Management Corporation**

Chapter 11

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Here, Claim 26 is unenforceable against Liberty because Liberty is not a party to the Settlement Agreement which is the basis for the claim. The parties to the Settlement Agreement are the claimant, Ms. Hung, on the one hand, and Gold River and Liberty Gardens, on the other hand. Ms. Hung has failed to demonstrate how the Settlement Agreement with these entities establishes an enforceable claim against Liberty.

Ms. Hung asserts that "Liberty agreed to repay ... a total of \$750,000." Attachment to Claim 26. In support of this contention, Ms. Hung attaches a promissory note in the amount of \$750,000. The note is secured by the 544 San Antonio Property. The Court finds that the promissory note does not support Ms. Hung's contention that Liberty agreed to repay \$750,000, because it is not signed by Liberty.

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CONT... Liberty Asset Management Corporation

Chapter 11

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 26 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#23.00 HearingRE: [820] Motion RE: Objection to Claim Number by Claimant The Lee Living Trust and Christopher Lee. /Plan Administrator's Limited Objection to Claim Number 3-1 (Greenwood, Gail)

Docket 820

Tentative Ruling:

12/3/2018

See Cal. No. 27.1, below, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#24.00 HearingRE: [823] Motion RE: Objection to Claim Number by Claimant YCJS 2012 LLC. / Plan Administrator's Limited Objection to Claim Number 2-1 filed by YCJS 2012 LLC; Declaration of Gail Greenwood in Support Thereof (Greenwood, Gail)

Docket 823

Tentative Ruling:

12/3/2018

See Cal. No. 27.1, below, incorporated in full by reference.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#25.00 HearingRE: [798] Motion RE: Objection to Claim Number 5,41 by Claimant Los Angeles County Treasurer and Tax Collector. Plan Administrators Objection To Claim Numbers 5-5 And 41-1 Filed By Los Angeles County Treasurer And Tax Collector; Declaration Of Erin E. Gray In Support Thereof

Docket 798

Tentative Ruling:

12/3/2018

The stipulated resolution of the Claim Objection is approved. As requested by the parties, Claim 5 is allowed as a secured claim in the amount of \$1,066.78, and Claim 41 is allowed as a secured claim in the amount of \$1,405.92.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Numbers 5-5 and 41-1 Filed by Los Angeles County Treasurer and Tax Collector [Doc. No. 798] (the "Claim Objection")
 - a) Notice Objection to Claim [Doc. No. 799]
- 2) Response to Plan Administrator's Objection to Claim Numbers 5-5 and 41-1 Filed by Los Angeles County Treasurer and Tax Collector [Doc. No. 833] (the "Response")
- 3) Plan Administrator's Corrected Reply in Support of Objection to Claim Numbers 5-5 and 41-1 Filed by Los Angeles County Treasurer and Tax Collector [Doc. No. 836]

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property

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CONT... Liberty Asset Management Corporation

Chapter 11

using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claims 5-5 and 41-1, Asserted by the Los Angeles County Treasurer and Tax Collector

On July 10, 2018, the Los Angeles County Treasurer and Tax Collector (the "Claimant") filed Proof of Claim No. 5-5 ("Claim 5-5"), asserting a secured claim in the amount of \$718,375.69, based upon unpaid property taxes.

On July 2, 2018, Claimant filed Proof of Claim No. 41-1 ("Claim 41-1"), asserting a secured claim in the amount of \$142,817.79, based on unpaid property taxes.

D. Summary of Papers Filed in Connection with the Plan Administrator's Claim Objection

In response to the Plan Administrator's Claim Objection, claimant has concluded that Claim 5 should be reduced to \$1,066.78 as of November 2018, and that Claim 41 should be reduced to \$1,405.92 as of November 2018. The Plan Administrator agrees with these conclusions.

II. Findings and Conclusions

Claimant and the Plan Administrator have agreed that Claim 5 should be reduced to \$1,066.78 and that Claim 41 should be reduced to \$1,405.92. Having reviewed the claims and the papers filed in connection with the Claim Objection, the Court finds that the resolution reached between the Claimant and the Plan Administrator is appropriate. As requested by the parties, Claim 5 is allowed as a secured claim in the amount of \$1,066.78, and Claim 41 is allowed as a secured claim in the amount of \$1,405.92.

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CONT... Liberty Asset Management Corporation

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The Plan Administrator shall submit an order, incorporating this tentative ruling by reference, within seven days of the hearing. The order shall be approved endorsed as to form by the Claimant in accordance with the procedure set forth in Local Bankruptcy Rule 9021-1(b)(3)(C).

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik
Sandford L. Frey
Raphael Cung

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#26.00 Hearing re [801] Objection to Claim Number 34-1 Filed by HT 2011 REO Management LLC Filed by Other Professional Bradley D. Sharp

Docket 0

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 34 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 34-1 Filed by HT 2011 REO Management LLC [Doc. No. 801] (the "Claim Objection")
 - a) Notice Objection to Claim [Doc. No. 802]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

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CONT... Liberty Asset Management Corporation

Chapter 11

On August 12, 2016, the Court issued an order setting October 30, 2016, as the deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 34-1, Asserted by HT 2011 REO Management LLC

On October 30, 2016, HT 2011 REO Management LLC ("HT 2011") filed Proof of Claim 34-1 ("Claim 34"). HT 2011 asserts an unsecured claim in the amount of \$690,000. In support of its claim, HT 2011 attaches an investment agreement dated June 22, 2012 for the purchase of property located at 904 Old Town Court, Cupertino, California. The investment agreement required HT 2011 to deposit \$690,000 to an escrow account by Skyline Escrow Services ("Skyline"), an internal escrow company operated by Liberty.

D. Summary of the Plan Administrator's Objection to Claim 38

The Plan Administrator asserts that Claim 34 must be disallowed for the following reasons:

- 1) The Plan Administrator has reviewed Skyline's bank statements for the month of the investment agreement and the following two months, and could not identify any deposits by HT 2011 or its principal, Helen Tan. The Plan Administrator has requested evidence from HT 2011 that it deposited the funds into escrow, but has not received any documents.
- 2) HT 2011 was a significant investor in Liberty and may have received preferential treatment. According to deposition testimony by Shelby Ho, HT 2011's principal, Helen Tan, is a longtime friend of Ms. Ho and a real estate agent. HT 2011 successfully invested \$2 million in a portfolio of distressed properties held by an entity controlled by Liberty. Ms. Tan made numerous short term loans to Liberty. In view of HT 2011's close ties to an insider, it is incumbent upon HT 2011 to demonstrate that it actually advanced money to Liberty.

No opposition to the Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount

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CONT... Liberty Asset Management Corporation

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of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." See *Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. See *Lundell*, 223 F.3d at 1039 (citation omitted).

As the Ninth Circuit Bankruptcy Appellate Panel has explained, a claimant's failure to respond to requests for information supporting its claim supports an objection:

[W]e agree with courts in the majority that creditors have an obligation to respond to formal or informal requests for information....

If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim.

Heath v. Am. Express Travel Related Svcs. Co. (In re Heath), 331 B.R. 424, 436-37 (B.A.P. 9th Cir. 2005)

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The Court finds that Claim 34 is unenforceable against Liberty. The claimant alleges that it invested \$690,000 with Liberty. The investment contract attached to the claim required the claimant to wire the funds to Skyline. The Plan Administrator's review of Skyline's bank statements shows that the claimant never deposited the funds

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with Skyline. When the Plan Administrator asked the claimant to furnish additional information in support of its claim, the claimant failed to respond.

By showing that Skyline's bank statements contained no record of an investment by the claimant, the Plan Administrator negated the claimant's allegation that it had invested funds with Liberty. By failing to respond to the Plan Administrator's request for additional information in support of the claim, the claimant has failed to carry its burden of proof in support of the claim's validity.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 34 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By
David B Golubchik
Jeffrey S Kwong
John-Patrick M Fritz
Eve H Karasik

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

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10:00 AM

CONT...

Liberty Asset Management Corporation

Sandford L. Frey
Raphael Cung

Chapter 11

**United States Bankruptcy Court
Central District of California
Los Angeles
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Courtroom 1568 Calendar**

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10:00 AM

2:16-13575 Liberty Asset Management Corporation

Chapter 11

#27.00 Hearing re [803] Objection to Claim Number 35-2 Filed by Brook Parker LLC

Docket 0

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Plan Administrator's Claim Objection is SUSTAINED, and Claim No. 35 is DISALLOWED in its entirety.

Pleadings Filed and Reviewed:

- 1) Plan Administrator's Objection to Claim Number 35-2 Filed by Brook Parker LLC [Doc. No. 803] (the "Claim Objection")
 - a) Notice Objection to Claim [Doc. No. 804]
- 2) No Opposition to the Claim Objection is on file

I. Facts and Summary of Pleadings

A. Background [Note 1]

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over this case. On January 30, 2017, the case was reassigned to the undersigned Judge. Doc. No. 325.

Liberty was a real estate investment company that bought and sold real property using a combination of its own cash, cash from investors, and bank loans. Real property acquired by Liberty was not titled in the name of Liberty or its investors, but instead was purchased in the name of various limited liability companies. At all times since its formation, Benjamin Kirk was Liberty's President, CEO, CFO, and sole shareholder. Mr. Kirk's primary role was soliciting investors for Liberty and identifying real properties for purchase and sale.

B. The Claims Bar Date

On August 12, 2016, the Court issued an order setting October 30, 2016, as the

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deadline to file proofs of general unsecured claims. Doc. No. 178. On August 19, 2016, Liberty's Official Committee of Unsecured Creditors (the "Committee") provided notice of the claims bar date to all known creditors. Doc. No. 186.

C. Claim 34-1, Asserted by HT 2011 REO Management LLC

On October 31, 2016, Brook Parker LLC ("Brook Parker") filed Proof of Claim 35-2 ("Claim 35"). Brook Parker asserts an unsecured claim of \$516,686.14, based on "monies advanced," and attaches a promissory note dated June 14, 2013 in the same amount signed by Benjamin Kirk.

D. Summary of the Plan Administrator's Objection to Claim 38

The Plan Administrator asserts that Claim 35 must be disallowed for the following reasons:

- 1) The promissory note attached to the claim does not contain any recitals regarding payment by Brook Parker, such as the date of payment or the circumstances of payment. The Plan Administrator has no record that Brook Parker advanced any funds to Liberty. Moreover, the amount stated in the promissory note conflicts with Liberty's schedules, which refer to a property investment in a different amount.
- 2) The Plan Administrator requested evidence of payment from Brook Parker, but did not receive any documents. In view of the absence of any records evidencing that Brook Parker advanced funds to Liberty, the Plan Administrator believes it is incumbent upon Brook Parker to demonstrate that it actually advanced funds.

No opposition to the Claim Objection is on file.

II. Findings and Conclusions

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Bendor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280

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(9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

As the Ninth Circuit Bankruptcy Appellate Panel has explained, a claimant's failure to respond to requests for information supporting its claim supports an objection:

[W]e agree with courts in the majority that creditors have an obligation to respond to formal or informal requests for information....

If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim.

Heath v. Am. Express Travel Related Svcs. Co. (In re Heath), 331 B.R. 424, 436-37 (B.A.P. 9th Cir. 2005)

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

The Court finds that Claim 35-2 is unenforceable against Liberty. The claimant alleges that it advanced \$516,686.14 to Liberty. However, the promissory note supporting the alleged loan does not contain recitals regarding the date of payment or the circumstances of payment. The Plan Administrator has no record of any payment, and the alleged payment conflicts with Liberty's schedules. Further, when the Plan Administrator requested additional information from Brook Parker regarding the claim, Brook Parker failed to provide any documentation.

The Plan Administrator has presented facts sufficient to overcome the *prima facie* validity afforded to the claim. By failing to furnish additional evidence in support of the claim in response to the Plan Administrator's requests, and by failing to respond to

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the Claim Objection, the claimant has failed to carry its ultimate burden of proof in support of the claim's validity.

Based upon the foregoing, the Claim Objection is SUSTAINED and Claim 35 is DISALLOWED in its entirety. The Plan Administrator shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, the Court made the findings set forth in *Section A* in its *Memorandum of Decision Finding that Plaintiff is Entitled to Judgment Against Defendants in the Amount of \$74,140,695.29* [Doc. No. 141, Adv. No. 2:16-ap-01337-ER] (the "Memorandum of Decision"). The Memorandum of Decision was entered on December 29, 2017, in the related adversary proceeding captioned *Official Unsecured Creditors Committee for Liberty Asset Management Corporation v. Lucy Gao and Benjamin Kirk*, Adv. No. 2:16-ap-01337-ER.

Party Information

Debtor(s):

Liberty Asset Management

Represented By

David B Golubchik

Jeffrey S Kwong

John-Patrick M Fritz

Eve H Karasik

Sandford L. Frey

Raphael Cung

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#27.10 Hearing
RE: [152] Motion to Disallow Claims / Notice Of Motion And Motion For Order Disallowing Certain Proofs Of Claim; Memorandum Of Points And Authorities; Declaration Of Lawrence Perkins In Support Thereof

Docket 152

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Claims Objections are GRANTED IN PART and DENIED IN PART. The Court finds that Claimants hold general unsecured claims against the Oak River estate in the following amounts:

- 1) AHA--\$720,000
- 2) YCJS--\$900,000
- 3) Lee Investors--\$900,000

To the extent that the Oak River estate does not contain sufficient funds to pay Claimants' claims in full, Claimants hold general unsecured claims for the remaining unpaid amounts against the Liberty estate.

Pleadings Filed and Reviewed:

- 1) Papers filed in the Oak River case [Case No. 2:16-bk-19233-ER]:
 - a) Notice of Motion and Motion for Order Disallowing Certain Proofs of Claim [Doc. No. 152] (the "Claim Objection")
 - b) Response to Objection to Claim [Doc. No. 162]
 - i) Declaration of David S. Henshaw in Support of Response to Objection to Claim [Doc. No. 162-1] (the "Henshaw Decl.")
 - ii) Declaration of Olivia Chang in Support of Response to Objection to Claim [Doc. No. 162-2] (the "Chang Decl.")
 - iii) Declaration of Frank Lee in Support of Response to Objection to Claim [Doc. No. 162-3] (the "Lee Decl.")
 - iv) Declaration of Yuchi Wang in Support of Response to Objection to Claim [Doc. No. 162-4] (the "Wang Decl.")
 - c) Movants' Reply Brief in Support of Motion for Order Disallowing Proofs of

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Claim Nos. 2, 3, and 4 [Doc. No. 165]

- 2) Papers filed in the Liberty case [Case No. 2:16-bk-13575-ER]:
- a) Plan Administrator's Limited Objection to Claim Number 2-1 Filed by YCJS 2012 LLC [Doc. No. 823]
 - i) Notice of Objection to Claim [Doc. No. 822]
 - b) Plan Administrator's Limited Objection to Claim Number 3-1 Filed by the Lee Living Trust and Christopher Lee [Doc. No. 820]
 - i) Notice of Objection to Claim [Doc. No. 819]
 - c) Plan Administrator's Limited Objection to Claim Number 4-1 Filed by AHA 2012 LLC [Doc. No. 816]
 - i) Notice of Motion for: Plan Administrator's Limited Objection to Claim Number 4-1 Filed by AHA 2012 LLC [Doc. No. 815]
 - ii) [Amended] Notice of Objection to Claim [Doc. No. 821]
 - d) Response to Objections to Claims [Doc. No. 835]
 - e) Plan Administrator's Reply Brief in Support of Limited Objections to Claim Numbers 2, 3, and 4 Filed by YCJS 2012 LLC, the Lees, and AHA 2012 LLC [Doc. No. 837]

I. Facts and Summary of Pleadings

Liberty Asset Management Corporation ("Liberty") commenced a voluntary Chapter 11 petition on March 21, 2016. Oak River Asset Management Corporation ("Oak River") commenced a voluntary Chapter 11 petition on July 12, 2016. Liberty holds a 100% equity interest in Oak River. From March 21, 2016 to January 29, 2017, the Hon. Thomas B. Donovan presided over Liberty and Oak River's cases. On January 30, 2017, both cases were reassigned to the undersigned Judge.

On June 18, 2018, the Court entered an order in the Liberty case confirming the *First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018* [Doc. No. 609, Ex. A] (the "Liberty Plan"). See Order Confirming First Amended Chapter 11 Plan of Liquidation Dated January 31, 2018 [Doc. No. 665, Case No. 2:16-bk-13575-ER] (the "Liberty Confirmation Order"). The Liberty Plan provides for the appointment of a Plan Administrator (the "Liberty Plan Administrator") responsible for liquidating the assets of Liberty's estate.

Oak River is a wholly-owned subsidiary of Liberty. Under the Liberty Plan, any surplus proceeds from the Oak River estate will be distributed to creditors of Liberty's estate.

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AHA 2012 LLC ("AHA"), YCJS 2012 LLC ("YCJS"), and Frank Lee, as Trustee of the Lee Living Trust Dated 6/23/1987, and Christopher Lee (the "Lee Investors") (collectively, the "Claimants") have filed identical proofs of claim against both the Liberty and Oak River estates. At issue is whether Claimants are entitled to receive a distribution from Liberty's estate or from Oak River's estate. Because more claims have been filed against the Liberty estate than the Oak River estate, Claimants' distribution will be significantly larger if it is paid from the Oak River estate rather than from the Liberty estate. Claimants assert that they are entitled to receive a distribution from Oak River's estate; the Liberty Plan Administrator and Oak River assert that Claimants' distribution must be paid from the Liberty estate.

The claims arise from Claimants' attempt to invest in real property located at 119 Furlong Lane, Bradbury, CA 911008 (the "Furlong Property"). Pursuant to this objective, each claimant executed a contract titled *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Property Agreement* (the "Purchase and Sale Agreement"). The contracts were substantially identical. Each Purchase and Sale Agreement was entered into between the Claimant, on the one hand, and "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates," on the other hand. The Purchase and Sale Agreements required Liberty and/or its subsidiaries and affiliates to purchase the Furlong Property on the Claimants' behalf, after which each Claimant would receive a fractional interest in the Property proportionate to the Claimant's investment. The Purchase and Sale Agreements further provided:

The investor acknowledges that LAMC is not the current owner of the real property [the Furlong Property] ... but has the same under purchase contract with its rights as Purchaser thereunder freely assignable to the investor

Each Claimant anticipated that after Liberty purchased the Furlong Property on their behalf, the Property would quickly be sold for a substantial profit. After several months, Claimants became suspicious as to why the Furlong Property had not been sold. At several times during 2014 and 2015, certain of the Claimants met with Benjamin Kirk and Shelby Ho to discuss the status of the Furlong Property. After these discussions provided fruitless, on January 19, 2016, Claimants commenced litigation against Liberty, Oak River, and other parties in the Los Angeles Superior Court. Claimants asserted causes of action for breach of contract, intentional misrepresentation, negligent misrepresentation, rescission, unfair competition, violation of the Corporate Securities Law of 1968, conversion, conspiracy, and alter ego. Only the causes of action for conspiracy and alter ego were pleaded against Oak

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River.

On June 17, 2016, the litigation was removed to the Bankruptcy Court pursuant to 28 U.S.C. §1452(a). An adversary proceeding is pending in the Liberty bankruptcy, but litigation has been stayed by mutual consent of the parties.

Paragraph 8 of the Proof of Claim form requires the claimant to identify the basis for the claim. The initial Proofs of Claim filed by each Claimant identified the basis for the claim as "breach of contract." On November 19, 2018—subsequent to the filing of the instant Claim Objections—each Claimant filed an Amended Proof of Claim. The Amended Proofs of Claim are identical to the initial Proofs of Claim, except that the Amended Proofs of Claim set forth additional bases for the claims in response to Paragraph 8. Specifically, in addition to "breach of contract," the Claimants assert that the claims are based upon "quasi contract, constructive trust, fraud, conspiracy to defraud, [and] conversion [of] equity."

AHA's Claim

AHA asserts an unsecured claim in the amount of \$959,868.49. Olivia Chang is a member of AHA. Declaration of Olivia Chang in Support of Response to Objection to Claim [Doc. No. 162] (the "Chang Decl.") at ¶1. In February 2012, Tsai Luan Ho, aka Shelby Ho, acting on behalf of Liberty, spoke to Ms. Chang regarding an investment opportunity in two condominiums located in San Mateo, California (the "San Mateo Properties"). *Id.* at ¶3. On March 5, 2012, Ms. Chang caused AHA to invest \$644,000 with Liberty, for the purpose of acquiring the San Mateo Properties. *Id.* at ¶4. Ms. Chang no longer has the documents memorializing this transaction. *Id.* At the same time, Ms. Chang caused AHA to invest an additional \$500,000 with Liberty to purchase a loan against real property located at 3020 Kirkham Street, San Francisco, California (the "Kirkham Property"). *Id.* at ¶5 and Ex. A.

On March 9, 2012, Ms. Chang transferred \$1,144,000 to Arch Escrow on account of the investments in the San Mateo and Kirkham Properties. *Id.* at ¶6 and Ex. B. Liberty never transferred title to the San Mateo Properties to AHA or to Ms. Chang. *Id.*

In June 2012, Ms. Ho informed Ms. Chang that Liberty's principal, Benjamin Kirk, wanted Liberty to retain the San Mateo Properties. *Id.* at ¶7. On July 25, 2012, Ms. Chang caused AHA to execute a *Cancellation of Real Estate Owned/Non-Performing Notes Purchase and Sale Agreement and Release of Deposit* (the "Cancellation Agreement"). *Id.* at ¶7 and Ex. C. The Cancellation Agreement required Liberty to refund \$644,000 to AHA within two business days. *Id.* at ¶8. Liberty did

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not refund the \$644,000 to AHA or to Ms. Chang. *Id.*

In lieu of the refund, Mr. Kirk told Ms. Chang that an investment opportunity in the Furlong Property was available. *Id.* at ¶9. Mr. Kirk and Ms. Ho told Ms. Chang that Liberty owned the Furlong Property. *Id.* Mr. Kirk promised that he had already solicited a buyer for the Furlong Property at a purchase price that would double AHA's investment. *Id.* at ¶10.

On November 27, 2012, Ms. Chang caused AHA to execute a *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Property Agreement* (the "AHA Purchase and Sale Agreement"). The AHA Purchase and Sale Agreement was entered into between AHA, on the one hand, and "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates," on the other hand. *Id.* at ¶11 and Ex. D. Pursuant to the AHA Purchase and Sale Agreement, Liberty and/or its affiliated companies were required to purchase the Furlong Property on AHA's behalf, so that AHA could obtain an 8% interest in the Property. *Id.* at ¶12.

The Lee Investor's Claim

The Lee Investors assert an unsecured claim in the amount of \$959,868.49. Frank Lee is the trustee of The Lee Living Trust dated 06/23/1987 (the "Lee Trust"). Declaration of Frank Lee in Support of Response to Objection to Claim (the "Lee Decl.") at ¶1. In February 2013, Mr. Lee met with Ms. Ho to discuss an investment opportunity in the Furlong Property. *Id.* at ¶3. On February 25, 2013, Mr. Lee and his son, Christopher Deryen Lee, executed a *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Property Agreement* (the "Lee Purchase and Sale Agreement"). *Id.* at ¶4. Like all the Purchase and Sale Agreements at issue, the Lee Purchase and Sale Agreement provided that Liberty and/or its affiliated companies would purchase the Furlong Property on the Lee Investor's behalf, and that subsequent to the purchase, the Lee Investors would obtain a fractional interest in the Property proportionate to their investment. *Id.* at Ex. A.

On February 26, 2013, Mr. Lee wired \$900,000 to Sincere Escrow with the expectation of acquiring a 10% interest in the Furlong Property. *Id.* at ¶¶5-7.

The YCJS Claim

YCJS asserts an unsecured claim in the amount of \$1,210,191.78. Yuchi Wang is a member of YCJS. Declaration of Yuchi Wang in Support of Response to Objection to Claim (the "Wang Decl.") at ¶1. In September 2012, Mr. Wang discussed investing in the Furlong Property with Ms. Ho. *Id.* at ¶3. In October 2012, Ms. Wang caused

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YCJS to execute a *Disclosure Acknowledgment and Commitment to Purchase and Sell Real Property Agreement* (the "YCJS Purchase and Sale Agreement"). *Id.* at ¶4. The YCJS Purchase and Sale Agreements was substantially identical to the Purchase and Sale Agreements executed by AHA and the Lee Investors. Like those agreements, the YCJS Purchase and Sale Agreement provided that Liberty and/or its affiliated companies would purchase the Furlong Property on YCJS' behalf, and that YCJS would obtain a fractional interest in the Property in proportion to the amount that it had invested. *Id.* at ¶4 and Ex. A.

To consummate the transaction, Ms. Wang caused her husband to make five wire transfers to Skyline Escrow during the month of October 2012, in the total amount of \$900,000. *Id.* at ¶5 and Ex. B.

Summary of Papers Filed in Connection with the Claim Objections

Oak River and the Plan Administrator (collectively, "Movants") assert that Claimants do not hold valid claims against Oak River's estate, because each Purchase and Sale Agreement was entered into with Liberty, not Oak River. Claimants contend that the Purchase and Sale Agreements are enforceable against Oak River. Claimants point out that the contracts were executed by "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates," and that there is no dispute that Oak River is a wholly-owned subsidiary of Liberty.

Claimants assert multiple theories of recovery against Oak River. First, Claimants argue that Oak River, as a subsidiary of Liberty, is a party to the Purchase and Sale Agreements, and is liable for breach of contract damages. Second, Claimants assert that they are entitled to restitution in lieu of breach of contract damages, because the contract with Liberty was procured by fraud. Third, Claimants contend that they are entitled to imposition of a constructive trust to prevent unjust enrichment. Fourth, Claimants assert that they are entitled to compensation from Oak River on the grounds of fraud. Fifth, Claimants assert that Oak River is liable as a conspirator in the scheme to retain the Furlong Property for the benefit of Liberty and itself.

Movants dispute each of these theories of recovery. First, Movants contend that Oak River is not liable for breach of contract because it is not a named party to any of the Purchase and Sale Agreements. Second, Movants argue that Oak River would not be unjustly enriched if Claimants were required to receive their recovery from Liberty's estate rather than Oak River's estate. Movants emphasize that all net equity from Oak River will be distributed to creditors of the Liberty estate. Third, Movants assert that Claimants' constructive trust theory fails, because Claimants (1) cannot

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trace their investment to either Oak River or the purchase of the Furlong Property, and (2) a constructive trust would unjustly enrich the Claimants at the expense of other Liberty investors.

Movants argue that allowing Claimants to recover against the Oak River estate would contravene the bankruptcy policy of ratable distribution among all creditors. Movants emphasize that many investors have been defrauded by the activities of Liberty and its various subsidiaries, and that allowing Claimants to recover against a specific subsidiary would unjustly enrich Claimants to the detriment of other victims of Liberty's fraudulent activities.

II. Findings and Conclusions

Section 502 requires the Court to disallow a claim that "is unenforceable against the debtor and the property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured."

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes prima facie evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

To determine whether the claims are enforceable against Oak River, the Court looks first to the Purchase and Sale Agreements upon which each Claim is based. As

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noted, each Purchase and Sale Agreement was entered into between the Claimant, on the one hand, and "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates," on the other hand. There is no dispute that at the time each Purchase and Sale Agreement was executed, Oak River was a wholly-owned subsidiary of Liberty. Therefore, under the plain language of the Purchase and Sale Agreements, Oak River was a party to each contract.

Movants make much of the fact that Oak River was not a "named party" to any of the Purchase and Sale Agreements. This distinction is immaterial. A contract may use shorthand to define key terms, provided that the definitions are clearly ascertainable. As indicated, no party has disputed that Oak River was a wholly-owned subsidiary of Liberty at all relevant times.

A contract enforceable against multiple corporate entities, where those entities conduct business as part of a larger economic enterprise, is not unusual. Many corporations conduct business in this manner, as it allows them to obtain tax and regulatory advantages. Corporations that so conduct business can, and frequently do, enter into contracts that are enforceable against each specific corporate entity within the larger economic enterprise. It is permissible for such a contract to incorporate the subsidiary entities through shorthand language similar to that used in the instant contracts. Such shorthand is often a necessity—large enterprises often conduct businesses through hundreds of subsidiaries; listing the name of each subsidiary would make a contract unwieldy. It is worth emphasizing that although Liberty used subsidiary entities for fraudulent ends, there is nothing *per se* illegitimate about either a corporation's use of subsidiaries to conduct business, or the use of contracts containing shorthand language incorporating multiple subsidiaries by reference.

Because each Purchase and Sale Agreement is, by its terms, enforceable against Oak River, Claimants are entitled to receive a distribution from Oak River's estate. There is no dispute that Oak River held title to the Furlong Property but failed to transfer such title to the Claimants, as required by the Purchase and Sale Agreements. Therefore, Claimants are entitled to recover from Oak River for breach of contract. It is not necessary for the Court to consider whether Claimants might also be entitled to recover against Oak River under any of the other theories asserted.

Movants contend that allowing Claimants to recover against the Oak River estate would enable Claimants to receive a greater distribution, to the detriment of other investors who were also defrauded by Liberty. This argument overlooks the fact that Claimants have identified contracts giving rise to a right to be paid from Oak River's estate. The practical effect of acknowledging Claimants' contractual rights will be a

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reduction in the distribution to other victims of Liberty's fraudulent activities. However, there is nothing nefarious about this result, as Movants imply. Oak River's estate has not been substantively consolidated with Liberty's estate. Unless and until it is shown that the substantive consolidation of both estates is an appropriate remedy, the simple reality is that the recoveries obtained by creditors of Oak River's estate will vary from the recoveries obtained by creditors of Liberty's estate.

Claimants assert that they are entitled to 10% interest on the amounts they invested. Claimants assert that they are entitled to prejudgment interest pursuant to Cal. Civ. Code §3288, which provides: "In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury."

The Court declines to award the prejudgment interest sought by the Claimants. Cal. Civ. Code §3288 applies to actions "for the breach of an obligation *not* arising from contract" (emphasis added). The statute does not apply to the instant claims, which arise from a contractual breach. *See, e.g., Segura v. McBride*, 5 Cal. App. 4th 1028, 1040, 7 Cal. Rptr. 2d 436, 444 (1992) ("Section 3288 provides for prejudgment interest in actions other than contract Segura's claim was for unliquidated damages on an action other than contract and, thus, comes within the purview of section 3288.").

Even if Cal. Civ. Code §3288 did apply, the Court would not exercise its discretion to award prejudgment interest. Awarding prejudgment interest would substantially increase Claimants' claims, thereby reducing the distribution from Oak River's estate to Liberty's estate. The effect would be to further reduce the recovery to Liberty's other creditors, who were also a victim of its fraudulent business practices.

Therefore, the portion of the claims based upon prejudgment interest is disallowed. Each claim shall be limited to the amount initially invested in connection with the Purchase and Sale Agreements. Accordingly, the Court finds that AHA holds a general unsecured claim in the amount of \$720,000; that YCJS holds a general unsecured claim in the amount of \$900,000; and that the Lee Investors hold a general unsecured claim in the amount of \$900,000.

Claimants have filed identical claims against the Liberty and Oak River estates. Claimants seek payment from the Liberty estate only to the extent that funds in the Oak River estate will be insufficient to pay their claims in full. As discussed, each Purchase and Sale Agreement was entered into by "Liberty Asset Management Corporation and its respective parent or subsidiary companies and affiliates" Therefore, the Purchase and Sale Agreements are enforceable against both the Oak

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River estate and the Liberty estate. The Court finds that to the extent the Oak River estate does not contain funds sufficient to pay Claimants' claims in full, Claimants are entitled to assert a claim for the remaining unpaid amounts against the Liberty estate.

III. Conclusion

Based upon the foregoing, the Claims Objections are GRANTED IN PART and DENIED IN PART. Claimants hold general unsecured claims against the Oak River estate in the following amounts:

- 4) AHA--\$720,000
- 5) YCJS--\$900,000
- 6) Lee Investors--\$900,000

To the extent that the Oak River estate does not contain sufficient funds to pay Claimants' claims in full, Claimants hold general unsecured claims for the remaining unpaid amounts against the Liberty estate.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By

David B Golubchik

Jeffrey S Kwong

Eve H Karasik

Robert Thomas Bryson

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-13131 Dwight Gregory Stephens

Chapter 11

#28.00 HearingRE: [35] Motion for approval of chapter 11 disclosure statement (with proof of service)

Docket 35

Tentative Ruling:

12/3/2018

For the reasons set forth below, CONTINUE HEARING to January 16, 2019 at 10:00 a.m.

Pleadings Filed and Reviewed

1. Individual Debtor's Disclosure Statement in Support of Plan of Reorganization [Doc. No. 35] (the "Disclosure Statement")
2. Individual Debtor's Chapter 11 Plan of Reorganization [Doc. No. 36] (the "Plan")
3. Notice of Hearing on Adequacy and Approval of Debtor's Disclosure Statement Describing Individual Chapter 11 Plan [Doc. No. 37]
4. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, Dwight Stephens (the "Debtor") filed a voluntary individual chapter 11 petition on March 21, 2018. Debtor presently seeks approval of his Disclosure Statement [Doc. No. 35]. The following provisions are the material provisions of Debtor's Plan [Doc. No. 36]:

- i. The Plan is a reorganizing plan. The Debtor proposes to fund the Plan with (a) pre- and post-confirmation employment and social security income; and (b) a one-time, \$50,000, contribution from Debtor's non-filing spouse that will come from a reverse mortgage associated with real property located at 5337 S. Verdun Avenue, Los Angeles, CA (the "Verdun Property"). Debtor states that the Verdun Property is the separate property of his non-filing spouse because the funds used to acquire the Verdun Property were the separate property of his non-filing spouse. Debtor states that he has never been on title for the Verdun Property, but is a co-obligor on the

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CONT... Dwight Gregory Stephens
note/mortgage.

Chapter 11

ii. Debtor proposes a March 2019 effective date.

iii. Debtor anticipates having approximately \$54,000 in cash on hand to pay \$52,345 in anticipated effective date payments.

iv. Debtor proposes to repay priority tax claims in full with 5% interest over 24 months.

v. Class 2(a) consists of the unimpaired secured claim of Mr. Cooper, which holds a first-priority lien on the Property. Debtor and his non-filing spouse are currently making \$1,041 monthly mortgage payments, but Debtor anticipates this payment will be reduced to \$500/month after obtaining a reverse mortgage.

vi. Class 6(a) consists of general unsecured claims of \$100 or less and any allowed general unsecured claim larger than \$100, but whose holder agrees to reduce its claim to \$100. Debtor proposes to pay each member of this class 100% of their claim on the effective date.

vii. Class 6(b) consists of the following remaining general unsecured claims:

(a) Benito Barbosa. Mr. Barbosa filed Proof of Claim 4-1 asserting an unsecured claim of \$2,139,530.42 resulting from a pre-petition judgment. Debtor proposes to treat Mr. Barbosa's claim as an allowed general unsecured claim in that amount.

(b) Direct Capital Corporation ("DCC"). DCC filed Proof of Claim 2-1 (the "DCC Claim") asserting a priority claim in the amount of \$97,111.83 pursuant to a recorded abstract of judgment. Debtor proposes to treat DCC's claim as wholly unsecured on the basis that Debtor has no estate property to which the abstract could attach.

(c) Spectrum Business ("SB"). SB has not filed a proof of claim. Debtor proposes to pay SB as an allowed general unsecured claimant in the amount of \$615.

(d) University of Illinois ("UI"). UI has not filed a proof of claim. Debtor proposes to pay UI as an allowed general unsecured claimant in the amount of \$350.

Debtor proposes to pay \$93,250, or 4%, in pro-rata distributions to Class 6(b) over

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CONT... Dwight Gregory Stephens

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a five year period with no interest as follows: \$50,000 (month 1); \$500/mo (months 2-24); \$900/mo (months 25-60). Debtor's liquidation analysis states that this distribution exceeds the 0% distribution general unsecured creditors would receive if the case were converted to a case under chapter 7.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 1125 requires a disclosure statement to contain "information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records . . . that would enable. . . a hypothetical investor of the relevant class to make an informed judgment about the plan." In determining whether a disclosure statement provides adequate information, "the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information." 11 U.S.C. § 1125(a).

Courts interpreting § 1125(a) have explained that the "primary purpose of a disclosure statement is to give the creditors the information they need to decide whether to accept the plan." *In re Monnier Bros.*, 755 F.2d 1336, 1342 (8th Cir. 1985). "According to the legislative history, the parameters of what constitutes adequate information are intended to be flexible." *In re Diversified Investors Fund XVII*, 91 B.R. 559, 560 (Bankr. C.D. Cal. 1988). "Adequate information will be determined by the facts and circumstances of each case." *Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988), *accord. In re Ariz. Fast Foods, Inc.*, 299 B.R. 589 (Bankr. D. Ariz. 2003).

Relevant factors for evaluating the adequacy of a disclosure statement may include: (1) the events which led to the filing of a bankruptcy petition; (2) a description of the available assets and their value; (3) the anticipated future of the company; (4) the source of information stated in the disclosure statement; (5) a disclaimer; (6) the present condition of the debtor while in Chapter 11; (7) the scheduled claims; (8) the estimated return to creditors under a Chapter 7 liquidation; (9) the accounting method utilized to produce financial information and the name of the accountants responsible for such information; (10) the

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CONT...

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Chapter 11

future management of the debtor; (11) the Chapter 11 plan or a summary thereof; (12) the estimated administrative expenses, including attorneys' and accountants' fees; (13) the collectability of accounts receivable; (14) financial information, data, valuations or projections relevant to the creditors' decision to accept or reject the Chapter 11 plan; (15) information relevant to the risks posed to creditors under the plan; (16) the actual or projected realizable value from recovery of preferential or otherwise voidable transfers; (17) litigation likely to arise in a nonbankruptcy context; (18) tax attributes of the debtor; and (19) the relationship of the debtor with affiliates.

In re Metrocraft Pub. Services, Inc., 39 B.R. 567, 568 (Bankr. Ga. 1984). However, “[d]isclosure of all factors is not necessary in every case.” *Id.*

Here, there are a number of issues that require this Court to continue the hearing on approval of the adequacy of the Disclosure Statement. First, the Debtor states that the Verdun Property is not property of the estate because Debtor’s non-filing spouse used separate property funds to acquire the Verdun Property. However, the Debtor also states that he is a co-obligor on the mortgage, so it is conceivable that Debtor has a community property interest in the Verdun Property if his non-filing spouse and he have been using community property income to service the mortgage and make repairs.

If this is the case, then the Debtor’s liquidation analysis, which values the Debtor’s interest in the Verdun Property as \$0.00 is incorrect and needs to be amended. If this is not the case, then the Disclosure Statement, Plan, and Debtor’s Schedules do not adequately explain how Mr. Cooper is a secured creditor of the Debtor’s estate or why the Debtor’s Plan proposes to treat Mr. Cooper as such. Any amended disclosure statement must clearly show why Debtor’s interest in the Verdun Property is \$0.00.

Second, the Debtor states that the DCC Claim is not entitled to treatment as a secured creditor because the Debtor does not have any secured claim upon which DCC’s claim could attach. **[Note 1]** Accordingly, Debtor proposes to treat the DCC Claim as a general unsecured Class 6(b) claim. However, pursuant to 11 U.S.C. § 502(a), “[a] claim or interest ... is deemed allowed, unless a part in interest ... objects.” Based upon a review of the docket, it appears that the Debtor has not filed

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CONT... Dwight Gregory Stephens

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an objection to the DCC Claim or otherwise indicated an intention to do so. Therefore, DCC currently holds a secured claim and, absent Debtor moving to reclassify the claim through a properly noticed claim objection motion, the Disclosure Statement and Plan need to be amended to reflect this.

Due to the sizeable amount of the DCC Claim, it appears appropriate to continue the hearing on consideration of the Disclosure Statement until after the extent and validity of the DCC Claim has been resolved. Therefore, the following dates and deadlines shall apply:

1. The Disclosure Statement Hearing is **CONTINUED to January 16, 2019 at 10:00 a.m.** No further briefing will be permitted. At the continued hearing, the Court will conduct a status conference to set a deadline for the Debtor to file an amended Disclosure Statement and Plan and to determine whether a further hearing is necessary.

2. The deadline for the Debtor to file an objection to the DCC Claim is **December 14, 2018**. If the Debtor elects to object to the DCC Claim, the Court will conduct a hearing on Debtor's Claim Objection on **January 16, 2019 at 10:00 a.m.** Opposition and reply deadlines will be in accordance with applicable local rules.

The Debtor is directed to lodge a scheduling order consistent with this ruling within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: For the same reasons as described above in connection with Mr. Cooper's claim, there is insufficient information for the Court to be able to assess the validity of Debtor's position.

Party Information

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CONT... Dwight Gregory Stephens

Chapter 11

Debtor(s):

Dwight Gregory Stephens

Represented By
Marcus G Tiggs

**United States Bankruptcy Court
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#29.00 Hearing
RE: [564] Motion to Amend (related document(s)409 Order on Motion to Use Cash Collateral (BNC-PDF)) Pursuant to Rule 7052(b) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing [...]

Docket 564

***** VACATED *** REASON: RESCHEDULED 12-5-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

United States Bankruptcy Court
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Tuesday, December 4, 2018

Hearing Room 1568

10:00 AM

2:18-20013 David Russell Clough

Chapter 7

#30.00 Hearing
RE: [15] Motion to Convert Case From Chapter 7 to 13. with proof of service

Docket 15

*** VACATED *** REASON: CONTINUED 3-19-19 AT 11:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Russell Clough

Represented By
Brad Weil

Trustee(s):

Heide Kurtz (TR)

Represented By
Robert A Hessling

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Hearing Room 1568

11:00 AM

2:17-16780 Rafael Cazares-Torres

Chapter 7

#100.00 HearingRE: [65] Application for Compensation First Interim Application for Award of Compensation and Reimbursement of Expenses of Danning, Gill, Diamond & Kollitz, LLP, as General Counsel to Chapter 7 Trustee with proof of service for Danning Gill Diamond & Kollitz LLP, Trustee's Attorney, Period: 1/10/2018 to 9/30/2018, Fee: \$31,707.00, Expenses: \$1,289.21. (Shechtman, Zev)

Docket 65

Tentative Ruling:

12/3/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$31,707.00

Expenses: \$1,289.21

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rafael Cazares-Torres

Represented By
Daniel King

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11:00 AM

CONT... Rafael Cazares-Torres

Chapter 7

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Zev Shechtman

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Tuesday, December 4, 2018

Hearing Room 1568

11:00 AM

2:18-13238 Oh Hyung Kim

Chapter 7

#101.00 HearingRE: [56] Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. 707(a)(3) for Failure to Produce Any Acceptable Documentation for Verification of Social Security Number [11 U.S.C. Section 521(h); Fed. R. Bankr. P. 4002(b)(1)(B)] . (Dye (TR), Carolyn)

Docket 56

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Motion is GRANTED and the case is DISMISSED.

Pleadings Filed and Reviewed

1. Motion to Dismiss Pursuant to 11 U.S.C. § 707(a)(3) for Failure to Produce Any Acceptable Documentation for Verification of Social Security Number [Doc. No. 56] (the "Motion")
2. Notice of Motion [Doc. No. 57]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Oh Hyung Kim ("Debtor") filed this voluntary chapter 7 case on March 23, 2018. Shortly thereafter, Carolyn A. Dye was appointed as Chapter 7 Trustee (the "Trustee"). The Trustee now moves to dismiss this case pursuant to 11 U.S.C. § 707(a)(3) based upon the Debtor's failure to present any acceptable documentation for verification of the Debtor's social security number. The Trustee states that she advised the Debtor and Debtor's counsel several times of the requirement to produce such documentation pursuant to 11 U.S.C. § 521(h) and continued the 341(a) Meeting of Creditors a number of times to afford the Debtor an opportunity to comply. Notwithstanding, the Debtor has not complied.

As of the preparation of this tentative ruling, no opposition is on file.

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CONT... Oh Hyung Kim

Chapter 7

II. Findings of Fact and Conclusions of Law

Pursuant to section 521(a)(3), a "debtor shall ... cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties" Section 521(h) provides, in relevant part:

- If requested by the ... trustee, the debtor shall provide –
- (1) a document that establishes the identity of the debtor, including a driver's license, passport, or other documentation that contains a photograph of the debtor; or
 - (2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.

11 U.S.C. § 521(h).

Federal Rule of Bankruptcy Procedure ("FRBP") 4002(b)(1)(B) provides:

- (1) Personal Identification. Every individual debtor shall bring to the meeting of creditors under § 341:
 - ...
 - (B) evidence of social-security number(s), or a written statement that such documentation does not exist.

In this case, the Trustee seeks dismissal under 707(a)(3) on the grounds that the Debtor has failed to cooperate with the Trustee by failing to produce evidence verifying the Debtor's social security number. However, the Court notes that section 707(a)(3) is expressly limited to a motion by the United States Trustee. 11 U.S.C. § 707(a)(3) ("[t]he court may dismiss a case under this chapter ... but only on a motion by the United States Trustee"). Nevertheless, the Motion put the Debtor on notice of the possibility that the case would be dismissed for failure to comply with section 521. Therefore, the Court finds it appropriate to *sua sponte* treat the Motion as a request to dismiss under section 521(i). That section provides that, "notwithstanding section 707(a)," a party in interest may request dismissal for failure to comply with section 521. *See* 11 U.S.C. § 521(i)(2). **[Note 1]**

The Trustee has submitted sufficient evidence to find that the Debtor has failed to

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CONT... Oh Hyung Kim

Chapter 7

comply with sections 521(a)(3) and 521(h) and the Debtor has not responded with any evidence to controvert the Trustee's evidence or otherwise opposed dismissal of this case. For these reasons, the Trustee's Motion is GRANTED.

The Trustee shall lodge a conforming proposed order, incorporating this tentative ruling, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: As alternative grounds for dismissal, the Court finds it appropriate to *sua sponte* treat the Motion as a request for relief as follows.

First, the Trustee has demonstrated cause to dismiss under section 707(a)(1) in light of the fact that (a) this is the Debtor's second case bankruptcy case and the Debtor filed this case only a day after the chapter 7 trustee in Debtor's prior case moved to set aside dismissal of that case (Case No. 2:18-bk-10687-ER); and (b) the Debtor has failed to cooperate with the Trustee by failing to produce a valid 2017 W-2 and to appear at the May 8, 2018, September 6, 2018, and September 19, 2018 341(a) Meeting of Creditors.

Second, the Trustee has presented sufficient evidence to dismiss this case under Local Bankruptcy Rule 1017-2(b) based upon (a) Debtor's failure to produce evidence validating his social security number, which this Court treats as a failure to appear at any 341(a) Meeting of Creditors (*see In re Borsotti*, 2017 Bankr. LEXIS 3112, at *9 (Bankr. C.D. Cal. Sep. 14 2017) ("It is appropriate for the Trustee to treat someone who fails to provide such ID as not having appeared at a 341(a) meeting.")); and (b) debtor's actual failure to appear at three 341(a) Meeting of Creditors.

Party Information

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11:00 AM

CONT... Oh Hyung Kim

Chapter 7

Debtor(s):

Oh Hyung Kim

Represented By
Steven J Barkin

Trustee(s):

Carolyn A Dye (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 4, 2018

Hearing Room 1568

11:00 AM

2:16-19233 Oak River Asset Management LLC

Chapter 11

#102.00 Hearing
RE: [152] Motion to Disallow Claims / Notice Of Motion And Motion For Order
Disallowing Certain Proofs Of Claim; Memorandum Of Points And Authorities;
Declaration Of Lawrence Perkins In Support Thereof

Docket 152

***** VACATED *** REASON: WILL BE HEARD AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Oak River Asset Management LLC

Represented By
David B Golubchik
Jeffrey S Kwong
Eve H Karasik
Robert Thomas Bryson

**United States Bankruptcy Court
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Tuesday, December 4, 2018

Hearing Room 1568

11:00 AM

2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#103.00 HearingRE: [16] Motion to Use Cash Collateral Notice of Motion and Motion For Authority To Use Cash Collateral (1258 N. Virgil Ave., Los Angeles, CA 90029); Memorandum of Points And Authorities; Declaration of Sandra McBeth In Support Thereof, with Proof of Service

Docket 16

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Motion is DENIED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Authority to Use Cash Collateral (1258 N. Virgil Ave., Los Angeles, CA 90029) (Doc. No. 16) (the "Cash Collateral Motion")
2. Opposition to Debtor's Motion for Authority to Use Cash Collateral (1258 N. Virgil Ave., Los Angeles, CA 90029) (Doc. No. 34) (the "Fannie Mae Opposition")
3. Seterus, Inc. and Fannie Mae's Opposition to Debtor's Motion for Authority to Use Cash Collateral Concerning Rental Income From 1258 N. Virgil Ave., Los Angeles, CA 90029 (Doc. No. 35) (the "Seterus Opposition")
4. Declaration of Seterus, Inc. in Support of Creditors' Opposition to Debtor's Motion for Authority to Use Cash Collateral Concerning Rental Income From 1258 N. Virgil Ave., Los Angeles, CA 90029 (Doc. No. 36)
5. Reply to Oppositions of Fannie Mae and Seterus, Inc. to Debtor's Motion For Authority to Use Cash Collateral (1258 N. Virgil Ave., Los Angeles, CA 90029) (Doc. No. 40) (the "Reply")

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, United International Mortgage Solutions, Inc. ("Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns, among others, a five-unit residential rental property located at 1258 N. Virgil Avenue, Los Angeles, CA 90029

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CONT... United International Mortgage Solutions, Inc. Chapter 11

(the "Virgil Property"). The Virgil Property is encumbered by a first priority deed of trust in favor of Seterus, Inc. ("Seterus"), as agent for Federal National Mortgage Associate ("Fannie Mae") securing debt in the approximate amount of \$882,106. The Virgil Property is also encumbered by a second priority deed of trust in favor of Errol Gordon ("Gordon") securing debt in the approximate amount of \$50,000.

Debtor presently seeks authority to use Fannie Mae and Gordon's cash collateral consisting of \$4,248.62 in monthly rental income as set forth in a proposed budget attached as Exhibit A to the Cash Collateral Motion. Debtor further requests authority to deviate from the proposed expenses set forth in the budget by 10% without the need for further Court order, provided that it does not pay any expenses outside of the approved categories. In support of its request, Debtor submits that Fannie Mae and Gordon's interests are adequately protected for purposes of section 363(c)(2) because the Debtor estimates the value of the Virgil Property to be \$1,300,000, which leaves a sizeable equity cushion. Debtor also submits that its proposed use of cash collateral preserves the value of the Virgil Property and avoids irreparable harm that might result from its failure to pay property insurance, taxes, utilities and maintenance.

Fannie Mae and Seterus (together, the "Secured Creditor Parties") each filed objections to the Debtor's proposed use of Fannie Mae's cash collateral. Collectively, the Secured Creditor Parties object to the Debtor's line items relating to (i) property insurance and taxes on the basis that the loan is impounded for taxes and insurance; (ii) CPA for 2016 and 2017; (iii) MOR preparer; and (iv) UST fees. The Secured Creditor Parties also assert that Fannie Mae has not consented to the Debtor's use of its cash collateral and the Debtor has not demonstrated that Fannie Mae's interest is adequately protected. The Secured Creditor Parties state that the underlying loan obligation has been in default since 2010 and that Debtor admits that it has failed to make the first two post-petition mortgage payments. Furthermore, the Secured Creditor Parties highlight that Debtor's proposed monthly payments do not cover the minimum monthly payments required under the loan documents and raise a number of issues relating to a pending Motion for Relief from the Automatic Stay with respect to the Virgil Property.

In reply, Debtor maintains its position that Fannie Mae is adequately protected by a 28.3% equity cushion but agrees to a slightly modified budget that removes line items for the CPA for 2016 and 2017 and the MOR preparer. However, Debtor objects to removing the line items for property insurance and taxes because Debtor

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CONT... United International Mortgage Solutions, Inc. Chapter 11

asserts that it makes those payments directly to the service providers and therefore Fannie Mae should not also be making those payments.

II. Findings of Fact and Conclusions of Law

Section 363(c)(2) requires court authorization for use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of § 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtor "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of § 363 – that is, that the secured creditor's interest in the cash collateral is adequately protected. 11 U.S.C. §§ 363(c)(2)(B), 363(e).

A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 382 (1988). Section 361 sets forth three non-exclusive examples of what may constitute adequate protection: (1) periodic cash payments equivalent to decrease in value; (2) an additional or replacement lien on other property; or (3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

In this case, the Debtor has failed to present an appraisal setting forth the value of the Virgil Property in support its assertion that Fannie Mae is adequately protected by an equity cushion and instead relies on its own self-serving schedules. Conversely, Fannie Mae has presented evidence to show that the loan has been delinquent since 2010, that its foreclosure efforts have been thwarted by no less than eight bankruptcy filings claiming an interest in the Virgil Property, and that the Debtor has failed to make post-petition payments. *See* Doc. No. 35, Ex. 1 & 2 and Doc. No. 26. On this record, the Court finds that Fannie Mae is not adequately protected.

Additionally, for the reasons set forth in this Court's concurrently issued tentative

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CONT... United International Mortgage Solutions, Inc. Chapter 11

ruling on Fannie Mae's motion for relief from the automatic stay, the Court finds it appropriate to grant relief from stay to allow Fannie Mae to proceed with foreclosure. In doing so, the Court finds that the Virgil Property is not necessary for reorganization, which provides a further basis for denying the Cash Collateral Motion.

For the reason set forth above, the Cash Collateral Motion is DENIED.

Fannie Mae is directed to lodge a conforming proposed order within 7 days of the hearing, incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 4, 2018

Hearing Room 1568

11:00 AM

2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#104.00 Hearing

RE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1258 North Virgil Avenue, Los Angeles, CA 90029 . , creditor c/o Seterus, Inc. (Attachments: # 1 Request for Judicial Notice) (Ryan, Timothy)

FR. 11-26-18; 12-17-18

Docket 26

Tentative Ruling:

12/3/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from Stay Under 11 U.S.C. § 362 (Real Property) [Doc No. 26] (the "Motion")
 - a. Request for Judicial Notice [Doc. No. 26-1] ("RJN")
 - b. Amended Notice of Motion [Doc. No. 29]
2. Debtor's Opposition to Motion for Relief of Seterus, Inc. [Doc. No. 31] (the "Opposition")
3. Seterus Inc's Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay [Doc. No. 33] (the "Reply")
 - a. Supplemental Request for Judicial Notice [Doc. No. 33-1] ("SRJN")
4. Order Advancing Hearing on Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 [Doc. No. 42]

I. Facts and Summary of Pleadings

Debtor and Debtor-in-possession, United International Mortgage Solutions, Inc. ("Debtor"), filed this voluntary chapter 11 case on September 12, 2018 (the "Petition Date"). The Debtor is a California corporation that owns, among others, a five-unit residential rental property located at 1258 N. Virgil Avenue, Los Angeles, CA 90029

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CONT... United International Mortgage Solutions, Inc. Chapter 11

(the "Virgil Property"). The Virgil Property is encumbered by a first priority deed of trust in favor of Seterus, Inc. ("Seterus"), as agent for Federal National Mortgage Associate ("Fannie Mae") securing debt in the approximate amount of \$882,106. The Virgil Property is also encumbered by a second priority deed of trust in favor of Errol Gordon ("Gordon") securing debt in the approximate amount of \$50,000. Sandra McBeth ("McBeth") is the vice president and 40% shareholder of the Debtor.

Motion

Seterus acting as agent for Fannie Mae (together, the "Movants") seek relief from the automatic stay with respect to the Virgil Property pursuant to §§ 362(d)(1) and (d)(4). Movants assert that cause exists to grant them relief from stay under § 362(d)(1) because this bankruptcy case was filed in bad faith and other bankruptcy cases have been filed in which an interest in the Virgil Property was asserted.

Movants also asserts that cause exists to grant *in rem* relief from stay under § 362(d)(4) because the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved (i) the transfer of all or part ownership of, or other interest in, the Virgil Property without the consent of Movants or court approval; and (ii) multiple bankruptcy cases affecting the Virgil Property. Movants state that on October 25, 2018, Movants obtained an order granting *in rem* relief under § 362(d)(4) with respect to the Virgil Property in McBeth's bankruptcy case (Case No. 2:18-bk-17700-SK). RJN, Exhibit 1. Movants assert that the merits of Movants' interest in the Virgil Property and entitlement to relief from stay has already been established in McBeth's bankruptcy case and that the findings and conclusions made in that case have res judicata effect in this case. RJN, Exhibits 2-4. Movants also identify the following additional bankruptcy cases affecting the Virgil Property: (i) Sandra K. Reynolds (Case No. 2:11-bk-43451-TD); (ii) United Int'l Mortg. Solutions aka Sandra McBeth (Case No. 2:12-bk-10130-TD); and (iii) Sandra McBeth (Case No. 2:14-bk-33759-VZ).

Opposition

Debtor opposes the Motion. With respect to Movants' request for relief under section 362(d)(1), Debtor contends that Movants have failed to present evidence sufficient to warrant relief. First, Debtor objects to the Declaration of Shanell McBride (the "McBride Decl.") on the basis that it contains errors and appears to be

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CONT... United International Mortgage Solutions, Inc.

Chapter 11

an old declaration that has been reused. Next, Debtor refutes Movants' contention that this case was filed in bad faith. Debtor concedes that McBeth is the sole borrower on the loan and that she transferred her interest in the Virgil Property to the Debtor in 2011. Debtor also does not dispute that McBeth has previously filed for bankruptcy. However, Debtor states that it filed this case to address the defaulted loans and liens secured by the Virgil Property and to reorganize its affairs. Debtor states it has existed since 2008 and was not created for the sole purpose of this bankruptcy filing. Debtor also states that McBeth's transfer of the Virgil Property to the Debtor was for the legitimate purpose of shielding McBeth from personal liability. Therefore, Debtor requests the Court deny the Motion under section 362(d)(1).

With respect to Movants' request for relief under section 362(d)(4), the Debtor again concedes that McBeth has previously filed for bankruptcy and that she transferred her interest in the Virgil Property to the Debtor. However, Debtor again highlights that the facts do not support a finding that these things were done to facilitate this bankruptcy filing and to hinder, delay or defraud Movants. Rather, Debtor asserts that there is no scheme and Debtor intends to reorganize its debts in the form of payment of all debts in full. Debtor asserts that Movant has not presented any evidence to show that the Debtor was involved in any scheme to delay, hinder or defraud creditors. Therefore, Debtor requests the Court deny the Motion under section 362(d)(4).

Debtor also contends that it is not barred by the doctrine of *res judicata* from relitigating these issues in this case because this case was filed before Movants' obtained an *in rem* relief from stay order in McBeth's individual case and Movant did not seek annulment.

Reply

Movants contend that *res judicata* does apply to this proceeding because it involves identical issues, the matter was finally decided in McBeth's case, and there is privity between McBeth and the Debtor.

With respect to Debtor's contention that Movants' have failed to demonstrate how the Debtor's acts have hindered or delayed creditors, Movants assert that their evidence supports such a finding. Movants state that on August 23, 2011, a Notice of Default was recorded with respect to the Virgil Property (SRJN, Ex.1) and that shortly

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thereafter, on September 6, 2011, McBeth transferred her interest in the Virgil Property to the Debtor (SRJN, Ex. 2). Further, Movants state that shortly before the scheduled foreclosure sale was set to take place, Debtor filed a prior chapter 7 bankruptcy petition which succeeded in delaying the foreclosure sale (SRJN, Ex. 2, 3, 4).

Movants state that McBeth and the Debtor have filed a combined total of at least eight bankruptcy cases between 2008 and 2017 that have affected the Virgil Property. Movants also assert that Debtor previously transferred a fractional 10% interest in the Virgil Property to Kenyatta Monifa who file a bankruptcy petition on the same day and that an individual named Walter Wallace filed for bankruptcy in 2018 and claimed an interest in the Virgil Property (SRJN, Ex. 5, 6, 7). Movant highlights that McBeth has been prohibited from filing chapter 11 cases without the consent of the Court and contends that McBeth has used the Debtor and other individuals to facilitate a scheme to delay, hinder and defraud Movants' attempts to foreclose (SRJN, Ex. 8).

Finally, Movants highlight that McBeth has been delinquent on her loan since February 2010, having not made a single payment, and that Debtor has already missed two post-petition monthly mortgage payments. Accordingly, Movants submit that they have presented ample evidence to warrant this Court granting relief from stay under sections 362(d)(1) and (d)(4).

II. Findings of Fact and Conclusions of Law

As a preliminary matter, the Court notes that the parties dispute whether *res judicata* prevents the Debtor from re-litigating these issues in this case. However, as explained below, because the Court finds there is ample evidence in the record to find that Movants have satisfied their burden under section 362(d)(4), the Court need not determine this issue as it will not change the outcome.

Request for Judicial Notice

The Court grants Movants' request and takes judicial notice of RJN, Exhibit 1 and SRJN, Exhibits 1-8.

Movants Are Entitled to Relief from Stay Under 11 U.S.C. § 362(d)(4)

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Section 362(d)(4) states, in relevant part:

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

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

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

(B) multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4).

The record supports granting relief under section 362(d)(4). First, the Court finds that the Debtor's bankruptcy filing was part of a scheme to delay, hinder or defraud creditors. Movants have presented evidence to show that as early as 2011, McBeth has been in default of her loan obligations with respect to the Virgil Property (SRJN, Ex. 1) and that since that time, McBeth, the Debtor, and other individuals have filed no less than nine bankruptcy cases affecting the Virgil Property. **[Note 1]** The evidence also shows that there have been at least two transfers of all or part ownership of the Virgil Property without Movants' consent (SRJN, Ex. 2, 5). The Court also finds that under McBeth's apparent control, the Debtor has used this bankruptcy filing to further this scheme.

Next, the Court finds that the object of the scheme is to delay and hinder Movants' ability to foreclose on the Virgil Property and that McBeth and the Debtor have succeeded in forestalling the foreclosure process for over seven years.

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Finally, for the reasons set forth above, the Court finds that the scheme satisfies both sections of 362(d)(4)(A) and (B) because the evidence shows that there have been two transfers without Movants' consent and nine bankruptcy filings affecting the Virgil Property.

The Court is not persuaded by the Debtor's contentions that McBeth's transfer of the Virgil Property was for a legitimate purpose or that this bankruptcy case was filed with the good faith intention of reorganizing. Instead, Movants' evidence reveals that McBeth transferred the Virgil Property without Movants' consent and on the eve of a trustee's sale and that since such transfer, McBeth and the Debtor have filed successive bankruptcy petitions to thwart Movants' foreclosure efforts.

For the reasons state above, the Court finds that relief from stay is warranted under § 362(d)(4).

Movants Are Entitled to Relief from Stay Under 11 U.S.C. § 362(d)(1)

Section 362(d)(1) directs the court to grant relief from the automatic stay upon a showing of "cause." *In re Mense*, 509 B.R. 269, 277-78 (Bankr. C.D. Cal. 2014) (citing 11 U.S.C. § 362(d)(1)). "What constitutes 'cause' for granting relief from the automatic stay is decided on a case-by-case basis." *Id.* (internal citations omitted).

Movants have requested that this Court find that the petition was filed in bad faith with respect to the Virgil Property. Debtor argues that the case was not filed in bad faith because the Virgil Property was not transferred to the Debtor immediately before it filed for bankruptcy, there is significant equity in the Virgil Property, and the Debtor intends to pay all debts in full through a plan of reorganization. Movants counter that the Debtor previously filed bankruptcy only days after McBeth transferred the Virgil Property to the Debtor and that McBeth, the Debtor, and third parties have successfully delayed Movants' ability to foreclose for nearly seven years through a series of multiple bankruptcy filings. Movants also contend that Debtor's bad faith is evidenced by its failure to make post-petition payments to Movants as required by applicable loan documents.

The Court finds that the Debtor has acted in bad faith with respect to the Virgil Property. In addition to the findings above, based upon this Court's review of the

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prior bankruptcy cases, it appears that almost all were dismissed shortly after being filed and no legitimate efforts to reorganize were undertaken. In this case, the Debtor's failure to make post-petition mortgage payments suggests that the Debtor's true intention in filing this case is to further delay and hinder Movants' ability to foreclose on the Virgil Property. Furthermore, as set forth in the Court's concurrently issued tentative ruling on Debtor's Motion for Authority to Use Movants' Cash Collateral with respect to the Virgil Property, the Debtor has failed to demonstrate that Movants' interest is adequately protected to warrant authorization of its use of cash collateral. This provides another basis to find that this case was not filed in good faith with respect to the Virgil Property.

For the reasons state above, the Court finds that relief from stay is warranted under § 362(d)(1).

III. Conclusion

For the reasons stated above, the Motion is GRANTED under sections 362(d)(1) and (d)(4). Movants' request for *in rem* relief is granted. If the order granting relief from stay is recorded in compliance with applicable state laws governing notices of interest or liens in real property, the order shall be binding in any other case under this title purporting to affect the Virgil Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown, after notice and a hearing. All other relief is denied.

Movants are directed to submit a proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: Based upon this Court's review of Movants' evidence and a search of McBeth's social security number, it appears McBeth or related entities/individuals have filed the following bankruptcy cases affecting the Virgil Property: (1) *In re Sandra K. McBeth*, Case No. 2:08-bk-31407-VZ; (2) *In re Sandra Woods*, Case No. 2:09-bk-19870-AA; (3) *In re Sandra Woods*, Case No. 2:09-bk-25760-VZ; (4) *In re United International Mortgage Solutions*, Case No. 2:12-bk-19267-ER; (5) *In re Sandra McBeth*, Case No. 2:14-bk-33759-VZ; (6) *In re Kenyatta Monifa*, Case No. 2:17-bk-24963-NB; (7) *In re Walter Wallace*, Case No. 2:18-bk-11109-SK, (8) *In re Sandra McBeth*, Case No. 2:18-bk-17700-SK; (9) *In re United International Mortgage Solutions, Inc.*, Case No. 2:18-bk-20698.

It also appears that both McBeth and the Debtor have filed other cases during the same time-period that did not purport to claim any interest in the Virgil Property. *See In re Sandra McBeth Reynolds*, 2:12-bk-44064-WB; *In re Sandra McBeth*, Case No. 2:16-bk-13895-WB; *In re Sandra K. Reynolds*, Case No. 2:11-bk-43451-TD; *In re United International Mortgage Solutions*, Case No. 2:12-bk-10130-TD.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Wednesday, December 5, 2018

Hearing Room 1568

10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#1.00 Hearing

RE: [200] Application for Compensation Greenberg Glusker Fields Claman & Machtinger LLP'S Application for Compensation and Reimbursement for Expenses for July 9, 2017 through October 31, 2018; Declaration of C. John M. Melissinos in Support Thereof for Greenberg Glusker, Trustee's Attorney, Period: 7/9/2017 to 10/31/2018, Fee: \$203,205.00, Expenses: \$3,834.67.

Docket 200

***** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
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Los Angeles
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Wednesday, December 5, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#2.00 Hearing
RE: [301] Confirmation of the Joint Proposed Chapter
11 Plan of Reorganization

fr. 9-18-18

Docket 301

***** VACATED *** REASON: CONTINUED 12-12-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 5, 2018

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#3.00 Hearing
RE: [78] Motion to Dismiss Debtor Notice of Motion For Order Dismissing Or
Converting Debtor's Chapter 11 Case Pursuant to 11 U.s.C. Sec. 1112;
Memorandum of Points And Authorities; Declarations of Margaret Waye, David
B. Bloom (Adler, James)

Docket 78

***** VACATED *** REASON: CONTINUED 1-8-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 5, 2018

Hearing Room 1568

10:00 AM

2:18-17345 Fu Kong Inc.

Chapter 11

#3.10 Hearing
RE: [75] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement DEBTORS MOTION TO: (1) EXTEND EXCLUSIVITY PERIODS FOR DEBTOR TO FILE A CHAPTER 11 PLAN AND OBTAIN ACCEPTANCE THEREOF; AND TO (2) VACATE THE DECEMBER 19 DEADLINE TO OBTAIN APPROVAL OF A DISCLOSURE STATEMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF LILLIAN HSU

Docket 75

***** VACATED *** REASON: CONTINUED 1-8-19 AT 10:00 A.M.**

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

**United States Bankruptcy Court
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10:00 AM

2:17-12677 Green Jane Inc

Chapter 7

#4.00 Hearing
RE: [198] Application for Compensation Accountant's First Interim Application for Approval of Compensation and Reimbursement of Costs for SLBiggs, Accountant, Period: 1/24/2018 to 11/2/2018, Fee: \$43,594.00, Expenses: \$123.72.

Docket 198

***** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 5, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#5.00 Hearing
RE: [815] Motion Notice of Motion and Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Patient Deposits and Overpayments; Memorandum of Points and Authorities in Support Thereof; Declaration of Richard G. Adcock in Support

Docket 815

***** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts

**United States Bankruptcy Court
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Wednesday, December 5, 2018

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10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [564] *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief*

fr. 12-4-18

Docket 564

*** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
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Wednesday, December 5, 2018

Hearing Room 1568

11:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#100.00 Hearing
RE: [138] Application for Compensation First Interim for Leech Tishman
Fuscaldo & Lampl, Debtor's Attorney, Period: 10/23/2017 to 9/30/2018, Fee:
\$209544.50, Expenses: \$3524.50.

Docket 138

***** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

**United States Bankruptcy Court
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Wednesday, December 5, 2018

Hearing Room 1568

11:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#101.00 Hearing
RE: [144] Application for Compensation First Interim for Leech Tishman
Fuscaldo & Lampl, Debtor's Attorney, Period: 10/23/2017 to 9/30/2018, Fee:
\$87403.00, Expenses: \$2004.55.

Docket 144

***** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.**

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
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Wednesday, December 5, 2018

Hearing Room 1568

11:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#103.00 Hearing

RE: [97] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Trustee's Notice of Motion and Motion to: (1) Confirm Sale of Real Property Commonly Known as 359 W. Langston Street, Upland, California, Free and Clear of Certain Liens and Interests, and (2) Authorize Payment of Real Estate Brokers Commissions and Reimbursement of Expenses; Memorandum of Points and Authorities, Request for Judicial Notice, and Declarations of Brad D. Krasnoff, Lisa Ta, Joe Mclat and Christina Criss in Support Thereof, With Proof of Service (Attachments: # 1 Proof of Service) (Israel, Eric)

Docket 97

*** VACATED *** REASON: CONTINUED 12-6-18 AT 10:00 A.M.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Thursday, December 6, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#1.00 Hearing

RE: [97] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Trustee's Notice of Motion and Motion to: (1) Confirm Sale of Real Property Commonly Known as 359 W. Langston Street, Upland, California, Free and Clear of Certain Liens and Interests, and (2) Authorize Payment of Real Estate Brokers Commissions and Reimbursement of Expenses; Memorandum of Points and Authorities, Request for Judicial Notice, and Declarations of Brad D. Krasnoff, Lisa Ta, Joe Mclat and Christina Criss in Support Thereof, With Proof of Service (Attachments: # 1 Proof of Service) (Israel, Eric)

fr. 12-5-18

Docket 97

Tentative Ruling:

12/05/2018

For the reasons set forth below, Ronald's objections to the Sale Motion are **OVERRULED**. The Court will conduct the auction in accordance with the procedures set forth herein.

Key Sale Terms:

- 1) Proposed purchasers: Joe Mclat and Christina Criss
- 2) Property for Sale: 359 W. Langston Street, Upland, CA 91786
- 3) Purchase price if no overbidders are present: \$580,000
- 4) Overbids (adjusted by the Court from the terms proposed in the Sale Motion): The minimum overbid shall be \$590,000, with subsequent overbids to be in increments of \$5,000, subject to adjustment by the Court to facilitate bidding

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion to: (1) Confirm Sale of Real Property Commonly Known as 359 W. Langston Street, Upland, California, Free and Clear of Certain Liens and Interests, and (2) Authorize Payment of Real Estate Brokers

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Judge Ernest Robles, Presiding
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10:00 AM

CONT...

Anne Lan Peterson

Chapter 7

Commissions and Reimbursement of Expenses [Doc. No. 97] (the "Sale Motion")

- a) Trustee's Notice of Hearing on [Sale Motion] [Doc. No. 98]
- b) Notice of Sale of Estate Property [Doc. No. 100]
- c) First Supplement to [Sale Motion] [Doc. No. 105]
- 2) Opposition to Motion to Sell Real Property [Doc. No. 103] (the "Opposition")
- 3) Trustee's Reply Memorandum of Points and Authorities in Support of Sale Motion [Doc. No. 11] (the "Reply")
 - a) Evidentiary Objections to Declaration of Ronald Peterson in Support of Ronald Peterson's Opposition [Doc. No. 112]

I. Facts and Summary of Pleadings

A. Background

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

The Debtor was married to Ronald Peterson ("Ronald") [**Note 1**] from 1997 to 2010. Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Chapter 7 Trustee (the "Trustee") of undisclosed assets, and the Debtor's case was reopened.

On October 19, 2017, the Trustee initiated a Complaint against Ronald and two LLCs—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Complaint sought a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Complaint sought turnover of the Property, avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

On June 14, 2018, the Court entered final judgment (the "Judgment") in favor of the Trustee, and against the Defendants, on the Trustee's first, third, and fifth claims for relief. Among other things, the Judgment provided that the Property is "community property of the Debtor and Ronald," and further provided that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)

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CONT... Anne Lan Peterson

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...." Judgment at ¶¶2–3. The Judgment ordered Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Defendants failed to comply with the Court's order and did not turnover the Property by the July 6 deadline.

On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment (the "Motion for Reconsideration"). In the Motion for Reconsideration, Defendants asserted that the only claims filed in the Debtor's bankruptcy case were on account of debts the Debtor incurred after she separated from Ronald. Defendants maintained that as a result, the claims are not payable from property of the estate because they do not qualify as "community claims" within the meaning of §101(7). Defendants' theory was that the absence of any creditors entitled to receive a distribution from the estate precluded the Trustee from administering estate property. In denying the Motion for Reconsideration, the Court noted that Defendants had been provided an opportunity to present their arguments before the Court entered the Judgment, but had failed to do so. Observing that Defendants had offered no explanation whatsoever for their failure to timely raise these arguments, the Court determined that the "extraordinary circumstances" necessary to support reconsideration were not present. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Defendants have appealed the denial of the Motion to Reconsideration to the District Court.

Concurrently with the denial of the Motion for Reconsideration, the Court directed the Clerk of the Court to issue a Writ of Possession, authorizing the United States Marshal (the "U.S. Marshal") to enforce the Judgment by placing the Trustee in possession of the Property. On August 10, 2018, the U.S. Marshal evicted Ronald, his fiancée, and their two children from the Property.

On July 26, 2018, Ronald appealed the Court's denial of his Motion to Reconsideration to the District Court. On November 16, 2018, the District Court dismissed Ronald's appeal with prejudice for failure to prosecute.

On August 16, 2018, the Court overruled Ronald's objections to Proofs of Claim filed by Shaco, Inc. ("Shaco") and Kathy K. Settle ("Ms. Settle"). The Court found that Ronald's claim objections were an improper attempt to gain a litigation advantage in the adversary proceeding brought by the Trustee:

In his Claim Objections, Ronald asserts that the claims do not qualify as "community claims" and therefore may not be paid from the estate's community property. The estate's primary community property asset is the Property. As discussed above, Ronald has vigorously contested the Trustee's

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attempts to enforce the Judgment and gain possession of the Property. Ronald's objective in prosecuting the Claim Objections is to prevent the Trustee from enforcing the Judgment.

Ronald raised the arguments he asserts now in his motion for Reconsideration of the Judgment. In denying Ronald's Motion for Reconsideration, the Court found that Ronald had failed to show that "extraordinary circumstances" excused his failure to timely raise his arguments regarding the allowability of the claims. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Based upon this finding, the Court refused to consider the arguments. Ronald cannot procedurally circumvent the Court's determination by now seeking to present these identical arguments in a different context.

The Court declines to find that Ronald lacks standing to object to the claims. It would be more precise to say that the Ronald has interposed the Claim Objections for the improper purpose of attempting to escape the consequences of his failure to timely raise the arguments he now presents. Had Ronald timely raised these arguments in opposition to the Trustee's motion for summary judgment, they would have been properly before the Court. But raising the arguments now—after the Court's express determination that the arguments would not be considered because they were untimely—is not proper.

Final Ruling Overruling Objection to Claim Number 2 [Doc. No. 81, Case No. 2:11-bk-60846-ER] at 4–5. [Note 2]

The Court went on to find that even had Ronald's claim objections been properly before it, the objections lacked merit. With respect to Ronald's argument that the Trustee was barred from administering any of the estate's community property because there were no creditors eligible to receive a distribution from such property, the Court stated:

Where an estate includes community property, distribution of such property is governed by §726(c). Section 726(c) provides a framework for the distribution of community property to holders of community claims.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [community property of the estate], whether or not

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there is any such property at the time of the commencement of the case." § 101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Court assumes without deciding that the indebtedness asserted by the claimants was incurred by the Debtor after she separated from Ronald. As such, the claims would not constitute community claims.

To provide for the distribution of community property, §726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

The distribution contemplated by the Trustee is consistent with the § 726(c). First, the Trustee will liquidate the Property, the estate's primary community asset. Once the Property has been liquidated, costs of administration will be paid from cash on hand. Subsequent to the payment of costs of administration, the remaining funds will be divided in half, with one half allocable to the Debtor, and the other allocable to Ronald. Once the remaining funds have been divided, the Debtor's share of such funds will no longer constitute community property. Instead, such funds will be property of the estate liable for separate property claims against the Debtor—such as the claims asserted by Shaco and Settle (provided that such claims are in fact properly characterized as separate property claims). Such funds may be distributed to the claimants pursuant to §726(c)(2)(C).

Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), aff'd sub nom. *Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the

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Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10. The precise manner in which funds will be distributed is not yet before the Court. However, contrary to Ronald's contention, funds can be distributed to claimants in a manner consistent with §726(c) and other applicable provisions of the Bankruptcy Code.

Id. at 5–7.

B. Summary of Papers Filed in Connection with the Trustee's Sale Motion

The Trustee moves to sell the Property, free and clear of liens, claims, and interests, pursuant to §363(f). The proposed purchasers are Joe Miclat and Christina Criss. The proposed sale price is \$580,000, and the sale is subject to overbids.

The Trustee has filed an interim fee application and a motion seeking authorization to pay administrative expenses from the sale proceeds of the Property. Hearings on both matters are set for December 18, 2018.

Ronald opposes the Sale Motion. He asserts that 50% of the sales proceeds must be paid to him directly from escrow. In support of this contention, Ronald makes essentially the same argument that he raised in the Claim Objections and the Motion for Reconsideration. That is, Ronald contends that he has no liability for the two claims that have been filed in this case, because they are not community claims, and that consequently, he is entitled to immediately receive 50% of the Property's sales proceeds. Ronald further asserts that he holds a \$100,000 homestead exemption in the Property which should be paid from the sales proceeds. He also contends that the Trustee cannot sell his purported co-ownership interest in the Property under §363(h) because the Trustee has not shown that the benefit to the estate of a sale outweighs the detriment to him.

In reply to Ronald's opposition, the Trustee asserts that the his proposed distribution of the Property's sales proceeds is not properly before the Court, but that the contemplated distribution is consistent with the priority scheme set forth in § 726(c). The Trustee contends that Ronald has not actually claimed a homestead exemption in accordance with the procedural requirements of the Bankruptcy Rules and Bankruptcy Code. The Trustee reserves the right to object to any homestead exemption that Ronald may assert in the future. Finally, the Trustee argues that Ronald's arguments under §363(h) are irrelevant, because §363(h) does not apply to the sale of community property assets of the estate.

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II. Findings and Conclusions

A. Ronald's Objections Are Overruled

Ronald asserts multiple objections to the Sale Motion, none of which have merit. For the reasons explained below, all of Ronald's objections are overruled.

First, Ronald asserts that the Trustee cannot sell his purported co-ownership interest in the Property under §363(h) because the Trustee has not shown that the benefit to the estate of a sale outweighs the detriment to him.

Under §363(h), the Trustee is authorized to "sell both the estate's interest ... and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety," if the Trustee meets certain requirements.

By its terms, §363(h) applies only to situations in which the estate and a co-owner hold an undivided interest in Property which the Trustee seeks to sell. It does not apply to the instant case, because the Property is property of the estate in its entirety. The Court has found that the Property is "community property of the Debtor and Ronald" and that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)" Judgment at ¶¶2-3. Ronald's appeal of these findings has been dismissed for failure to prosecute.

Ronald's arguments with respect to §363(h) are not well taken. Ronald retained new counsel on October 15, 2018. *See* Substitution of Attorney [Doc. No. 144, Case No. 2:17-ap-01505-ER]. Had counsel conducted even a cursory review of the docket, he would have discovered the Judgment, which establishes unequivocally that the sale of the Property is not subject to §363(h).

Second, Ronald points to §365(j) in support of his objection to the Trustee's contemplated distribution of the sales proceeds, and in support of his demand to be paid 50% of the proceeds directly from escrow. Section 365(j) applies to sales of Property under §365(g) or (h). It does not apply to the instant sale, because the Trustee is not selling the Property under either of those subsections. Further, the Trustee has set for hearing a motion seeking authorization to disburse some of the Property's sale proceeds to pay administrative expenses. Ronald's objections are properly asserted in connection with the hearing on that motion, rather than in connection with this hearing.

Third, Ronald contends that he must be paid 50% of the sales proceeds directly from escrow because he holds a \$100,000 homestead exemption in the Property. It is

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not procedurally proper for Ronald to assert his alleged entitlement to a homestead exemption in this context. The Bankruptcy Code and Bankruptcy Rules contain detailed procedures setting forth the manner in which a homestead exemption in community property may be asserted by a non-debtor such as Ronald. *See* §522(l) (authorizing a dependent of the debtor to claim property as exempt if the debtor fails to do so); *see also* Michael G. D’Alba, *Non-Filing Spouses, Homestead Exemptions, and Voidable Transactions*, 34 Cal. Bankr. J. 77 (2017); *see also* *Burman v. Homan (In re Homan)*, 112 B.R. 356 (BAP 9th Cir. 1989) (discussing circumstances under which a non-debtor spouse may claim a homestead exemption in community property). In certain instances, a non-debtor spouse such as Ronald is not permitted to claim an exemption in community property. *See Homan*, 112 B.R. at 359 (“The conclusion that [non-Debtor] Carolyn is bound by [Debtor] Daniel’s failure to file a homestead exemption in the Island Property is not subject to modification under the provision of the Bankruptcy Code which permits a nondebtor spouse to declare exemptions as a *dependent* of a debtor spouse. 11 U.S.C. § 522(a)(1) and § 522(l). Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions.”). If and when Ronald properly asserts an exemption in the Property, the Court will determine whether Ronald is entitled to claim an exemption, and if so, whether the exemption is valid.

Fourth, Ronald challenges the Trustee’s contemplated distribution of the Property’s sales proceeds. Ronald argues that the Trustee is not authorized to first pay the estate’s administrative expenses from the proceeds before distributing to Ronald his alleged 50% share of those proceeds. Because the Trustee has filed a separate motion seeking approval of his contemplated distribution of the proceeds, the Court declines to consider Ronald’s argument at this time. However, it is important to note that throughout this case, the Trustee has consistently explained his intent regarding the distribution of estate assets. In connection with Ronald’s Claim Objections, the Court conducted a preliminary analysis of the propriety of the Trustee’s proposed distribution (see Section I.A., above). While the Court makes no final ruling at this time, the Court’s examination of the proposed distribution (set forth in Section I.A., above), shows that it is consistent with §726(c).

B. The Sale is Approved

Section 363(b) permits the Trustee to sell estate property out of the ordinary

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course of business, subject to court approval. The Trustee must articulate a business justification for the sale. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* at 19–20.

Pursuant to §704(a), the Trustee has an obligation to "collect and reduce to money the property of the estate for which such trustee serves," and to "close such estate as expeditiously as is compatible with the best interests of parties in interest." The sale is consistent with the Trustee's fiduciary obligation to creditors to liquidate the estate's property.

Pursuant to §363(f), the Trustee is authorized to sell the Property free and clear of all liens, claims, and interests, which include (without limitation) the following:

- 1) Any right, claim, lien, or interest asserted by Maitreya LLC ("Maitreya"). Maitreya's right, claim, lien, or interest (if any) was extinguished by the Judgment.
- 2) Any lien arising from the Debtor's recordation of an *Abstract of Support Judgment* issued by the Family Court (the "Support Lien"). To the extent the Support Lien purports to secure a right to payment from the estate (as opposed to a right to payment from Ronald), such lien is void as a violation of the automatic stay.
- 3) The Deed of Trust securing indebtedness in the original amount of \$224,534.00, originally issued by Wells Fargo Home Mortgage. This indebtedness has been paid in full, as reflected by a reconveyance recorded on January 27, 2017.
- 4) Tax liens for real property taxes recorded by San Bernardino County. To the extent property taxes are not current, they will be paid through escrow.
- 5) Any rights, claims, liens, or interests asserted by Ronald. The Court will determine at a later date whether Ronald is entitled to a right to payment from any surplus community funds pursuant to §726(c).
- 6) The *Notice of Pendency of Action* (the "Lis Pendens") recorded by the Trustee in connection with the adversary proceeding. The Lis Pendens has been superseded by the Judgment.

Having reviewed the declarations submitted by Lisa Ta, the Trustee's real estate broker, and the proposed purchasers, Joe Miclat and Christina Criss Agnes, the Court finds that the sale transaction was negotiated at arms-length and in good-faith, and that the proposed purchasers are entitled to the protections of §363(m). In the event

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that an overbidder prevails at the auction, the Court will take testimony at the hearing to determine whether such overbidder is entitled to the protections of §363(m).

The Trustee is authorized to pay the real estate broker a 6% commission directly from escrow. The Trustee is authorized, at his discretion, to pay from escrow any other closing costs. Pursuant to Bankruptcy Rule 6004(f)(2), the Trustee is authorized to execute all documents necessary to consummate the sale. Notwithstanding Bankruptcy Rule 6004(h), the order approving the sale shall take effect immediately upon entry.

C. Auction Procedures

The Court will distribute numbered auction paddles to the proposed purchaser and all qualified overbidders. The initial overbid will be \$590,000, with subsequent overbids to be increments of \$5,000. The overbid increment is subject to adjustment by the Court to facilitate bidding. The Court will announce each bid level. To remain in the auction, bidders must participate at all bid levels. That is, parties who do not bid in a round cannot later change their minds and re-enter the auction. Parties may make a bid higher than that announced by the Court by approaching the podium and stating their bid.

III. Conclusion

Based upon the foregoing, Ronald's objections to the Sale Motion are OVERRULED, and the Motion is GRANTED in its entirety.

IV. Evidentiary Rulings

The Trustee objections to those portions of Ronald's testimony which contain legal argument and legal conclusions. Specifically, Ronald testifies that he is the co-owner of the Property; that as a co-owner, he holds a homestead exemption; and that he is not liable for claims filed against the Debtor because they are post-separation debts rather than community property claims. The Court construes this testimony only as legal argument, not as evidence.

Ronald testifies regarding the harmful effects that the eviction from the Property has had on his business and family. The Trustee's objection to this testimony as irrelevant is SUSTAINED. The issue before the Court is the appropriateness of the sale, not the merits of the Court's order directing the U.S. Marshal to enforce the Judgement by evicting Ronald from the Property.

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Note 1

A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

Note 2

The Court made identical findings with respect to Ronald's objection to the Proof of Claim filed by Shaco, Inc. *See* Final Ruling Overruling Objection to Claim Number 1 [Doc. No. 82, Case No. 2:11-bk-60846-ER] at 4-5.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

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2:17-12677 Green Jane Inc

Chapter 7

#2.00 Hearing

RE: [198] Application for Compensation Accountant's First Interim Application for Approval of Compensation and Reimbursement of Costs for SLBiggs, Accountant, Period: 1/24/2018 to 11/2/2018, Fee: \$43,594.00, Expenses: \$123.72. fr. 12-5-18

Docket 198

Tentative Ruling:

12/05/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$43,594.00

Expenses: \$123.72

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By

Thomas A Willoughby

Keith Patrick Banner

C John M Melissinos

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2:17-12677 Green Jane Inc

Chapter 7

#3.00 Hearing

RE: [200] Application for Compensation Greenberg Glusker Fields Claman & Machtinger LLP'S Application for Compensation and Reimbursement for Expenses for July 9, 2017 through October 31, 2018; Declaration of C. John M. Melissinos in Support Thereof for Greenberg Glusker, Trustee's Attorney, Period: 7/9/2017 to 10/31/2018, Fee: \$203,205.00, Expenses: \$3,834.67.

FR. 12-5-18

Docket 200

Tentative Ruling:

12/05/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$203,205.00

Expenses: \$3,834.67

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Green Jane Inc

Represented By
Philip H Stillman

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Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Thomas A Willoughby
Keith Patrick Banner
C John M Melissinos

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2:17-22974 Rideshare Port Management, LLC

Chapter 11

#4.00 Hearing
RE: [138] Application for Compensation First Interim for Leech Tishman
Fuscaldo & Lampl, Debtor's Attorney, Period: 10/23/2017 to 9/30/2018, Fee:
\$209544.50, Expenses: \$3524.50.

FR. 12-5-18

Docket 138

Tentative Ruling:

12/4/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$202,196.30

Expenses: \$3,524.05

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:17-22975 Red Booth, Inc.

Chapter 11

#5.00 Hearing
RE: [144] Application for Compensation First Interim for Leech Tishman
Fuscaldo & Lampl, Debtor's Attorney, Period: 10/23/2017 to 9/30/2018, Fee:
\$87403.00, Expenses: \$2004.55.

fr. 12-5-18

Docket 144

Tentative Ruling:

12/4/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$87,403

Expenses: \$2,004.55

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#6.00 Hearing
RE: [815] Motion Notice of Motion and Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Patient Deposits and Overpayments; Memorandum of Points and Authorities in Support Thereof; Declaration of Richard G. Adcock in Support

fr. 12-5-18

Docket 815

Tentative Ruling:

12/4/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Patient Deposits and Overpayments [Doc. No. 815] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 811 and 815 [Doc. No. 861]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion for Entry of an Order to Authorize Debtors to Refund Prepetition Patient Deposits and Overpayments [Doc. No. 855]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors seek authorization to establish a Patient Refund Program, under which the Debtors would be authorized (but not required) to refund prepetition

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deposits up to a cap of \$1 million. Funds for payments to be made under the Patient Refund Program will be allocated from the budget of the Debtors' Debtor in Possession financing with Ally Bank. The Program is necessary because patients at the Debtors' hospitals frequently pre-pay for procedures based on estimates (each such payment, a "Deposit"). Once the bill is finalized, the amount owed by the patient is sometimes less than the original estimate, requiring a refund.

Approximately 7,500 patients would be eligible to receive refunds under the contemplated Patient Refund Program. The Debtors estimate that the Deposits owed to 99% of these patients are below the \$2,850 deposit priority cap of §507(a)(7). The vast majority of the Deposits are refunds of co-payments made by patients in advance of future services that ultimately cost less than the co-payment.

The Patient Refund Program is supported by Ally Bank, the DIP Lender. The Official Committee of Unsecured Creditors has no objection to the Motion. The Committee has reached an agreement with the Debtors, pursuant to which the Debtors will provide weekly reporting to the Committee regarding the Patient Refund Program.

II. Findings and Conclusions

The Motion is GRANTED in its entirety. Section 507(a)(7) accords seventh-priority status to "allowed unsecured claims of individuals, to the extent of \$2,850 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the ... purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided." The vast majority of payments to be made under the Patient Refund Program are below the § 507(a)(7) priority cap. The payment of such priority claims outside the context of a Chapter 11 Plan is appropriate, because any confirmed Plan would be required to pay priority claims pursuant to §1129(a)(9)(B).

To the extent that payments exceed the §507(a)(7) priority cap, such payments are justified because the Patient Refund Program preserves the going-concern value of the estates by maintaining patient satisfaction. Absent the Patient Refund Program, patients would not receive timely refunds of overpayments. Such patients—many of whom are low income—would likely become dissatisfied with the Debtors and might subsequently choose to receive healthcare at other hospitals. Such a decrease in business would reduce the sales price the Debtors would receive for their hospitals, and/or make any reorganization more difficult.

Cognizant of the importance of maintaining the Debtors' going-concern value, the

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Courtroom 1568 Calendar**

Thursday, December 6, 2018

Hearing Room 1568

10:00 AM

CONT... Verity Health System of California, Inc.

Chapter 11

Court has previously authorized the Debtors to establish a program under which certain Critical Vendors would receive payments on account of prepetition claims (the “Critical Vendors Program”). *See* Final Order Granting Debtors’ Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 436] and Final Ruling Granting Debtors Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors [Doc. No. 386]. The Court finds that the Patient Refund Program, like the Critical Vendors Program, is necessary to preserve the going-concern value of the Debtors’ assets so that the Debtors can receive the maximum sale price if and when such assets are sold.

The Court notes that in dicta, the Supreme Court has recently recognized that Bankruptcy Courts have authorized programs permitting debtors to pay prepetition claims outside the context of a Plan. In *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985, 197 L. Ed. 2d 398 (2017), the Supreme Court noted that Bankruptcy Courts routinely authorize “critical vendor” orders that allow payment of an essential suppliers’ prepetition invoices.” The court reasoned that such critical vendor orders were necessary to “enable a successful reorganization and make even the disfavored creditors better off.” *Id.*

In the context of a cross-collateralization clause, the Ninth Circuit has recognized that “[c]ases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.” *Burchinal v. Central Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987).

Other Bankruptcy Courts have recognized that programs similar to the Patient Refund Program are necessary to preserve goodwill and going-concern value:

There are occasions when [the Debtor in Possession’s duty to operate its business for the benefit of creditors] can only be fulfilled by the preplan satisfaction of a prepetition claim.... Another category of prepetition claims which must be dealt with is the prepetition warranty or refund claims of consumer customers which, if not honored, could so harm the debtor's good will as to destroy its going concern value (like employees, the bankruptcy court cannot force consumers to deal with the debtor, nor is there a practical alternative to satisfying warranty or refund claims). Rental deposits and other claims that arise prepetition but come due post petition may require payment

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CONT... Verity Health System of California, Inc. Chapter 11

to avoid sanctions under state law as well as loss of good will.... It may be that payment of a prepetition unsecured claim is the only means to effect a substantial enhancement of the estate, and here, too, payment would be justified.

In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Thursday, December 6, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#7.00 Hearing
RE: [564] *Motion Pursuant to Bankruptcy Rule 7052(B) for Amendment of Findings in Final Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief*

fr. 12-4-18

fr. 12-5-18

Docket 564

*** VACATED *** REASON: CONTINUED 1-23-19 AT 10:00 A.M.

Tentative Ruling:

The Court has entered an order approving the stipulated continuance of this hearing to **January 23, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

2:18-22125 Craig Alan Cook and Kimberly Annette Cook

Chapter 7

#1.00 HearingRE: [15] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 Mitsubishi Mirage, VIN ML32A3HJ9FH038957 . (Wang, Jennifer)

Docket 15

Tentative Ruling:

12/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, December 10, 2018

Hearing Room 1568

10:00 AM

CONT... Craig Alan Cook and Kimberly Annette Cook

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Craig Alan Cook

Represented By
Steven A Alpert

Joint Debtor(s):

Kimberly Annette Cook

Represented By
Steven A Alpert

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

2:18-22824 Patrick Hallare

Chapter 7

#2.00 HearingRE: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2017 Jeep Cherokee, VIN 1C4PJLDB1HD232538 . (Wang, Jennifer)

Docket 9

Tentative Ruling:

12/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). Debtor filed a response indicating that he does not oppose the granting of the Motion (Doc. No. 11).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(2) to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court finds that there is no equity in the subject vehicle and that the vehicle is not necessary for an effective reorganization since this is a chapter 7 case.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Patrick Hallare

Chapter 7

Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Patrick Hallare

Represented By
Caroline S Kim

Trustee(s):

Rosendo Gonzalez (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

2:18-22544 Lucero Berenice Sanchez de Ornelas

Chapter 7

#3.00 HearingRE: [8] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: (2017 Nissan Pathfinder) with Exhibits A-C and Proof of Service.

Docket 8

Tentative Ruling:

12/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1) for cause to permit Movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. Movant may not pursue any deficiency claim against the Debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. The Court takes judicial notice of the Chapter 7 Individual Debtor's Statement of Intention in which the Debtor stated an intention to surrender the vehicle to Movant.

This order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code. The 14-day stay prescribed by FRBP 4001(a)(3) is waived. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

CONT... Lucero Berenice Sanchez de Ornelas

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Lucero Berenice Sanchez de Ornelas

Represented By
Michael D Luppi

Trustee(s):

Elissa Miller (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

2:18-20930 Nicholas Mondale Greer

Chapter 7

#4.00 HearingRE: [18] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: .

Docket 18

Tentative Ruling:

12/6/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum) (Doc. No. 18) (the "R/S Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Nicholas Mondale Greer ("Debtor") filed this voluntary chapter 7 case on September 18, 2018. State Farm Mutual Automobile Insurance Company ("Movant") seeks relief from the automatic stay pursuant to § 362(d)(1) to proceed to final judgment in the nonbankruptcy action captioned *State Farm Mutual Auto. Ins. Co. v. Nicholas Greer* (Case No. 30-2018-00997106-CU-UC-CJC) pending in the Orange County Superior Court of California (the "State Court Action"). Movant commenced the State Court Action on June 5, 2018 by filing a complaint for subrogation recovery. Trial is scheduled to begin February 14, 2019.

Movant asserts that cause exists to grant stay relief because Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the Debtor or property of the Debtor's bankruptcy estate.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Monday, December 10, 2018

Hearing Room 1568

10:00 AM

CONT... Nicholas Mondale Greer

Chapter 7

Section 362(d)(1) permits a bankruptcy court to grant relief from the automatic stay upon a showing of "cause." Cause is a flexible concept and courts often conduct a fact intensive, case-by-case balancing test, examining the totality of the circumstances to determine whether sufficient cause exists to lift the stay. *In re SCO Grp., Inc.*, 395 B.R. 852, 856 (Bankr. D. Del. 2007) (citing *Baldino v. Wilson (In re Wilson)*, 116 F.3d 87, 90 (3d Cir. 1997); *In re Laguna Assocs. Ltd.*, 30 F.3d 734, 737 (7th Cir. 1994)); *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Among factors appropriate to consider in determining whether relief from the automatic stay should be granted to allow state court proceedings to continue are considerations of judicial economy and the expertise of the state court." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009) (citing *In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985)).

Here, the Court finds that the State Court Action involves nonbankruptcy law and is within the expertise of the state court. Allowing the Movant to continue the State Court Action will best promote the judicial economy by adjudicating a final judgment as to the underlying claims that may either support or negate the filing of a proof of claim and/or an adversary complaint.

Based on the foregoing, the Court GRANTS the Motion pursuant to 11 U.S.C. § 362(d)(1) to permit the Movant to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtors or estate property. The Movant may not pursue any deficiency claim or any other claim against the Debtors or property of the estate, except that the Movant will retain the right to file a proof of claim and/or an adversary complaint under §§ 523 or 727 (to the extent applicable). The order shall be binding and effective despite any conversion of the bankruptcy case to a case under any other chapter of Title 11 of the United States Code.

All other relief is denied.

Movant shall upload a conforming order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel

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Los Angeles
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Monday, December 10, 2018

Hearing Room 1568

10:00 AM

CONT... Nicholas Mondale Greer Chapter 7

at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Nicholas Mondale Greer

Represented By
Sam Benevento

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Monday, December 10, 2018

Hearing Room 1568

10:00 AM

2:18-20774 Henriette S. Viray

Chapter 7

#5.00 HearingRE: [16] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 200 S. Olive Street #1710, Los Angeles, CA 90012 .

Docket 16

Tentative Ruling:

12/6/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set on a shortened notice in accordance with Judge Robles' procedures. Oppositions, if any, will be considered at the hearing. In the event of no opposition, the Court's tentative ruling is as follows.

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

This Motion has been filed to allow the Movant to proceed with the filing of an unlawful detainer proceeding in state court. An unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

Movant's request for annulment is denied for lack of sufficient cause shown.

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

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10:00 AM

CONT... Henriette S. Viray

Chapter 7

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

Party Information

Debtor(s):

Henriette S. Viray

Represented By
Eliza Ghanooni

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-11688 Shasa USA LLC

Chapter 7

Adv#: 2:17-01058 Goodrich v. Eska, Inc., a California corporation, d/b/a Event

#1.00 Status conference RE: [1] Adversary case 2:17-ap-01058. **to monitor the status of the consummation of the Settlement Agreement** Complaint by David M. Goodrich against Eska, Inc., a California corporation, d/b/a Event Spice Wear. (Charge To Estate). Complaint for Avoidance and Recovery of Preferential Transfers Pursuant to 11 U.S.C. §§ 547(b), 550 and 551 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Werth, Steven)

FR. 9-25-17; 12-12-17; 6-5-18

Docket 1

Tentative Ruling:

12/10/2018

This action has settled and the Court has approved the Settlement Agreement. The Settlement Agreement provides for the Defendant to make installment payments in the total amount of \$40,000 over a period of approximately one year, with the final payment of \$2,500 to be made on November 20, 2018. The Settlement Agreement further provides that the Trustee will dismiss the action upon receipt of the final payment.

When the Status Report was filed on November 28, 2018, the Trustee had received all payments except for the final payment of \$2,500, which was due on November 20, 2018. The parties shall appear to advise the Court of the status of the final payment.

Party Information

Debtor(s):

Shasa USA LLC

Represented By
Rowena Santos

Defendant(s):

Eska, Inc., a California corporation,

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Hearing Room 1568

10:00 AM

CONT... Shasa USA LLC

Chapter 7

Plaintiff(s):

David M. Goodrich

Represented By
Steven Werth
Mark S Horoupian

Trustee(s):

David M Goodrich (TR)

Represented By
Steven Werth
Jason Balitzer
Mark S Horoupian

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01418 Gonzalez, Chapter 7 Trustee v. Pobeda Services, Inc.

#2.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01418. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Pobeda Services, Inc.. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18

Docket 1

Tentative Ruling:

12/10/2018

The parties have settled this action and intend to file a motion seeking approval of the settlement within the next 45–60 days (the "Rule 9019 Motion"). Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The contemplated Rule 9019 Motion shall be filed by no later than **January 22, 2019**.
- 2) Pursuant to the parties' request, a continued Status Conference shall be held on **February 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 3) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 34] entered on June 19, 2018, shall remain unchanged.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you

**United States Bankruptcy Court
Central District of California
Los Angeles
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10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Pobeda Services, Inc.	Represented By Jeffrey S Shinbrot
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01420 Gonzalez, Chapter 7 Trustee v. Azatian

#3.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01420. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Hakop Azatian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18

Docket 1

Tentative Ruling:

12/10/2018

The parties have settled this action and intend to file a motion seeking approval of the settlement within the next 45–60 days (the "Rule 9019 Motion"). Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The contemplated Rule 9019 Motion shall be filed by no later than **January 22, 2019**.
- 2) Pursuant to the parties' request, a continued Status Conference shall be held on **February 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 3) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 37] entered on June 19, 2018, shall remain unchanged.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 11, 2018

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10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Hakop Azatian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01421 Gonzalez, Chapter 7 Trustee v. Akopian

#4.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01421. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Grish Akopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

fr: 10-16-18

fr: 12-12-17; 3-7-18; 5-8-18; 10-16-18

Docket 1

Tentative Ruling:

12/10/2018

The parties have settled this action and intend to file a motion seeking approval of the settlement within the next 45–60 days (the "Rule 9019 Motion"). Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The contemplated Rule 9019 Motion shall be filed by no later than **January 22, 2019**.
- 2) Pursuant to the parties' request, a continued Status Conference shall be held on **February 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 3) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018, shall remain unchanged.

The Court will prepare and enter an appropriate order.

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

CONT... Friendly Adult Day Healthcare Center, Inc.

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare

Represented By
Kelly F Ryan

Defendant(s):

Grish Akopian

Represented By
Kelly F Ryan

Plaintiff(s):

Rosendo Gonzalez, Chapter 7

Represented By
Paul R Shankman

Trustee(s):

Rosendo Gonzalez (TR)

Represented By
Paul R Shankman

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-25183 Friendly Adult Day Healthcare Center, Inc.

Chapter 7

Adv#: 2:17-01422 Gonzalez, Chapter 7 Trustee v. Tel Expo, a Sole Proprietorship et al

#5.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01422. Complaint by Rosendo Gonzalez, Chapter 7 Trustee against Tel Expo, a Sole Proprietorship, Henry A. Hakopian. (Charge To Estate). Complaint for Turnover and Accounting of Estate Property; to Avoid, Recover, and Preserve Fraudulent, Transfers of Property; to Avoid, Recover, and Preserve Preferential Transfers of Property; to Avoid, Recover, and Preserve Unauthorized Post-Petition Transfers of Property; Conversion; Constructive Trust; and for Injunctive Relief Nature of Suit: (14 (Recovery of money/property - other)) (Shankman, Paul)

FR. 12-12-17; 3-7-18; 5-8-18; 7-10-18; 10-16-18

Docket 1

Tentative Ruling:

12/10/2018

The parties have settled this action and intend to file a motion seeking approval of the settlement within the next 45–60 days (the "Rule 9019 Motion"). Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The contemplated Rule 9019 Motion shall be filed by no later than **January 22, 2019**.
- 2) Pursuant to the parties' request, a continued Status Conference shall be held on **February 12, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing. If an order approving the Rule 9019 Motion has been entered, the continued Status Conference will off calendar.
- 3) The litigation deadlines previously set by way of the *Scheduling Order* [Doc. No. 36] entered on June 19, 2018, shall remain unchanged.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you

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CONT... Friendly Adult Day Healthcare Center, Inc. Chapter 7

intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Friendly Adult Day Healthcare	Represented By Kelly F Ryan
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Defendant(s):

Tel Expo, a Sole Proprietorship	Represented By Kelly F Ryan
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Henry A. Hakopian	Represented By Kelly F Ryan
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Plaintiff(s):

Rosendo Gonzalez, Chapter 7	Represented By Paul R Shankman
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Trustee(s):

Rosendo Gonzalez (TR)	Represented By Paul R Shankman
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**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:17-13016 Sharp Edge Enterprises

Chapter 7

Adv#: 2:18-01163 Leslie v. Reihanian et al

#6.00 Status Hearing RE: [10] Amended Complaint by Christian T Kim on behalf of Sam S. Leslie, Sam S Leslie (TR) against Leon Reihanian. (RE: related document(s)1 Adversary case 2:18-ap-01163. Complaint by Sam S. Leslie against Leon Reihanian. (Charge To Estate). Nature of Suit: (11 (Recovery of money/property - 542 turnover of property)) filed by Plaintiff Sam S. Leslie). (Kim, Christian)

Docket 10

Tentative Ruling:

12/10/2018

Having reviewed the Joint Status Report submitted by the parties, the Court HEREBY ORDERS as follows:

- 1) With respect to Defendant Abraham Reihanian, as Trustee of the Abraham Reihanian and Nosrat Yahid Revocable Trust, the Trustee shall file a Motion for Default Judgment by no later than **January 18, 2018**. At the Trustee's option, the Motion may be filed on a negative notice basis, or may be set for hearing.
- 2) With respect to Defendant Leon Reihanian, the litigation deadlines previously ordered by the Court shall continue to apply, as follows:
 - a) The last day to amend pleadings and/or join other parties is **1/10/2019**.
 - b) The last day to disclose expert witnesses and expert witness reports is **4/30/2019**.
 - c) The last day to disclose rebuttal expert witnesses and rebuttal expert witness reports is **5/30/2019**.
 - d) The last date to complete discovery relating to expert witnesses (e.g., depositions of expert witnesses), including hearings on motions related to expert discovery, is **6/18/2019**. (For contemplated hearings on motions related to expert discovery, it is counsel's responsibility to check the Judge's self-calendaring dates, posted on the Court's website. If the expert discovery cutoff date falls on a date when the court is closed or that is not available for self-calendaring, the deadline for hearings on expert discovery motions is the next closest date which is available for self-

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CONT...

Sharp Edge Enterprises

Chapter 7

calendar.)

- e) The last day for dispositive motions to be heard is **6/25/2019**. (If the motion cutoff date is not available for self-calendar, the deadline for dispositive motions to be heard is the next closest date which is available for self-calendar.)
- f) The last day to complete discovery (except as to experts), including hearings on discovery motions, is **6/29/2019**. (If the non-expert discovery cutoff date is not available for self-calendar, the deadline for non-expert discovery motions to be heard is the next closest date which is available for self-calendar.)
- g) A Pretrial Conference is set for **7/16/2019 at 11:00 a.m.** By no later than fourteen days prior to the Pretrial Conference, the parties must submit a Joint Pretrial Stipulation via the Court's Lodged Order Upload (LOU) system. Submission via LOU allows the Court to edit the Joint Pretrial Stipulation, if necessary. Parties should consult the Court Manual, section 4, for information about LOU.
- h) In addition to the procedures set forth in Local Bankruptcy Rule 7016-1(b), the following procedures govern the conduct of the Pretrial Conference and the preparation of the Pretrial Stipulation:
 - i) By no later than thirty days prior to the Pretrial Conference, the parties must exchange copies of all exhibits which each party intends to introduce into evidence (other than exhibits to be used solely for impeachment or rebuttal).
 - ii) When preparing the Pretrial Stipulation, all parties shall stipulate to the admissibility of exhibits whenever possible. In the event any party cannot stipulate to the admissibility of an exhibit, that party must file a Motion in Limine which clearly identifies each exhibit alleged to be inadmissible and/or prejudicial. The moving party must set the Motion in Limine for hearing at the same time as the Pretrial Conference; notice and service of the Motion shall be governed by LBR 9013-1. The Motion in Limine must contain a statement of the specific prejudice that will be suffered by the moving party if the Motion is not granted. The Motion must be supported by a memorandum of points and authorities containing citations to the applicable Federal Rules of Evidence, relevant caselaw, and other legal authority. Blanket or boilerplate evidentiary objections not accompanied by detailed

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CONT...

Sharp Edge Enterprises

Chapter 7

supporting argument are prohibited, will be summarily overruled, and may subject the moving party to sanctions.

- iii) The failure of a party to file a Motion in Limine complying with the requirements of ¶(2)(h)(ii) shall be deemed a waiver of any objections to the admissibility of an exhibit.
 - iv) Motions in Limine seeking to exclude testimony to be offered by any witness shall comply with the requirements set forth in ¶(2)(h)(ii).
 - i) Trial is set for the week of **7/29/2019**. The trial day commences at 9:00 a.m. The exact date of the trial will be set at the Pretrial Conference. Consult the Court's website for the Judge's requirements regarding exhibit binders and trial briefs.
- 3) As to the Trustee and non-defaulted Defendant Leon Reihanian, this matter shall be referred to the Mediation Panel. The parties shall meet and confer and select a Mediator from this District's Mediation Panel. Plaintiff will lodge a completed "Request for Assignment to Mediation Program; [Proposed] Order Thereon" (See Amended General Order 95-01 available on the Court's website) within 15 days from the date of this hearing, and deliver a hard copy directly to chambers c/o the judge's law clerk Daniel Koontz.

The Court will prepare and enter a Scheduling Order. Plaintiff shall submit the order assigning the matter to mediation.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sharp Edge Enterprises

Represented By
Peter A Davidson

**United States Bankruptcy Court
Central District of California
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Hearing Room 1568

10:00 AM

CONT... Sharp Edge Enterprises

Chapter 7

Defendant(s):

Leon Reihanian

Represented By
Raymond H. Aver

DOES 1-20, inclusive

Pro Se

Abraham Reihanian

Pro Se

Plaintiff(s):

Sam S. Leslie

Represented By
Christian T Kim
James A Dumas Jr

Trustee(s):

Sam S Leslie (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:17-15115 John Martin Kennedy

Chapter 7

Adv#: 2:17-01377 Campos v. Kennedy, MD

#7.00 Status Hearing

RE: [1] Adversary case 2:17-ap-01377. Complaint by Yunuen Campos against John Martin Kennedy. willful and malicious injury)) (Dean, Lauren)

fr: 11-14-17; 2-13-18; 5-15-18; 8-14-18; 10-16-18

Docket 1

Tentative Ruling:

12/10/2018

On November 16, 2017, the Court entered an order staying this adversary proceeding and vacating litigation deadlines pending the completion of Defendant's appeal of the State Court Judgment giving rise to the indebtedness alleged to be non-dischargeable. On April 16, 2018, the California Court of Appeal reversed and remanded to the trial court the portion of the State Court Judgment awarding attorneys' fees. The trial court subsequently awarded attorneys' fees of \$2,538,458.35. An appeal of the trial court's award of attorneys' fees is now pending. The other aspects of the State Court Judgment—judgment on the merits in the amount of \$225,000, and an award of costs in the amount of \$84,090.34—are now final.

On October 16, the Court conducted a Status Conference and ordered Plaintiff to file a motion for summary judgment by no later than November 13, 2018. Plaintiff's motion for partial summary adjudication (the "Motion") is set to be heard on January 23, 2019. Plaintiff seeks partial summary adjudication with respect to its claim that the judgment of \$225,000 and the award of costs of \$84,090.34 is excepted from Debtor/Defendant's discharge. Debtor/Defendant states that he will not oppose Plaintiff's Motion, but reserves all rights with respect to the dischargeability of the State Court's award of attorneys' fees.

The hearing on Plaintiff's Motion shall go forward on January 23, 2019. Once that Motion has been adjudicated, the Court will issue a further order governing the adjudication of any remaining issues.

The Court will prepare and enter an appropriate order.

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10:00 AM

CONT...

John Martin Kennedy

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

John Martin Kennedy

Represented By
Jeffrey S Shinbrot

Defendant(s):

John M. Kennedy MD

Represented By
Jeffrey S Shinbrot

Plaintiff(s):

Yunuen Campos

Represented By
Robert S Lampl
Lauren A Dean

Trustee(s):

David M Goodrich (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:17-23056 Darren James Searle

Chapter 7

Adv#: 2:17-01533 Williams v. Searle et al

#8.00 Status Conference

RE: [1] Adversary case 2:17-ap-01533. Complaint by Robin Williams against Darren James Searle. false pretenses, false representation, actual fraud)) (Anaya, Alana)

fr. 2-21-18; 9-11-18; 11-13-18

Docket 1

***** VACATED *** REASON: DISMISSED 11-27-18**

Tentative Ruling:

9/10/2018

This hearing is VACATED and no appearances are required. In connection with hearings on a Motion to Compel conducted on August 23, 2018, the Court has set a continued Pretrial Conference for **November 13, 2018, at 11:00 a.m.**

Party Information

Debtor(s):

Darren James Searle

Represented By
Mark J Markus

Defendant(s):

DOES 1 through 10, inclusive

Pro Se

Darren James Searle

Pro Se

Joint Debtor(s):

Andrea Lynn Searle

Represented By
Mark J Markus

Plaintiff(s):

Robin Williams

Represented By
Alana B Anaya

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10:00 AM

CONT... Darren James Searle

Chapter 7

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:18-15693 Kami Emein

Chapter 7

Adv#: 2:18-01260 Amin v. Emein

#9.00 Status Hearing
RE: [12] Amended Complaint by Michael N Berke on behalf of Joseph Amin
against Kami Emein. (Attachments: # 1 Exhibit A # 2 Exhibit B) (Berke, Michael)

fr: 11-13-18

Docket 12

***** VACATED *** REASON: CONTINUED TO 2-12-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kami Emein

Represented By
Douglas M Neistat

Defendant(s):

Kami Emein

Represented By
Michael J Conway

Plaintiff(s):

Joseph Amin

Represented By
Michael N Berke

Trustee(s):

John J Menchaca (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01273 Menchaca Chapter 7 Trustee v. Olivares

#10.00 Status Hearing RE: [3] Amended Complaint by Wesley H Avery on behalf of John Menchaca Chapter 7 Trustee against Johanna Olivares. (RE: related document(s)1 Adversary case 2:18-ap-01273. Complaint by John Menchaca Chapter 7 Trustee against Johanna Olivares. (Charge To Estate). Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(21 (Validity, priority or extent of lien or other interest in property)),(72 (Injunctive relief - other)),(91 (Declaratory judgment)) filed by Plaintiff John Menchaca Chapter 7 Trustee). (Avery, Wesley)

Docket 3

Tentative Ruling:

12/10/2018

The Clerk of the Court entered default against the Defendant on November 8, 2018. Doc. No. 14. In his Unilateral Status Report, the Trustee requests direction regarding the Court's preferences for adjudicating motions for default judgment, including whether the motion can be brought on an *ex-parte* basis. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The Trustee shall file a Motion for Default Judgment (the "Motion") by no later than **January 18, 2018**.
- 2) Because Defendant has not appeared and has not communicated with the Trustee, the Motion may be brought on an *ex-parte* basis. *See* Civil Rule 55(b) (2) (requiring service of a motion for default judgment only upon a party who "has appeared personally or by a representative"); *see also* Local Bankruptcy Rule 7055-1(b)(1)(E) (requiring service of motions for default judgment upon the defaulted party only if mandated by Civil Rule 55(b)(2)).
- 3) The Trustee may set the Motion for hearing but is not required to do so. If the Motion is set for hearing, at least 21 days' notice to the Court shall be provided.

The Court will prepare and enter an appropriate order.

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10:00 AM

CONT...

Felix Anibal Diaz

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Johanna Olivares

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
Central District of California
Los Angeles
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:18-17781 Felix Anibal Diaz

Chapter 7

Adv#: 2:18-01274 Menchaca Chapter 7 Trustee v. Diaz et al

#11.00 Status Hearing RE: [2] Amended Complaint by Wesley H Avery on behalf of John Menchaca Chapter 7 Trustee against all defendants. (RE: related document(s)1 Adversary case 2:18-ap-01274. Complaint by John Menchaca Chapter 7 Trustee against Felix Anibal Diaz, Cecilia Giron Diaz. (Charge To Estate). Nature of Suit: (41 (Objection / revocation of discharge - 727(c),(d),(e))) filed by Plaintiff John Menchaca Chapter 7 Trustee). (Avery, Wesley)

Docket 2

Tentative Ruling:

12/10/2018

The Clerk of the Court entered default against the Defendants on November 8, 2018. Doc. Nos. 13–14. In his Unilateral Status Report, the Trustee requests direction regarding the Court’s preferences for adjudicating motions for default judgment, including whether the motion can be brought on an *ex-parte* basis. Good cause appearing, the Court HEREBY ORDERS as follows:

- 1) The Trustee shall file a Motion for Default Judgment (the "Motion") by no later than **January 18, 2018**.
- 2) Because Defendants have not appeared and have not communicated with the Trustee, the Motion may be brought on an *ex-parte* basis. *See* Civil Rule 55(b)(2) (requiring service of a motion for default judgment only upon a party who "has appeared personally or by a representative"); *see also* Local Bankruptcy Rule 7055-1(b)(1)(E) (requiring service of motions for default judgment upon the defaulted party only if mandated by Civil Rule 55(b)(2)).
- 3) The Trustee may set the Motion for hearing but is not required to do so. If the Motion is set for hearing, at least 21 days’ notice to the Court shall be provided.

The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

CONT... Felix Anibal Diaz

Chapter 7

at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Felix Anibal Diaz

Represented By
Glenn Park

Defendant(s):

Felix Anibal Diaz

Pro Se

Cecilia Giron Diaz

Pro Se

Joint Debtor(s):

Cecilia Giron Diaz

Represented By
Glenn Park

Plaintiff(s):

John Menchaca Chapter 7 Trustee

Represented By
Wesley H Avery

Trustee(s):

John J Menchaca (TR)

Represented By
Wesley H Avery

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

Adv#: 2:18-01276 LeClair v. United States Of America (Treasury Department, Int

#12.00 Status HearingRE: [1] Adversary case 2:18-ap-01276. Complaint by Jeremy Wyatt LeClair against United States Of America (Treasury Department, Internal Revenue Service Division) . (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a) (1),(14),(14A) priority tax claims)). Adversary transferred-in from Western District of North Carolina (Charlotte) and Adversary Proceeding #: 18-03043 to Central District of California (Los Angeles). (Ly, Lynn) Additional attachment(s) added on 8/30/2018 (Ly, Lynn). Additional attachment(s) added on 8/30/2018 (Ly, Lynn).

Docket 1

Tentative Ruling:

12/10/2018

The Court is prepared to grant the United States Trustee's unopposed motion seeking a 90-day extension of the deadline to file a complaint objecting to the debtor's discharge and/or a motion to dismiss pursuant to §707(b)(3). *See* Cal. No. 103, below. If the UST files a complaint objecting to discharge and prevails, or if the case is dismissed under §707(b)(3), this action will be rendered moot. The Court finds it appropriate to stay this action until it has been determined whether the Debtor will receive a discharge and/or whether the case will be dismissed. Accordingly, the Court HEREBY ORDERS as follows:

- 1) This action is STAYED pending further order of the Court. The litigation deadlines previously ordered are VACATED.
- 2) The United States shall not be required to respond to the Complaint at this time. In the event the case is not dismissed and it is determined that the Debtor is eligible to receive a discharge, the Court will set a new deadline for the United States to respond to the Complaint.
- 3) A continued Status Conference shall be held on **May 14, 2019, at 10:00 a.m.** A Joint Status Report shall be submitted by no later than fourteen days prior to the hearing.

The Court will prepare and enter an appropriate order.

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10:00 AM

CONT... Jeremy Wyatt LeClair

Chapter 7

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Defendant(s):

United States Of America (Treasury

Pro Se

Plaintiff(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:15-27769 Crystal Waterfalls LLC

Chapter 11

Adv#: 2:16-01145 Liberty Asset Management Corporation v. Crystal Waterfalls, LLC et al

#13.00 Status Conference

RE: [1] Adversary case 2:16-ap-01145. Complaint by Liberty Asset Management Corporation against Crystal Waterfalls, LLC, Golden Bay Investments, LLC, Lucy Gao. (Charge To Estate). -[Complaint For (1) Declaratory Relief; And (2) Unjust Enrichment And Imposition Of Constructive Trust]- Nature of Suit: (91 (Declaratory judgment)),(02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) (Kwong, Jeffrey)

FR. 6-7-16; 3-14-17; 9-12-17; 1-16-18; 5-15-18; 7-17-18; 9-11-18

Docket 1

Tentative Ruling:

12/10/2018

The Court has previously found that resolution of the Chapter 11 case of Crystal Waterfalls, LLC ("Crystal") may resolve this action. *See* Order Continuing Pretrial Conference Pending Confirmation of Crystal Waterfalls, LLC's Chapter 11 Plan [Doc. No. 26]. On June 8, 2018, the Court entered an *Order Approving Motion for Structured Dismissal of Chapter 11 Case* [Bankr. Doc. No. 478] (the "Approval Order") in Crystal's bankruptcy case. The Approval Order provides that the structured dismissal of Crystal's Chapter 11 case shall occur through a two-step process. First, Crystal is required to make payments to various creditors, obtain orders disallowing certain claims, and satisfy various other conditions. Upon satisfaction of the conditions, Crystal's case will be dismissed.

Based upon its review of the Joint Status Report submitted by the parties, the Court finds that most of the actions contemplated by the Approval Order have been completed. Pursuant to the Plan Administrator's request, a continued Status Conference shall be held on **January 15, 2019, at 10:00 a.m.** A Joint Status Report shall be filed by no later than fourteen days prior to the hearing.

The Court will prepare and enter an order setting the continued Status Conference.

No appearance is required if submitting on the court's tentative ruling. If you

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10:00 AM

CONT... Crystal Waterfalls LLC Chapter 11

intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Crystal Waterfalls LLC	Represented By Ian Landsberg
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Defendant(s):

Crystal Waterfalls, LLC	Pro Se
Golden Bay Investments, LLC	Pro Se
Lucy Gao	Pro Se

Plaintiff(s):

Liberty Asset Management	Represented By Jeffrey S Kwong
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U.S. Trustee(s):

United States Trustee (LA)	Pro Se
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Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

Adv#: 2:18-01179 Official Committee of Unsecured Creditors of Garde v. Starstone National

#14.00 Status Hearing

RE: [1] Adversary case 2:18-ap-01179. Complaint by Official Committee of Unsecured Creditors of Gardens Regional Hospital and Medical Center, Inc. against Starstone National Insurance Company fka TORUS NATIONAL INSURANCE COMPANY. (Charge To Estate). for Avoidance and Recover of Preferential Transfers Pursuant to 11 U.S.C. Section 547 and 550 Nature of Suit: (12 (Recovery of money/property - 547 preference)) (Golden, Jeffrey)

fr: 8-22-18; 11-13-18

Docket 1

***** VACATED *** REASON: CONTINUED 2-12-19 AT 10:00 A.M.**

Tentative Ruling:

See Cal. No. 4, above, incorporated in full by reference.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe

Defendant(s):

Starstone National Insurance

Pro Se

Plaintiff(s):

Official Committee of Unsecured

Represented By
Jeffrey I Golden

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 11, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

Adv#: 2:18-01277 Verity Health System of California, Inc. v. Old Republic Insurance Company

#15.00 Status Hearing
RE: [2] Amended Complaint Amended Only to Include Complete Pages to
Complaint by Tania M Moyron on behalf of Verity Health System of California,
Inc. against City National Bank, Old Republic Insurance Company.

Docket 2

***** VACATED *** REASON: DISMISSED 11-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California,	Represented By
	Samuel R Maizel
	John A Moe
	Tania M Moyron

Defendant(s):

Old Republic Insurance Company	Pro Se
City National Bank	Pro Se

Plaintiff(s):

Verity Health System of California,	Represented By
	Tania M Moyron
	Samuel R Maizel

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

11:00 AM

2:18-16143 Sharlyce Borders

Chapter 7

#100.00 HearingRE: [30] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Cubby Wayne Williams (Maroko, Ron)

Docket 30

Tentative Ruling:

12/10/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 110(h)(5) for Fines Against Bankruptcy Petitioner Preparer for Failing to Comply with a Court Turnover Order; Request for Injunction Under 11 U.S.C. § 110(j)(3) [Doc. No. 30] (the "110 Motion")
2. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

On July 25, 2018, the Office of the United States Trustee (the "UST") filed a *Motion for Fines and/or Disgorgement of Fees Against Bankruptcy Petitioner Preparer* [Doc. No. 13] (the "Original 110 Motion") against Cubby Wayne Williams ("Williams") and Williams Financial Network ("WFN" and together with Williams, the "Respondents"). Following the expiration of the opposition deadline set forth in Local Bankruptcy Rule 9013-1(o), the Court entered an order granting the Original 110 Motion [Doc. No. 15] (the "110 Order") on August 20, 2018. Pursuant to the 110 Order, the Court (i) imposed fines against Williams in the total amount of \$15,000, payable to the UST within thirty-days of entry of the order, (ii) ordered Williams to disgorge \$300 to the Debtor; and (iii) directed Williams to file a declaration of compliance with the Court within forty-five days of entry of the order. The 110 Order specifically stated:

[F]ailure to file [the] declaration [of compliance] with the Court is presumptive evidence that the payment was not made to Sharlyce

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CONT...

Sharlyce Borders

Chapter 7

Borders and may subject Cubby Wayne Williams to a motion for additional fines under 11 U.S.C. § 110(h)(5) and an injunction against acting as a bankruptcy petition preparer under 11 U.S.C. § 110(j)(3).

Doc. No. 15, p. 2, lines 19-22.

On October 17, 2018, the UST filed the instant 110 Motion stating that Williams has not paid the \$15,000 fines to the UST and forty-five days have elapsed since entry of the Court's 110 Order and Williams has not filed a declaration attesting to his compliance with that order. Accordingly, the UST seeks an additional \$500 fine against Williams under section 110(h)(5) for his failure to comply with the Court's 110 Order. The UST further requests that the Court impose an injunction against Williams pursuant to section 110(j)(3) that enjoins him from acting as a bankruptcy petition preparer until he has fully complied with the 110 Order. **[Note 1]**

II. Findings of Fact and Conclusions of Law

As set forth in section 110(h)(5), "[a] bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order." 11 U.S.C. § 110(h)(5).

Based upon a review of the docket, and the Declaration of Ron Maroko filed in support of the 110 Motion, the Court finds that Williams has not complied with the 110 Order. The Court therefore imposes an additional fine of \$500 and orders the immediate turnover of such fine, as well as the \$15,000 in delinquent fines, to the UST. Williams is also directed to immediately disgorge and turnover \$300 to the Debtor in accordance with the 110 Order.

Section 110(j)(3) states,

The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States Trustee

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CONT... Sharlyce Borders
11 U.S.C. § 110(j)(3).

Chapter 7

In light of Williams' failure to comply with the 110 Order, or otherwise respond to this 110 Motion, the Court finds it appropriate to enjoin Williams from acting as a bankruptcy petition preparer until Williams demonstrates that he has fully complied with the 110 Order and paid the additional \$500 fine imposed herein.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

The UST shall lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The UST also requests that any injunction imposed by the undersigned bankruptcy Judge not be lifted until Williams makes a showing that he has fully complied with orders entered by other bankruptcy Judges in this district. Motion, fn. 1. The UST identifies the following cases: "the Brown case (2:18-bk-15089-BB);" "the Stiner-Lyons case (2:15-bk-27573-BB);" "the Dykes case (2:10-bk-50324-BR)." However, the UST has not identified any authority for this Court to enforce orders entered in cases not before the undersigned Judge. Further, the UST's request would usurp the authority of the judges in those cases to determine compliance with their own orders. Accordingly, that request is denied.

Party Information

Debtor(s):

Sharlyce Borders

Pro Se

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CONT... Sharlyce Borders

Chapter 7

Trustee(s):

Wesley H Avery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#101.00 Hearing
RE: [76] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 76

***** VACATED *** REASON: CONTINUED 12-19-18 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang

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Tuesday, December 11, 2018

Hearing Room 1568

11:00 AM

2:18-20901 Ben & Reef Gardens, Inc.

Chapter 11

#102.00 HearingRE: [12] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

Docket 12

Tentative Ruling:

12/10/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 12] (the "Motion")
2. Debtor's Response in Opposition to Motion to Dismiss [Doc. No. 23] (the "Opposition")
3. United States Trustee's Reply to Response in Opposition to Motion to Dismiss [Doc. No. 25 (the "Reply")

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Ben & Reef Gardens, Inc. ("Debtor"), filed this chapter 11 case on September 18, 2018. The Office of the United States Trustee (the "UST") seeks to convert this case to a case under chapter 7 based upon the follow:

- i. To date, no Disclosure Statement or Plan of Reorganization has been filed;
- ii. Debtor has not filed:
 - a. Notice of Setting/Increasing Insider Compensation;
 - b. Application to Employ Attorney;
 - c. Declaration of Debtor Regarding Compliance with U.S. Trustee Guidelines and Requirements for Chapter 11 Debtors In Possession ("Chapter 11 Compliance declaration");
 - d. Real Property Questionnaire(s);

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CONT...

Ben & Reef Gardens, Inc.

Chapter 11

- e. Sufficient evidence of closing of all pre-petition bank accounts including:
 - 1. Closing bank statements; and/or
 - 2. Bank Account Information in the Chapter 11 Compliance declaration;
- f. Sufficient evidence of the opening and maintenance of three debtor-in-possession bank accounts;
- g. Sufficient evidence of current insurance coverage including:
 - 1. The declaration page for each policy; and/or
 - 2. Insurance information in the Chapter 11 Compliance declaration
- h. Proof of required certificates and/or applicable licenses in the Chapter 11 Compliance declaration;
- i. A list of insiders as defined at 11 U.S.C. § 101(31) in the Chapter 11 Compliance declaration;
- j. Financial Statement information in the Chapter 11 Compliance declaration;
- k. A projected cash flow statement for the first ninety (90) days of operation under chapter 11;
 - l. A conformed copy(ies) of the recording of the Debtor's bankruptcy petition in each county in which real property is owned.
- m. A Statement of Major Issues and Timetable Report;
- n. Provide copies of the preceding two years of state and federal income tax returns and the most recent payroll and sales tax returns at the Initial Debtor Interview;
- o. An Employee Benefit Plan Questionnaire;
- p. Monthly Operating Reports ("MORS") since filing;
- q. Pay quarterly fees since filing; and
- iii. Debtor is a repeat filer. Prior filing for Debtor Ben & Reef Gardens, Inc., Case Number 2:14-bk-12962-ER, Chapter 7 Case filed on 2/18/2014, dismissed on 3/12/2014.

Motion, Declaration of Maria A. Ramos.

Debtor opposes conversion and asserts that the Debtor has cured all of the above-referenced deficiencies and is now in compliance with the UST's filing and reporting requirements. The Debtor also states that it has been working toward resolving the claims of its primary creditor and has submitted a settlement proposal that, if accepted, will facilitate a consensual resolution of this case. If not accepted, the Debtor will proceed with filing a disclosure statement and plan of reorganization.

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Based on the foregoing, the Debtor requests that the Court deny the Motion.

The UST submits the following arguments in Reply to the Debtor's Opposition:

1. The Opposition was filed five days late, on December 2, 2018, leaving the UST little time to prepare this Reply.
2. The Debtor has been lackadaisical in fulfilling its debtor-in-possession requirements. Debtor waited almost 3 months to file its 7-day package and only did so on the eve of the hearing on this Motion. Moreover, the 7-day package is still deficient because the following items are still missing: (i) insurance for 3222 Agua Dulce Canyon Road, Santa Clarita, CA expired on May 23, 2018; (ii) no voided DIP checks have been provided for two accounts; (iii) no projected cash flow for the first 90 days; and (iv) no tax returns.
3. The Debtor's original Schedules and Statement of Financial Affairs ("SOFA") were essentially blank and Debtor did not file amended Schedules or SOFA until the day after the continued 341(a) Meeting of Creditors took place.
4. The Debtor's principal, Ronit Waizgan, continues to fail to fulfill her fiduciary duties. At the third 341(a) Meeting of Creditors, the Debtor's principal testified that (i) Mr. Yakovi loaned money to the Debtor post-petition without court authorization and this was not listed on the monthly operating report; (ii) the Debtor collected rent but did not properly report them on the monthly operating report; (iii) the city collected rents on one of the Debtor's properties and this was not accounted for on the monthly operating report; and (iv) the Debtor has never filed tax returns. Additionally, Ms. Waizgan showed little knowledge about the Debtor even though she is the one who signed the Schedules.

Based upon the foregoing, the UST requests that the Court convert this case.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including in relevant part: "(B) gross mismanagement of the estate; (C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(F) unexcused failure to satisfy timely any

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filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consolidated Pioneer Mortgage Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

In this case, the Court finds that sufficient "cause" exists within the meaning of § 1112(b) to convert this case to a case under chapter 7. As set forth in the Declarations of Maria A. Ramos and Gary Baddin filed in support of the Motion and Reply, the Debtor has enjoyed the benefit of an approximately 90-day breathing spell yet inexplicably failed to comply with almost all of its obligations as a debtor-in-possession. The Debtor offers no explanation for its derogation of duties. Instead, the Opposition simply acknowledges the deficiencies and states that the Debtor is now in compliance with all UST filing and reporting requirements. However, the UST represents in its Reply that several deficiencies remain.

The Court finds it even more troubling that Debtor's principal appears to lack the necessary competence to manage the affairs of the Debtor as a debtor-in-possession. The UST's evidence supports a finding that there has been a gross mismanagement of the estate and the Court has no confidence that the Debtor and its chosen counsel are capable of navigating their way through confirmation of a plan of reorganization.

For these reasons, the Motion is GRANTED under § 1112(b)(4)(B), (C), (F), and (H). Based upon the representations by the UST, and the Court's review of the Debtor's Schedules, there appear to be assets that a trustee can administer for the benefit of creditors. Accordingly, the case is CONVERTED to a case under Chapter 7.

The UST is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Ben & Reef Gardens, Inc.

Represented By
William H Brownstein

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11:00 AM

2:18-20111 Jeremy Wyatt LeClair

Chapter 7

#103.00 HearingRE: [12] Motion for extension of time to file a complaint objecting to discharge Under 11 U.S.C. 727 and.or Motion to Dismiss Under 11 U.S.C 707 by the United States Trustee and/or the Chapter 7 Trustee; Memorandum of Points and Authorities; Declaration of Dare Law in Support Thereof (Mar, Alvin)

Docket 12

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of the United States Trustee for Extension of Deadline Date for Filing a Complaint Objecting to Debtor's Discharge Under 11 U.S.C. §727 and/or Motion to Dismiss Under Section 707 by the United States Trustee and/or the Chapter 7 Trustee [Doc. No. 12] (the "Motion")
 - a) Request for Judicial Notice in Support of Motion for Extension of Time to Object to Discharge Under 11 U.S.C. §727 and/or §707
- 2) No opposition to the Motion is on file

I. Facts and Summary of Pleadings

Jeremy Wyatt LeClair (the "Debtor") commenced a voluntary Chapter 7 case on August 29, 2018 in the Western District of North Carolina (Charlotte). On August 30, 2018, the case was transferred to the Central District of California, Los Angeles Division. The United States Trustee (the "UST") requests a 90-day extension of the deadline for filing a motion to dismiss under §707(b)(3) and/or a complaint objecting to the Debtor's discharge under §727, and requests that the extension be made applicable to both the UST and the Chapter 7 Trustee. The UST states that it needs additional time to investigate the Debtor's scheduled debts of over \$63 million. The UST states that the extension is necessary because the Debtor failed to produce documents requested by the UST and failed to appear at the October 4, 2018 meeting of creditors. No opposition to the Motion is on file.

II. Findings and Conclusions

Bankruptcy Rule 4004(a) requires that a complaint objecting to a debtor's

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discharge be filed within 60 days after the first date set for the §341(a) meeting of creditors. Bankruptcy Rule 4004(b) provides that the deadline may be extended "for cause," provided that the motion for an extension is filed before the deadline has expired.

Bankruptcy Rule 1017(e)(1) requires that a motion to dismiss brought under § 707(b)(3) be filed within 60 days after the first date set for the §341(a) meeting of creditors, unless the deadline is extended "for cause."

Here, the UST has shown cause for a 90-day extension of both the deadline for filing a §727 complaint and the deadline for filing a motion to dismiss under §707(b)(3). The Debtor's failure to respond to the UST's requests for documentation or to appear at the October 4, 2018 meeting of creditors justifies the extension.

The Motion is GRANTED in its entirety. The UST shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jeremy Wyatt LeClair

Represented By
Michael K Elliot

Trustee(s):

Sam S Leslie (TR)

Pro Se

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11:00 AM

2:18-18972 Juan Carlos Navarro Vazquez and Angelina F Lopez

Chapter 7

#104.00 HearingRE: [19] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer German Pena; request for sec. 110(i) damages related to docket # 18) (hearing date:12/11/18) (Maroko, Ron)

Docket 19

Tentative Ruling:

12/10/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 110 for Fines and/or Disgorgement of Fees Against Bankruptcy Petition Preparer; Request for § 110(i) Damages [Doc. No. 19] (the "110 Motion")
2. Request for Judicial Notice in Support of 110 Motion [Doc. No. 20] ("RJN")
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

The Office of the United States Trustee (the "UST") seeks an order assessing fines and/or disgorgement of fees against German Pena ("Respondent"). The UST alleges that Respondent is a bankruptcy petition preparer within the meaning of section 110(a)(2), having received compensation from the debtors in this case for preparing the debtors' bankruptcy petition and schedules. **[Note 1]** The UST further alleges that Respondent's actions or omissions in connection with preparing the debtors' petition and schedules resulted in violations of sections 110(b)(1), (b)(2), (c)(1), (h)(2), and (f). Accordingly, the UST requests that this Court assess \$500 in fines against Respondent for each of the nine violations, for a total fine of \$4,500. The UST also contends that Respondent failed to disclose his identity, thereby warranting a trebling of the fines under § 110(1)(2)(D), such that the total fines payable to the UST should be \$13,500.

Next, the UST states that the Debtors testified that they paid Respondent \$1,500

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in compensation for bankruptcy preparation services. However, in light of the multiple violations of section 110, the UST contends that Respondent's fees exceeded the reasonable value of Respondent's services and should be entirely disgorged. Alternatively, the UST asserts that the Court should order Respondent to disgorge all fees because he has previously been enjoined from preparing or assisting in the preparation of bankruptcy documents. Motion, fn. 5, citing Case No. 2:14-bk-23297-ER. **[Note 2]** The UST contends that pursuant to section 110(i), this court should exercise its authority and order liquidating damages in the amount of \$3,000.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

1. Bankruptcy Petition Preparer

Section 110(a) defines "bankruptcy petition preparer" as a "person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing[.]" *See In re Crowe*, 243 B.R. 43, 49 (9th Cir. BAP 1999) *aff'd*, 246 F.3d 673 (9th Cir. 2000) (quoting an earlier version 11 U.S.C. § 110(a)).

Respondent's status as a bankruptcy petition preparer is not in dispute, and the Court finds that, based on the Declarations of Juan Carlos Navarro Vasquez (the "Vasquez Decl."), and Maria Ramos ("Ramos Decl."), Respondent falls squarely within the definition set forth in § 110(a).

2. Violations of 11 U.S.C. § 110

As stated above, the Court finds that Respondent is a bankruptcy petition preparer and liable for five violations of 11 U.S.C. § 110.

a. Violation of § 110(b)(1)

Section 110(b)(1) provides: "A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address." For purposes of § 110, the Schedules, Statement of Affairs,

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Statement of Intention, and petition are considered four separate documents. The petition preparer's failure to sign any one of these documents constitutes separate violations of § 110. *In re Jolly*, 313 B.R. 295, 300 (Bankr. S.D. Iowa 2004).

The evidence filed in support of the 110 Motion reveals that Respondent failed to sign the petition, schedules or statement of financial affairs or file Official Form 119 as required by § 110(b)(1). Exhibit B, pp 12-24, Exhibit C, pp. 25-84 and specifically pages 19, 57, and 69. Therefore, the Court finds Respondent committed three violations of § 110(b)(1).

b. Violation of § 110(b)(2)

Section 110(b)(2) states that "before preparing any document for filing or accepting any fees from or on behalf of a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice . . . inform[ing] the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice." This notice to debtor shall be signed by both preparer and debtor and must be filed with the Court at the time the prepared documents are filed. 11 U.S.C. § 110(b)(2).

The evidence filed in support of the 110 Motion reveals that Respondent failed to ever file Official Form 119. Exhibit B, pp. 12-24. Therefore, the Court finds Respondent committed one violation of § 110(b)(2).

c. Violation of § 110(c)(1)

Section 110(c)(1) mandates that petition preparers "shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document" (petition preparers commonly use a social security number as the identifying number).

The evidence filed in support of the 110 Motion reveals that Respondent failed to place an identifying number of the forms as required by this section. Exhibit B, pp. 12-24. Therefore, the Court finds Respondent committed three violation of § 110(c)(1).

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d. Violation of § 110(h)(2)

Section 110(h)(2) requires petition preparers to file with the petition a declaration under penalty of perjury "disclosing any fees received from the debtor or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor."

The evidence filed in support of the 110 Motion reveals that Respondent failed to file any declaration under penalty of perjury that accurately disclosed the fee received from the Debtors concurrently with the petition. Exhibit B, pp. 12-24. Therefore, the Court finds Respondent committed one violation of § 110(h)(2).

e. Violation of § 110(f)

Section 110(f) prohibits "[a] bankruptcy petition preparer" from "us[ing] the word 'legal' or any similar term in any advertisements, or advertise under any category that includes the word 'legal' or any similar term."

In support of the 110 Motion, the UST attached a copy of Respondent's business card identifying Respondent as "Peser Legal Academy, Inc.," with a website of "peserlaw.com." Exhibit A. Therefore, for using the word "legal" in its business card, the Court finds that Respondent committed one violation of § 110(f).

Based upon the foregoing, the Court finds Respondent liable for nine violations of § 110.

e. Disgorgement of Fees

Under section 110(h)(3)(A)(i), the court shall order the turnover of all fees in excess of the reasonable value of the services rendered for the documents prepared. Additionally, section 110(h)(3)(B) provides: "All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with . . . subsection (b), (c), (d), (e), (f), or (g)."

Here, the Court finds that disgorgement is appropriate pursuant to § 110(h)(3)(B), based on Respondent's violations of section 110. Accordingly, the \$1,500 paid for

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CONT... Juan Carlos Navarro Vazquez and Angelina F Lopez

Chapter 7

Respondent's services are ordered disgorged.

f. Liquidated damages

Under section 110(i)(1), this Court can order the bankruptcy petition preparer to pay (a) the debtor's actual damages and (b) the greater of \$2,000 or twice the amount paid by the debtor if this Court determines the bankruptcy petition preparer's actions were fraudulent, unfair or deceptive. 11 U.S.C. § 110(i)(1)(A), (B), (i) and (ii).

In this case, debtor Juan Carlos Navarro Vasquez testified that Respondent "told [Debtors] to say that Marisol Ville filed the papers" for debtors and to include other false information in their bankruptcy papers. Ramos Decl., 1:17-22. The Court finds this type of conduct is intentionally deceptive and fraudulent, especially in light of this Court's prior order enjoining Respondent from acting as a bankruptcy petition preparer. Accordingly, Respondent is ordered to pay Debtors \$3,000 in liquidated damages.

g. Trebling of Fines

Under section 110(l)(1), the court shall triple the amount of a fine in any case in which the court finds that a bankruptcy petition preparer:

- (A) advised the debtor to exclude assets or income that should have been included on applicable schedules;
- (B) advised the debtor to use a false Social Security account number;
- (C) failed to inform the debtor that the debtor was filing for relief under this title; or
- (D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

11 U.S.C. § 110(l)(1).

Here, in light of this Court's prior order enjoining Respondent from acting as a bankruptcy petition preparer and Respondent's failure to disclose his identity when preparing Debtor's documents, the Court finds it appropriate to treble fines pursuant to section 110(l)(1)(D) for a total fine of \$13,500.

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CONT... Juan Carlos Navarro Vazquez and Angelina F Lopez

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Based on the foregoing, the Motion is GRANTED. Respondent is liable for five violations of 11 U.S.C. § 110, warranting an order assessing \$7,500 in treble fines against Respondent, to be turned over to the UST's office within thirty-days of the entry of an order on this 110 Motion.

Furthermore, pursuant to § 110(h)(3)(B), the \$1,500 payment is ordered disgorged and turned over to the Debtors and Respondent is ordered to pay an additional \$3,000 in liquidated damages to the Debtors within forty-five days of the entry of an order on this 110 Motion.

The UST shall lodge a conforming order, incorporating this ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The UST has concurrently filed a separate motion under section 110 seeking fines and disgorgement against Marisol Valle and Peser Legal Academy, Inc., in connection with services assisting the debtors prepare their petition and schedules in this case (*see* Calendar No. 104, December 11, 2018 at 11:00 a.m.). As set forth in footnote 1 of the Court's tentative ruling for that matter, the Court finds it appropriate to grant both of the UST's motions and assess fines against Mr. Pena, Ms. Valle, and Peser Legal Academy, Inc.

Note 2: On September 30, 2014, this Court entered an *Order on U.S. Trustee's Motion Under 11 U.S.C. § 110 for Fines and/or Disgorgement of Fees Against Bankruptcy Petition Preparer* [2:14-bk-23297-ER; Doc. No. 13] (the "First Penalties Order") imposing fines of \$10,500.00 against Mr. German Pena and ordering disgorgement of \$900.00 in monies received from the debtor based upon this Court's

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findings that Mr. Pena violated numerous provisions of 11 U.S.C. § 110. Mr. Pena failed to comply with the First Penalties Order. Accordingly, on April 9, 2015, this Court entered a further *Order on U.S. Trustee's Motion Under 11 U.S.C. § 110(h)(5) for Fines Against Bankruptcy Petition Preparer; Injunction* [2:14-bk-23297-ER; Doc. No. 26] (the "Second Penalties Order"). Pursuant to the Second Penalties Order, this Court imposed an additional \$500 penalty against Mr. Pena, ordered Mr. Pena to immediately pay all outstanding amounts previously assessed, and enjoined Mr. Pena from "preparing or assisting in preparing any bankruptcy documents for filing in the Central District of California" Mr. Pena has not complied with the Second Penalties Order. Therefore, Mr. Pena is in contempt of Court for his failure to comply with the First Penalties Order and the Second Penalties Order and this Court's injunction remains in full force and effect.

Party Information

Debtor(s):

Juan Carlos Navarro Vazquez	Pro Se
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Joint Debtor(s):

Angelina F Lopez	Pro Se
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Trustee(s):

Heide Kurtz (TR)	Pro Se
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**United States Bankruptcy Court
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Hearing Room 1568

11:00 AM

2:18-18972 Juan Carlos Navarro Vazquez and Angelina F Lopez

Chapter 7

#104.10 HearingRE: [15] Motion for fine and/or disgorgement of fees against bankruptcy petition preparer Marisol Valle and Peser Legal Academy, Inc. (Maroko, Ron)

Docket 15

Tentative Ruling:

12/10/2018

For the reasons set forth below, the Motions is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion Under 11 U.S.C. § 110 for Fines and/or Disgorgement of Fees Against Bankruptcy Petition Preparer [Doc. No. 15] (the "110 Motion")
2. Notice of Hearing on 110 Motion [Doc. No. 18]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

The Office of the United States Trustee (the "UST") seeks an order assessing fines and/or disgorgement of fees against Marisol Valle ("Valle") and Peser Legal Academy, Inc. ("PLA," and together with Valle, the "Respondent"). The UST alleges that Respondent is a bankruptcy petition preparer within the meaning of section 110(a)(2), having received compensation from the debtors in this case for preparing the debtors' bankruptcy petition and schedules. **[Note 1]** The UST further alleges that Respondent's actions or omissions in connection with preparing the debtors' petition and schedules resulted in violations of sections 110(b)(1), (b)(2), (c)(1), (h)(2) and (f). Accordingly, the UST requests that this Court assess \$500 in fines against Respondent for each of the five violations, for a total fine of \$2,500, and direct Respondent to turn over such funds to the UST.

Next, the UST states that the Debtors testified that they paid Respondent \$200 in compensation for bankruptcy preparation services. However, in light of the multiple violations of section 110, the UST contends that Respondent's fees exceeded the

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reasonable value of Respondent's services. Therefore, the UST requests the Court order Respondent to disgorge the entire \$200 in fees and return those funds directly to the Debtor.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

1. Bankruptcy Petition Preparer

Section 110(a) defines "bankruptcy petition preparer" as a "person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing[.]" *See In re Crowe*, 243 B.R. 43, 49 (9th Cir. BAP 1999) *aff'd*, 246 F.3d 673 (9th Cir. 2000) (quoting an earlier version 11 U.S.C. § 110(a)).

Respondent's status as a bankruptcy petition preparer is not in dispute, and the Court finds that, based on the Declarations of Juan Carlos Navarro Vasquez (the "Vasquez Decl."), and Maria Ramos ("Ramos Decl."), Respondent falls squarely within the definition set forth in § 110(a).

2. Violations of 11 U.S.C. § 110

As stated above, the Court finds that Respondent is a bankruptcy petition preparer and liable for five violations of 11 U.S.C. § 110.

a. Violation of § 110(b)(1)

Section 110(b)(1) provides: "A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address." For purposes of § 110, the Schedules, Statement of Affairs, Statement of Intention, and petition are considered four separate documents. The petition preparer's failure to sign any one of these documents constitutes separate violations of § 110. *In re Jolly*, 313 B.R. 295, 300 (Bankr. S.D. Iowa 2004).

The evidence filed in support of the 110 Motion reveals that Respondent failed to

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sign the petition as required by § 110(b)(1). Exhibit B, pp 12-24. Therefore, the Court finds Respondent committed one violation of § 110(b)(1).

b. Violation of § 110(b)(2)

Section 110(b)(2) states that "before preparing any document for filing or accepting any fees from or on behalf of a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice . . . inform[ing] the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice." This notice to debtor shall be signed by both preparer and debtor and must be filed with the Court at the time the prepared documents are filed. 11 U.S.C. § 110(b)(2).

The evidence filed in support of the 110 Motion reveals that Respondent failed to timely sign and file Official Form 119 concurrently with the filing of the petition on August 3, 2018. Exhibit B, pp. 12-24. Instead, Respondent waited until August 15, 2018 to sign Official Form 119 and another two days, until August 17, 2018, to file the form on the docket (Doc. No. 9). Therefore, the Court finds Respondent committed one violation of § 110(b)(2).

c. Violation of § 110(c)(1)

Section 110(c)(1) mandates that petition preparers "shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document" (petition preparers commonly use a social security number as the identifying number).

The evidence filed in support of the 110 Motion reveals that Respondent failed to place an identifying number of the forms as required by this section. Exhibit B, pp. 12-24. Therefore, the Court finds Respondent committed one violation of § 110(c)(1).

d. Violation of § 110(h)(2)

Section 110(h)(2) requires petition preparers to file with the petition a declaration under penalty of perjury "disclosing any fees received from the debtor or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any

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CONT... Juan Carlos Navarro Vazquez and Angelina F Lopez
unpaid fee charged to the debtor."

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The evidence filed in support of the 110 Motion reveals that Respondent failed to timely file a declaration under penalty of perjury that accurately disclosed the fee received from the Debtors concurrently with the petition. Exhibit B, pp. 12-24. Therefore, the Court finds Respondent committed one violation of § 110(h)(2).

e. Violation of § 110(f)

Section 110(f) prohibits "[a] bankruptcy petition preparer" from "us[ing] the word 'legal' or any similar term in any advertisements, or advertise under any category that includes the word 'legal' or any similar term."

In support of the 110 Motion, the UST attached a copy of Respondent's business card identifying Respondent as "Peser Legal Academy, Inc.," with a website of "peserlaw.com." Exhibit A. Therefore, for using the word "legal" in its business card, the Court finds that Respondent committed one violation of § 110(f).

e. Disgorgement of Fees

Under section 110(h)(3)(A)(i), the court shall order the turnover of all fees in excess of the reasonable value of the services rendered for the documents prepared. Additionally, section 110(h)(3)(B) provides: "All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with . . . subsection (b), (c), (d), (e), (f), or (g)."

Here, the Court finds that disgorgement is appropriate pursuant to § 110(h)(3)(B), based on Respondent's violations of section 110. [Note 2] Accordingly, the \$200.00 paid for Respondent's services are ordered disgorged.

Based on the foregoing, the Motion is GRANTED. Respondent is liable for five violations of 11 U.S.C. § 110, warranting an order assessing \$2,500 in fines against Respondent, to be turned over to the UST's office within thirty-days of the entry of an order on this 110 Motion.

Furthermore, pursuant to § 110(h)(3)(B), the \$200.00 payment is ordered

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disgorged and turned over to the Debtors within forty-five days of the entry of an order on this 110 Motion.

The UST shall lodge a conforming order, incorporating this ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The UST has concurrently filed a separate motion under section 110 seeking fines and disgorgement against German Pena in connection with his services assisting the debtors prepare their petition and schedules in this case (*see* Calendar No. 104, December 11, 2018 at 11:00 a.m.). As set forth in the declaration of Juan Carlos Navarro Vasquez (translated by the declaration of Maria Ramos), Mr. Vasquez states that he was referred to Mr. Pena for bankruptcy assistance and that co-debtor Angelina Lopez and he were never introduced to Ms. Valle, although they did see her. Ramos Decl., 1:8, 17-22. However, Ms. Valle's name and signature appear on the Declaration and Signature of Bankruptcy Petition Preparer filed in the Debtors' case (Exhibit 1, pp. 26-27). Additionally, the UST attached a copy of an order issued in another case in this district in which Mr. Pena, Ms. Valle, and Peser Legal Academy, Inc., were determined to be jointly and severally liable for violating section 110 and ordered to pay fines and disgorge any monies received in connection with bankruptcy petition services in that case. *See* Motion, Exhibit D (Case No. 2:17-bk-25234-BB, Doc. No. 22). Accordingly, the Court finds it appropriate to grant both of the UST's motions and assess fines against Mr. Pena, Ms. Valle, and Peser Legal Academy, Inc.

Note 2: The Court further finds disgorgement is appropriate because, as the UST points out, Respondent has previously been fined for similar violations. Motion, Exhibit D, pp. 28-30 (Case No. 2:17-bk-25234-BB).

Party Information

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11:00 AM

CONT... Juan Carlos Navarro Vazquez and Angelina F Lopez

Chapter 7

Debtor(s):

Juan Carlos Navarro Vazquez Pro Se

Joint Debtor(s):

Angelina F Lopez Pro Se

Trustee(s):

Heide Kurtz (TR) Pro Se

**United States Bankruptcy Court
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Tuesday, December 11, 2018

Hearing Room 1568

11:00 AM

2:17-22974 Rideshare Port Management, LLC

Chapter 11

#105.00 Hearing
RE: [12] Status of U.S. Trustee fees

FR. 11-13-18

Docket 129

Tentative Ruling:

12/10/2018

Hearing required only if payment of UST fees has not been made. Parties are to file a stipulation re status of fees which will resolve the motion without hearing.

Party Information

Debtor(s):

Rideshare Port Management, LLC

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

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Tuesday, December 11, 2018

Hearing Room 1568

11:00 AM

2:17-22975 Red Booth, Inc.

Chapter 11

#106.00 Hearing
RE: [135] Status of U.S. Trustee fees/

fr. 11-13-18

Docket 135

Tentative Ruling:

12/10/2018

Hearing required only if payment of UST fees has not been made. Parties are to file a stipulation re status of fees which will resolve the motion without hearing.

Party Information

Debtor(s):

Red Booth, Inc.

Represented By
Sandford L. Frey
Crystal H Thorton-Illar
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 12, 2018

Hearing Room 1568

10:00 AM

2:17-18805 ROBERT MARK CARPENTER

Chapter 7

Adv#: 2:17-01512 Rosenberg et al v. CARPENTER

#1.00 Show Cause Hearing
RE: [44] Order (1) Requiring Plaintiff To Show Cause Why This Action Should Not Be Dismissed For Failure To Prosecute And (2) Vacating November 6, 2018 Continued Hearing On Plaintiffs' Motion For Summary Judgment.

Docket 1

***** VACATED *** REASON: CONTINUED 1-23-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ROBERT MARK CARPENTER

Represented By
Paul C Nguyen

Defendant(s):

ROBERT MARK CARPENTER

Pro Se

Plaintiff(s):

Fred Rosenberg

Represented By
Leonard Pena

FRIENDGIFTR, INC

Represented By
Leonard Pena

Trustee(s):

Timothy Yoo (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, December 12, 2018

Hearing Room 1568

10:00 AM

2:18-18329 Edwin Wellington Terry

Chapter 7

- #2.00 Show Cause Hearing
RE: [10] Order Requiring Petitioning Creditor To Appear And Show Cause Why This Involuntary Petition Should Not Be Dismissed.

Docket 1

Tentative Ruling:

12/11/2018

The case is dismissed for the reasons set forth below.

Pleadings Filed and Reviewed:

- 1) Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not be Dismissed [Doc. No. 10-1] (the "OSC")
 - a) Bankruptcy Noticing Center Certificate of Notice [Doc. No. 13]
- 2) No response to the OSC has been filed

I. Facts and Summary of Pleadings

On October 23, 2018, the Court issued an *Order Requiring Petitioning Creditor to Appear and Show Cause Why this Involuntary Petition Should Not be Dismissed* [Doc. No. 10-1] (the "OSC"). The OSC required the Petitioning Creditor to file a written response to the following *Preliminary Findings and Conclusions* by no later than November 13, 2018:

On July 20, 2018, Petro-Token Management LLC (the "Petitioning Creditor") commenced an *Involuntary Petition Against an Individual* [Doc. No. 1] (the "Involuntary Petition") against Edwin Wellington Terry (the "Alleged Debtor"). Petitioning Creditor's authorized representative is Marshall Broadway. Mr. Broadway is not licensed to practice law in the State of California, and Petitioning Creditor is not represented by any other individual who is licensed to practice law in the State of California.

It is well established that a corporation, trust, limited liability company, or

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CONT...

Edwin Wellington Terry

Chapter 7

other type of business entity "may appear in the federal courts only through licensed counsel." *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202 (1993). This requirement is reiterated in Local Bankruptcy Rule ("LBR") 9011-2(a). Here, the Petitioning Creditor is a business entity but is not represented by counsel. Because the Petitioning Creditor is not represented by counsel, it is not authorized to appear before the Court. Consequently, the Court cannot take into consideration the Petitioning Creditor's representation that it holds a claim against the Alleged Debtor. There being no evidence before the Court that the Petitioning Creditor is entitled to an order for relief against the Alleged Debtor, the Involuntary Petition must be dismissed.

Even if Petitioning Creditor was represented by counsel, the Involuntary Petition does not establish that Petitioning Creditor is entitled to an order for relief against the Alleged Debtor. Pursuant to §303(b)(2), a single Petitioning Creditor is entitled to an order for relief if that Petitioning Creditor holds a noncontingent, undisputed claim of at least \$15,775 against the Alleged Debtor. Here, the Involuntary Petition asserts that the Petitioning Creditor holds a claim of \$12,500. Because the alleged debt does not meet the threshold set forth in §303(b)(2), Petitioning Creditor is not entitled to entry of an order for relief even assuming that the allegations set forth in the Involuntary Petition are true.

OSC at 3.

The OSC further required the Petitioning Creditor to provide additional information to the Court, and set forth the reasons why the additional information was required:

Mr. Broadway has represented to the Court that he is the Petitioning Creditors' authorized representative. The Involuntary Petition does not indicate the jurisdiction in which the Petitioning Creditor has been incorporated. The Court has been unable to verify the corporate existence of the Petitioning Creditor. The records of the California Secretary of State establish that no business entities bearing the name "Petro-Token Management LLC" or names similar thereto have been incorporated in the State of California.

Petitioning Creditor is entitled to the relief demanded only if it is a valid

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CONT...

Edwin Wellington Terry

Chapter 7

corporate entity. To enable the Court to verify the Petitioning Creditor's corporate existence, Mr. Broadway shall file the following documents with the Court:

- 1) The Petitioning Creditors' Articles of Incorporation.
- 2) Documents evidencing Mr. Broadway's authority to take action on behalf of the Petitioning Creditor.
- 3) If applicable, documents showing that any suspension of the Petitioning Creditor's corporate status has been cured through reinstatement.

Mr. Broadway shall submit a declaration, signed under penalty of perjury, authenticating the documents set forth above. Mr. Broadway's declaration shall also set forth the date of the Petitioning Creditor's incorporation and the jurisdiction in which the Petitioning Creditor was incorporated.

OSC at 3-4.

Petitioning Creditor has failed to respond to the OSC.

II. Findings and Conclusions

The *Preliminary Findings and Conclusions* are hereby adopted as the findings of the Court, and the case is dismissed based upon those findings. In addition, Petitioning Creditor's failure to supply the additional information required by the OSC further supports dismissal.

The Court will prepare and enter an order dismissing the case.

Party Information

Debtor(s):

Edwin Wellington Terry

Pro Se

**United States Bankruptcy Court
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Wednesday, December 12, 2018

Hearing Room 1568

10:00 AM

2:12-50423 Deborah Earle

Chapter 11

#3.00 Status Hearing re post confirmation status conference

fr. 11-8-16; 2-7-17; 6-13-17; 9-12-17; 12-12-17; 3-13-18' 6-12-18; 9-12-18

Docket 0

Tentative Ruling:

12/11/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor's Post Confirmation Report on Status of Reorganization [Doc. No. 438], the Court CONTINUES the status conference to February 13, 2019 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Deborah Earle

Represented By
Anthony Obehi Egbase
Crystle J Lindsey
Edith Walters

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Wednesday, December 12, 2018

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#4.00 Status Hearing
RE: [131] post confirmation status conference

fr. 5-2-17; 8-30-17; 12-27-17; 1-3-18; 4-4-18; 9-18-18

Docket 131

*** VACATED *** REASON: CONTINUED 12-19-18 AT 10:00 A.M.

Tentative Ruling:

9/17/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor's Post Confirmation Report on Status of Reorganization [Doc. No. 185], the Court CONTINUES the status conference to December 12, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

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Wednesday, December 12, 2018

Hearing Room 1568

10:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger

Chapter 11

#5.00 Hearing
RE: [301] Confirmation of the Joint Proposed Chapter
11 Plan of Reorganization

fr. 9-18-18; 12-5-18

Docket 301

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED and the Plan is CONFIRMED.

Pleadings Filed and Reviewed

1. Joint Proposed Chapter 11 Plan of Reorganization [Doc. No. 282] (the "Plan")
2. Joint Proposed Chapter 11 Disclosure Statement Describing Plan of Reorganization [Doc. No. 283] (the "Disclosure Statement")
 - a. Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan [Doc. No. 358]
 - b. Proofs of Service of Disclosure Statement, Plan, and Voting Package [Doc. Nos. 360, 361, 362]
 - c. Order Continuing Deadlines Pertaining to Plan Confirmation [Doc. No. 377]
 - i. Proof of Service of Order Continuing Deadlines Pertaining to Plan Confirmation [Doc. No. 389]
3. Order Granting Debtor and Debtor-In-Possession's Motion for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and all Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 413]
 - a. Motion by Debtor and Debtor-In-Possession for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf

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CONT...

Pac Anchor Transportation Consisting of the Merger

Chapter 11

- of Themselves and all Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 286] (the "Settlement Motion")
- b. Declarations of Alfredo Barajas, Elizabeth Zarate, Neil S. Lerner, and David R. Haberbusch in Support of Motion by Debtor-In-Possession for Order Approving Settlement Between Debtor, the Official Committee of Unsecured Creditors, and Carlos Mosquera and Juan Francisco Rodriguez, on Behalf of Themselves and all Others Similarly Situated Pursuant to Federal Rule of Bankruptcy Procedure 9019 [Doc. No. 287]
4. Order Sustaining Objection to Proof of Claim Number 12 Filed by the State of California, Department of Justice as Superseded by Proof of Claim Number 13 [Doc. No. 414]
5. Order Sustaining Objection to Proof of Claim Number 13 Filed by the State of California, Department of Justice: (1) for Improperly Claiming Rights of Priorities; and (2) as Duplicative of Proof of Claim Number 14 [Doc. No. 415]
6. Order Denying California's Objection to Class Proof of Claim of Carlos Mosquera and Juan F. Rodriguez [Proof of Claim Number 14] [Doc. No. 416]
7. Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 432] (the "Confirmation Brief")
8. Notice of Plan Confirmation Hearing [Doc. No. 433]
9. Plan Ballot Summary in Relation to Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 434] (the "Ballot Summary")
10. Amended Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 451]
- a. Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 445] (the "People's Opposition")
- b. Declaration of Timothy J. Kolesnikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 446] (the "Kolesnikow Decl.")
- i. Amended Exhibits 1-3 to Declaration of Timothy J. Kolesnikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 450]
11. Reply to California's Opposition to Motion to Confirm Debtor's and Official

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Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization
[Doc. No. 455] ("Debtor's Reply")

- a. Request for Judicial Notice in Support of Reply to California's Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 456]
- b. Debtor and Debtor-In-Possession's Evidentiary Objections to Declaration of Timothy J. Kolsenikow in Opposition to Motion to Confirm Debtor's and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan of Reorganization [Doc. No. 457]

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor") filed this voluntary chapter 11 case on July 6, 2017 (the "Petition Date"). The Debtor is a trucking company that provides trucking services throughout the Western United States. A material portion of its business is drayage to and from the Los Angeles and Long Beach ports.

The Debtor and the Official Committee of Unsecured Creditors (the "Committee," and together with the Debtor, the "Proponents") seek confirmation of their *Joint Proposed Chapter 11 Plan of Reorganization* [Doc. No. 282] (the "Plan"). The material provisions of the Plan are as follows:

1. The Plan is a reorganizing plan. The Proponents seek to accomplish payment under the Plan with both pre- and post-confirmation income from the Debtor's continued business operations generated from the Effective Date through and including approximately January 1, 2024.
2. The Effective Date will be 10 days after entry of the order confirming the plan or final approval of the class action settlement in the Superior Court of the State of California. The Proponents estimate the Effective Date will be on or before December 31, 2018.
3. On the Effective Date, the Committee will cease to exist and will be replaced by a Plan Committee that will monitor Debtor's compliance with the Plan and serve as disbursing agent.
4. The Plan consists of 15 classes of claims. Only Class 11 and Class 14 are

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impaired and entitled to vote.

5. Class 11 consists of general unsecured claims. The Plan proposes to pay Class 11 \$4,500,000 over approximately 5 years. This represents an approximate 21.116% distribution on such claims.
6. Class 14 consists of civil and tax penalty claims. The Plan proposes to pay Class 14 a one-time \$10,000 payment on January 1, 2024. This represents an approximate 0.02% distribution on such claims.
7. The Debtor shall establish a post-confirmation liquidating trust that will become effective on the Effective Date. Nigel Hamer (rather than Timothy J. Yoo or his designee), shall serve as trustee. In the event of an uncured default under the Plan, at the election of the Plan Committee, the assets of the Debtor will be transferred to and vest in the Liquidation Trust. Among other things, preferential and fraudulent transfer claims will be tolled, and the trustee will be vested with standing to pursue such claims.

Summary of the People's Opposition to the Plan

California's Attorney General, acting on behalf of the People of the State of California (the "People"), opposes confirmation of the Plan. The People assert that the Plan cannot be confirmed for the following reasons:

1. The Plan is not proposed in good faith as required by § 1129(a)(3) because the Debtor is still employing drivers as independent contractors allegedly in violation of California law and the Plan does not contain an injunction preventing the Debtor from classifying and treating drivers as independent contractors post-confirmation.
2. The Plan does not satisfy § 1129(a)(9) because the Plan does not provide for payment in full of the People's asserted priority Administrative Claim.
3. The Plan is not feasible as required by § 1129(a)(11) because the projections do not take into account an additional \$150,000 needed to pay 21 newly converted drivers as employees.
4. The Plan improperly releases third parties from liability in violation of § 524(e).

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The Debtor makes the following arguments in Reply to the People's Opposition:

1. The Plan is proposed in good faith. The Debtor has not employed any independent contractor drivers since September 1, 2017, and disputes that any of its employment practices have been in violations of California law. The Debtor's good faith is further demonstrated by its approved settlement with the truck drivers and commitment to only use employee drivers following the effective date of the plan. The Debtor does not object to including an injunction provision in the confirmation order.

2. The Plan is feasible. Debtor concedes that if the Administrative Claim is allowed, the Plan will be rendered infeasible, but the Debtor objects to the allowance of the Administrative Claim on a number of grounds (set forth in more detail in its objection to Motion to Allow Administrative Claim).

3. The Debtor's projections are not misleading. The Debtor utilizes Owner-Operator drivers and the projections take this change in business model into account.

4. The Plan does not release third parties from liability. The Settlement only releases insider claims for fraudulent conveyances and the People will retain its claim against Mr. Barajas in the state court action.

5. The People should be estopped from challenging the Plan on the basis of illegality and infeasibility because of its delay in challenging the Debtor's use of Owner-Operator drivers.

II. Findings of Fact and Conclusions of Law

A. The People's Objections are Overruled.

The People's objections are overruled in their entirety.

1. The People have not established that the Plan was not proposed in good faith within the meaning of § 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not

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by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

The People contend that the Plan is not proposed in good faith because the Debtor continues to misclassify its drivers in violation of California law and mislead this Court and its creditors. The Court finds that the People's evidence in support of this contention is wholly insufficient and does not establish, even by a preponderance of the evidence, that the Plan was not proposed in good faith.

First, the People simply conclude that the Debtor is misclassifying its drivers in violation California law without identify which California law(s) it believes are implicated or any specific analysis as to how the Debtor's conduct violated such provision(s). [Note 1]

Next, the People's evidence does not support a finding that the Debtor has continued to misclassify drivers as "independent contractors" postpetition or that the Debtor intends to continue to do so after confirmation of the Plan. The People rely on the Debtor's Monthly Operating Reports ("MORs") and Plan projections to establish the alleged ongoing misclassification, but as the Debtor points out, the People have conflated the terms "subcontractor" with "independent contractor." Debtor's principal, Mr. Alfredo Barajas, testifies that the Debtor's use of the term "subcontractors" includes "Owner-Operators, Entities, and non-drivers such as computer serving, maintenance on Debtor's fuel pumps, and vehicle repairs." Barajas Decl., ¶ 11. The Court finds that this sufficiently undermines the People's arguments on this point.

The Court also finds that the excerpts of deposition testimony from Mr. Barajas (Ex. 1 & 2), and Debtor's former employee, Carlos Mosquera (Ex. 3) do not establish that the Debtor has continued to misclassify its employees. With respect to the Barajas testimony, the Court finds that most of the testimony was given pre-petition, on January 29, 2009, March 24, 2017, June 21, 2017 which the Court does not find

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particularly helpful in establishing alleged postpetition violations in light of Debtor's testimony that it has changed its business model since filing this bankruptcy case. Mr. Barajas' postpetition testimony also does not establish that the Debtor has violated California law. The People did not provide the full deposition transcript and the excerpts that were provided make it difficult to determine the context in which the People's questions were propounded. As a result, the testimony is at times vague as to whether Mr. Barajas is describing postpetition or prepetition employment practices [Note 2] and whether Mr. Barajas is describing the Debtor's employment practices with respect to all subclasses of drivers (e.g., employees, Owner-Operators, Entities, Independent Contractors) or only with respect to employee drivers. [Note 3] The Court also does not find the Mosquera testimony useful because his testimony appears to describe his prepetition employment experience with the Debtor and the People's contention is that the Debtor has continued to misclassify drivers postpetition.

The Court is also unpersuaded by the People's contention that the Debtor's principal, Alfredo Barajas, has misled this Court with respect to the Debtor's postpetition employment practices. Debtor submitted the Declaration of Mr. Barajas in which he testifies that the Debtor began converting all of its drivers from independent contractors to employees at the outset of this case and has not used independent contractors since September 1, 2017. Barajas Decl., ¶¶ 9-10. Mr. Barajas further testifies that the Debtor has utilized four different types of drivers, including Owner-Operators (drivers who drive their own trucks) and submits that the People have never alleged that Debtor's use of Owner-Operators violates California law. *Id.*, ¶¶ 5, 6, 10.

Finally, the Court finds that the Debtor's agreement to include an injunction provision in the confirmation order will sufficiently address the People's concerns on this issue.

In sum, the Court finds that the Plan, which was proposed as a joint plan by the Debtor and the Committee of Unsecured Creditors, is designed to achieve results that are consistent with the Bankruptcy Code. The Debtor has changed its business model to prevent future litigation and through the Plan, the Debtor seeks to reorganize its affairs and avoid liquidation, while still paying out a large distribution to unsecured creditors.

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2. The Plan Satisfies § 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The People contend that the Plan does not satisfy § 1129(a)(9) because the Plan does not provide for payment in full of the People's asserted \$4,000,000 priority Administrative Claim on the effective date.

For the reasons set forth in the concurrently posted tentative ruling on the People's request for an administrative claim (See Cal. No. 5.50, December 12, 2018), the Court is prepared to deny the People's request for an Administrative Claim in full. Accordingly, the Debtor's Plan will not be rendered infeasible by the need to pay such claim and is not deficient within the meaning of § 1129(a)(9) in failing to provide for that claim. The People's objection is overruled on this basis.

3. The Plan satisfies § 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Court overrules the People's assertion that the Plan is infeasible under § 1129(a)(11), because its contention on this ground is premised entirely upon speculation and unsupported conclusions that the Debtor's projections do not take into account an extra \$150,000 in expenses arising from the Debtor's conversion of Owner-Operator drivers to employees following the Effective Date. However, as the Debtor explains, the People have incorrectly conflated the term "subcontractor" with "independent contractor." The Debtor submits that its projections have properly taken into account its new employment model. Barajas Decl., ¶¶ 12-17.

4. The Plan does not contain an improper release of third-party liability in violation of

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Section 524(e) states that "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity, for such debt." 11 U.S.C. § 524(e). Section 524(e) "precludes bankruptcy courts from discharging the liabilities of non-debtors." *Resorts Int'l v. Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995).

The People contend that the Plan improperly releases third parties from liability in violation of § 524(e) on two grounds. First, the People assert that "there is an indefinite stay of the Enforcement Action against owner Alfredo Barajas based in part upon expected confirmation of the plan. This is tantamount to a release of a third party, and deprives the People of their right to proceed against Mr. Barajas for his individual liability for misclassification." Amended Opposition, p. 21:27-22:2.

However, the People are mistaken that the Court has issued an indefinite stay of the Enforcement Action against Mr. Barajas by way of its *Order Granting Motion for Preliminary Injunction* in the *Pac Anchor, Transportation, Inc., Consisting of the Merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. v. People of the State of California, ex rel. Xavier Becerra, Attorney General of the State of California*, Adv. Case No. 2:18-ap-01244-ER (the "Adversary Proceeding"), docket number 40. That order only imposes a preliminary injunction with respect to enforcement of the Enforcement Action against the Debtor. *Id.* In fact, in Debtor's reply in support of its request for a preliminary injunction, the Debtor states "Debtor is not requesting a stay as to Mr. Barajas. The Motion only seeks injunctive relief as to Debtor." Adversary Proceeding, Dkt. 34, PDF p. 18: 9-10.

Second, the People contend that the Plan effectuates the provisions of a court approved settlement between the Debtor, committee of unsecured creditors, and Carlos Mosquera and Juan Francisco Rodriguez on behalf of themselves and all others similarly situated [Doc. Nos. 286, 287 & 413] (the "Settlement"), that the People assert improperly releases Alfredo Barajas and Elizabeth Zarate (the "Insiders") from fraudulent transfer liability. Although the People fail to reference the specific provision it finds objectionable, that provisions states:

In the event that Alfredo Barajas and Elizabeth Zarate file a petition

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seeking relief under Title 11 of the United States Code, which petition is not dismissed prior to confirmation of a plan under chapter 13 or 11 or approval of a final report under chapter 7, the Liquidating Trustee shall have a claim in the sum of \$100,000 in full and complete satisfaction of any and all claims that may exist against Alfredo Barajas and/or of Elizabeth Zarate arising under California law arising under California law or arising under 11 U.S.C. § 542 et seq.

Doc. No. 287-1, Settlement, ¶ 5.

The People contend that this provision is tantamount to the release of third parties' liability. The Court does not agree. The Court approved this provision as part of a broader settlement within the context of a motion brought under Federal Rule of Bankruptcy Procedure 9019, based upon this Court's determination that it was one of several forms of bargained for consideration. The Court concluded that the provision was a liquidation of potential judgment liability against the Insiders, based upon the Committee's determination that the Insiders were largely judgment proof. Furthermore, the provision is not akin to a general release of liability on all claims that could be brought against the Insiders. Instead, it is a limited release respecting the Estate's § 542 fraudulent transfer claims against the Insiders. Accordingly, the People's objections are overruled on this basis.

For the foregoing reasons, the Court finds that the Plan does not violate § 524(e).

B. The Plan Complies with All Applicable Provisions of 11 U.S.C. § 1129

As set forth below, the Court finds that the Plan complies with all applicable provisions of § 1129. The Plan is confirmed.

SECTION 1129(a)(1)

Section 1129(a)(1) requires that the "plan compl[y] with the applicable provisions of this title." According to the leading treatise, the "legislative history suggests that the applicable provisions are those governing the plan's internal structure and drafting: 'Paragraph (1) requires that the plan comply with the applicable provisions of chapter 11, such as section 1122 and 1123, governing classification and contents of a plan.'" *Collier on Bankruptcy* ¶ 1129.01[1] (16th rev'd ed.) (citing S. Rep. No. 989, 95th

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Cong., 2d Sess. 126 (1978)).

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1. Section 1122(a)

Section 1122(a) provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class."

The Plan's classification structure complies with § 1122(a).

2. Section 1122(b)

Section 1122(b) provides that "a plan may designate a separate class of claims consisting only of every unsecured claim that is less than or reduced to an amount that the court approves as reasonable and necessary for administrative convenience."

The Plan does not contain any convenience classes. Section 112(b) does not apply.

3. Section 1123(a)(1)

Section 1123(a)(1) requires that a plan "designate ... classes of claims, other than claims of a kind specified in section 507(a)(2) [administrative expense claims], 507(a)(3) [claims arising during the gap period in an involuntary case], or 507(a)(8) [priority tax claims], and classes of interest."

There are no involuntary gap claims because this is a voluntary chapter 11 case. The Plan appropriately classifies administrative expense claims and unsecured priority tax claims. The Plan satisfies § 1123(a)(1).

4. Section 1123(a)(2)

Section 1123(a)(2) requires that the Plan "specify any class of claims or interests that is not impaired under the Plan."

The Plan specifies that Classes 1 – 10, 12, 13 and 15 are unimpaired. The Plan satisfies § 1123(a)(2).

5. Section 1123(a)(3)

Section 1123(a)(3) requires that the Plan "specify the treatment of any class of

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claims or interests that is impaired under the Plan."

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The Plan specifies the treatment of impaired Classes 11 and 14. The Plan satisfies § 1123(a)(3).

6. Section 1123(a)(4)

Section 1123(a)(4) requires that the Plan "provide the same treatment for each claim or interest of a particular class unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest."

The Plan provides the same treatment to claims and interests of the same class. The Plan satisfies § 1123(a)(4).

7. Section 1123(a)(5)

Section 1123(a)(5) requires that the Plan "provide adequate means for the plan's implementation."

The Plan will be funded by income generated by the Debtor's pre- and post-confirmation business operations. The Debtor anticipates having approximately \$2,288,000 of cash on hand on the Effective Date of the Plan to pay anticipated effective date payments. The Proponents submitted evidence in support of Debtor's ability to adequately implement the Plan, in the form of: (1) balance sheets and income statements for the years of 2014, 2015, and 2016 (Disclosure Statement, Exhibit B), and (2) financial projections for the anticipated duration of the Plan (Disclosure Statement, Exhibit C). The proposed funding sources provide an adequate means for the Plan's implementation. The Plan satisfies § 1123(a)(5).

8. Section 1123(a)(6)

Section 1123(a)(6) provides: "[A] plan shall provide for the inclusion in the charter of the debtor, if the debtor is a corporation ..., of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends."

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The Plan specifies that the Debtor's bylaws will be amended to include the requisite language set forth above. The Plan satisfies § 1123(a)(6).

9. Section 1123(a)(7)

Section 1123(a)(7) requires that the Plan's provisions with respect to the selection of officers and directors be consistent with public policy and the interests of creditors and equity security holders.

The Reorganized Debtor will be managed by the sole shareholder, general manager, President and CEO, Alfredo Barajas, and Mr. Barajas' wife, Elizabeth Zarate (together, the "Insiders"). The Insiders will receive compensation for their management services as set forth in paragraph 15 of the Declaration of Alfredo Barajas (the "Barajas Decl.") filed in support of the Confirmation Brief. In addition, non-insider employee Bianca Bugarin will be responsible for all financial matters. The Insiders and Ms. Bugarin have extensive experience in the daily management of the Debtor. The Plan satisfies § 1123(a)(7).

10. Section 1123(a)(8)

Section 1123(a)(8) which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(2)

Section 1129(a)(2) requires that the "proponent of the plan compl[y] with the applicable provisions of this title." The Court finds that the Plan Proponents have:

- 1) Obtained Court approval of a Disclosure Statement in accordance with § 1125 (*see* "Order Approving Disclosure Statement and Setting Hearing on Confirmation of Plan" [Doc. No. 358]);
- 2) Obtained Court approval of the employment of professional persons (*see* "Order Granting Application by Debtor-In-Possession to Employ Trojan and Company Accountancy Corporation as Special General Certified Public Accountant" [Doc. No. 63], "Order Granting Application of Debtor-In-Possession to Employ Cox Wooton Lerner Griffin & Hansen LLP as Special Employment Law Counsel" [Doc. No. 64], "Order Granting Application by Debtor-In-Possession to Employ Haberbusch & Associates, LLP as General Bankruptcy Counsel" [Doc. No. 65], "Order Granting Application to Employ Levene, Neale, Bender, Yoo & Brill L.L.P., as Bankruptcy Counsel for the Official Committee of Unsecured Creditors" [Doc. No. 78], and "Order Granting Application to Employ Armory

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Financial Consulting as Financial Advisor for the Official Committee of Unsecured Creditors" [Doc. No. 197]); and

3) Filed monthly operating reports.

Accordingly, the Plan Proponents have satisfied the requirements of § 1129(a)(2).

SECTION 1129(a)(3)

Section 1129(a)(3) requires that the "plan has been proposed in good faith and not by any means forbidden by law." As one court has explained:

The term 'good faith' in the context of 11 U.S.C. § 1129(a)(3) is not statutorily defined but has been interpreted by case law as referring to a plan that 'achieves a result consistent with the objectives and purposes of the Code.' 'The requisite good faith determination is based on the totality of the circumstances.'

In re Melcher, 329 B.R. 865, 876 (Bankr. N.D. Cal. 2005) (internal citations omitted).

As discussed in section II.A.1 above, the Plan seeks objectives that are consistent with those of the Bankruptcy Code and the Plan Proponents have complied with the requirements of the Code throughout this case. The Court rejects the People's contentions and finds that the Plan was proposed in good faith. Section 1129(a)(3) is satisfied.

SECTION 1129(a)(4)

Section 1129(a)(4) requires that "[a]ny payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable."

The Plan provides that all professional fees are subject to review by the Court. The plan satisfies § 1129(a)(4).

SECTION 1129(a)(5)

Section 1129(a)(5) requires that the Plan disclose "the identity and affiliations of any individual proposed to serve, after confirmation of the Plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint Plan with the debtor, or a successor to the debtor under the Plan." Section 1129(a)(5)(A)(ii)

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requires that the appointment to or continuation in office of a director or officer be consistent with the interests of creditors, equity security holders, and public policy. Section 1129(a)(5)(B) requires the Plan proponent to disclose the identity of any insider to be employed by the reorganized debtor.

The Plan discloses that Mr. Barajas, an insider, will continue to serve as the Debtor's president and chief executive officer subsequent to confirmation. The Plan further discloses that Ms. Burgin, a non-insider employee, will be responsible for all financial matters of the Debtor subsequent to confirmation. The Barajas Decl. filed in support of the Plan and Disclosure Statement disclose the identities, relationships, roles and post-confirmation compensation of five additional insider employees. The Plan discloses that a Liquidating Trust will be created on the Effective Date and that Nigel Hamer as the Liquidating Trustee. The Plan satisfies § 1129(a)(5).

SECTION 1129(a)(6)

Section 1129(a)(6), which requires that a governmental regulatory commission with jurisdiction over rates charged by a debtor approve any rate changes provided for in the plan, does not apply.

SECTION 1129(a)(7)

Section 1129(a)(7), known as the "best interests of creditors test," provides in relevant part: "With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has accepted the plan; or will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date."

Classes 1-10, 12, 13 and 15 are unimpaired and are deemed to have accepted the Plan. Classes 11 and 14 have accepted the Plan. *See* Ballot Summary [Doc. No. 434]. Section 1129(a)(7) is satisfied because all classes of creditors have accepted the Plan.

SECTION 1129(a)(8)

Section 1129(a)(8) requires each class to accept the Plan, unless the class is not impaired.

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Classes 1-10, 12, 13 and 15 are unimpaired and are deemed to have accepted the Plan. Classes 11 and 14 have accepted the Plan. *See* Ballot Summary [Doc. No. 434]. Section 1129(a)(8) is satisfied because all classes of creditors have accepted the Plan.

SECTION 1129(a)(9)

Section 1129(a)(9) requires that holders of certain administrative and priority claims receive cash equal to the allowed claim amount of their claims on the effective date of the plan, unless the claimant agrees to different treatment.

The Plan provides for the payment of administrative claims and the priority tax claims of the Franchise Tax board and Los Angeles County Tax Collector in full on or before the Effective Date. Class 10 consists of priority unsecured wage claims. Pursuant to an order of this Court, the Debtor paid the priority unsecured wage claims in full after the commencement of this case. *See* Barajas Decl., ¶ 24; "Order Granting Emergency Motion of Debtor and Debtor-In-Possession for an Order Authorizing Debtor-In-Possession to Pay Pre-Petition Payroll and Related Payroll Taxes and to Honor Pre-Petition Employment Procedures" [Doc. No. 28].

As discussed above in section II.A.2, the People have not established entitlement to an Administrative Claim for penalties pursuant to § 503(b). Accordingly, the Plan need to provide for such claim.

The Plan satisfies § 1129(a)(9).

SECTION 1129(a)(10)

Section 1129(a)(10) requires that "at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider."

Classes 11 and 14 are impaired, do not consist of insiders, and have accepted the Plan. Section 1129(a)(10) is satisfied.

SECTION 1129(a)(11)

Section 1129(a)(11), known as the "feasibility requirement," requires the Court to find that "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the

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debtor under the plan, unless such liquidation or reorganization is proposed in the plan."

The Debtor has sufficient cash on hand to pay the amounts that are due on the Effective Date. Based upon its review of the budget projections included with the Disclosure Statement, the Court finds that confirmation is not likely to be followed by liquidation or the need for further financial reorganization. The Court has overruled the People's objections on this ground for the reasons set forth above in section II.A.3.

The Plan is feasible and satisfies § 1129(a)(11).

SECTION 1129(a)(12)

Section 1129(a)(12) requires that the Debtor pay all United States Trustee fees prior to confirmation or provide for payment of those fees on the effective date.

To the Court's knowledge, UST fees are current. Section 1129(a)(12) is satisfied.

SECTION 1129(a)(13)

Section 1129(a)(13), which contains requirements pertaining to the payment of retirement benefits, does not apply.

SECTION 1129(a)(14)

Section 1129(a)(14), which contains requirements pertaining to the payment of domestic support obligations, does not apply.

SECTION 1129(a)(15)

Section 1129(a)(15), which imposes certain requirements upon individual debtors, does not apply.

SECTION 1129(a)(16)

Section 1129(a)(16) provides: "All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust."

The Plan provides that on the Effective Date, all claims arising under 11 U.S.C. § 542 et seq., together with any and all other claims (the "Adversarial Claims") which

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may be made against Debtor's insiders (as defined by Title 11 of the United States Code), shall vest exclusively in a Liquidating Trust in accordance with applicable nonbankruptcy law, and confers standing to pursue such Adversarial Claims upon the liquidating trustee. The Plan satisfies § 1129(a)(16).

SECTION 1129(b)

Section 1129(b), which contains requirements for cram-down, does not apply. All impaired classes (Classes 11 and 14) have accepted the Plan.

SECTION 1129(c)

Section 1129(c), which states that the court may confirm only one plan in a particular case, is satisfied.

SECTION 1129(d)

Section 1129(d) provides: "Notwithstanding any other provisions of this section, on request of a party in interest that is a governmental unit, the court may not confirm a Plan if the principal purpose of the Plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933."

No governmental unit has requested that the court not confirm the Plan on the grounds that the Plan's purpose is the avoidance of taxes or application of section 5 of the Securities Act of 1944. The Plan satisfies § 1129(d).

C. Evidentiary Objections

- 1) **Kolesnikow's Decl. ¶10 [Page 3, lines 16-19]. Ruling:** Objection overruled.
- 2) **Kolesnikow's Decl. ¶11 [Page 3, lines 21-26]. Ruling:** Objection sustained. Lack of foundation, legal conclusion, argumentative.
- 3) **Kolesnikow's Decl. ¶12 [Page 3, line 27 and Page 4, lines 1-19]. Ruling:** Objection overruled.
- 4) **Kolesnikow's Decl. ¶13 [Page 4, lines 20-21]. Ruling:** Objection overruled.
- 5) **Kolesnikow's Decl. ¶14 [Page 4, lines 22-28 and Page 5, lines 1-8]. Ruling:** Objection sustained as to "The running totals contained in the monthly operating reports filed with this Court show Pac Anchor paid independent drivers as 'subcontractors' \$4.2 million during the pendency of this bankruptcy case." Argumentative, legal conclusion, lack of foundation. Objection sustained as to

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“Mr. Barajas testified in connection with the similar, December, 2017 Monthly Operating Report 6, Main Bankruptcy, Doc. No. 418, that the ‘subcontractors’ were owner-operator drivers or owners of trucks who provided drivers to Debtor.” Argumentative, legal conclusion, lack of foundation. Objection overruled as to the remaining testimony.

- 6) **Kolesnikow’s Decl. ¶15 [Page 5, lines 9-14]. Ruling:** Objection sustained. Argumentative, legal conclusion.
- 7) **Kolesnikow’s Decl. ¶16 [Page 5, lines 18-22]. Ruling:** Objection sustained as to “The projections in support of the plan indicate that the Debtor will continue to use ‘Independent Contractor’ drivers.” Objection overruled as to the remaining testimony.
- 8) **Kolesnikow’s Decl. ¶17 [Page 5, lines 23-27 and Page 6, lines 1-3]. Ruling:** Objection sustained as to the word “drivers” following the word “subcontractor” and as to “Debtor continued to classify drivers as independent contractors throughout the pendency of the bankruptcy.” Argumentative, legal conclusion, lack of foundation, lack of personal knowledge. Objection overruled as to the remaining testimony.
- 9) **Kolesnikow’s Decl. ¶18 [Page 6, lines 4-16]. Ruling:** Objection sustained. Argumentative, legal conclusion, lack of personal knowledge.
- 10) **Kolesnikow’s Decl. ¶19 [Page 6, lines 17-28 and Page 7, line 1]. Ruling:** Objection sustained. Argumentative, legal conclusion, lack of personal knowledge.
- 11) **Kolesnikow’s Decl. ¶20 [Page 7, lines 3-5]. Ruling:** Objection sustained. Argumentative, lack of foundation, lack of personal knowledge.
- 12) **Kolesnikow’s Decl. ¶21 [Page 7, lines 7-11]. Ruling:** Objection overruled.
- 13) **Kolesnikow’s Decl. ¶22 [Page 7, lines 12-16]. Ruling:** Objection sustained. Argumentative, lack of foundation, lack of personal knowledge.
- 14) **Kolesnikow’s Decl. ¶23 [Page 7, lines 20-28]. Ruling:** Objection sustained. Argumentative, lack of foundation.
- 15) **Kolesnikow’s Decl. ¶25 [Page 8, lines 21-28 and Page 9, lines 1-7]. Ruling:** Objection overruled.
- 16) **Kolesnikow’s Decl. ¶26 [Page 9, lines 8-12]. Ruling:** Objection overruled.
- 17) **Kolesnikow’s Decl. ¶27 [Page 9, lines 14-22]. Ruling:** Objection sustained as to “Debtor cannot demonstrate that the drivers were free from direction and control.” Argumentative, lack of foundation, lack of personal knowledge. Objection overruled as to the remaining testimony.

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- 18) **Kolesnikow's Decl. ¶28 [Page 9, lines 24-28 and Page 10, lines 1-16]. Ruling:** Objection sustained. Argumentative, lack of foundation, legal conclusion, lack of personal knowledge.
- 19) **Kolesnikow's Decl. ¶29 [Page 10, lines 17-27]. Ruling:** Objection sustained as to "Debtor admits that it cannot operate their [sic] business without the victim drivers." Argumentative. Objection overruled as to the remaining testimony.

III. Conclusion

Based upon the foregoing, the Plan is confirmed. The Court will conduct a post-confirmation status report on April 10, 2019. The Debtor is directed to file a post-confirmation status report 14-days prior to the hearing.

The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing. The confirmation order shall include a provision incorporating the injunction contemplated in the Settlement Agreement.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: The Court presumes the People's contentions regarding violations of California law mirror the claims pled in its state court complaint. However, those claims have not been finally adjudicated in the People's favor and the Debtor continues to dispute that its conduct violated California law. Accordingly, even if the Court presumes the claims pled in the state court complaint are the same state court violations issue here, there is insufficient evidence before this Court to conclude that the Debtor's post-petition employment practices violated California law.

Note 2:

"Q: Okay. So *would* drivers get in trouble if they *didn't* keep the outside of their

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truck clean?

A: No. They *would* get pulled over by the police and questioned on why the truck was so dirty."

Barajas Transcript, Monday January 29, 2018, Volume 5, p. 645:16-19 (emphasis added).

Note 3:

"Q: How do you determine how much you're going to be paying *drivers* for Pac Anchor and Green Anchor? How do you determine the rate schedule specifically?

A: Pretty much according to what the customers pay."

Barajas Deposition Transcript, Wednesday, June 21, 2017, p. 535:1-4 (emphasis added).

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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2:17-18213 Pac Anchor Transportation Consisting of the Merger and

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#5.10 HearingRE: [419] Motion to Assume Lease or Executory Contract Motion to Assume Non-Residential Lease of Real Property Located at 425 Quay Avenue, Wilmington, CA 90744; with Proof of Service (Haberbush, Vanessa)

Docket 419

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion to Assume Non-Residential Lease of Real Property Located at 425 Quay Avenue, Wilmington, CA 90744 Pursuant to 11 U.S.C. § 365 [Doc. No. 419] (the "Assumption Motion")
2. Notice of Assumption Motion [Doc. No. 420]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Pac Anchor Transportation, Inc., consisting of the Merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc., (the "Debtor") seeks authorization to assume the non-residential lease of real property located at 425 Quay Avenue, Wilmington, CA 90744 (the "Property") pursuant to 11 U.S.C. § 365. The Debtor and Prologis USLV New CA 4, LLC as successor in interest to KTR Southbay VII LLC ("Landlord") are parties to the lease agreement, pursuant to which the Landlord leases the Property to the Debtor (the "Lease"). The Debtor states that it currently rents office space and an industrial lot on the Property, which it uses as its principal place of business. The Lease commenced on June 1, 2013 and it set to expire on September 30, 2020. The Debtor is current on payments and has not defaulted under the Lease. The current deadline for the Debtor to assume or reject the Lease is December 31, 2018.

The Debtor seeks to assume the Lease only if the Joint Chapter 11 Plan of

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Reorganization (the "Plan") is confirmed. The hearing on Plan confirmation is set concurrently with the hearing on this Assumption Motion. In the event the Plan is confirmed, the Debtor will need use of the Property to operate its business and perform the terms of the Plan. If the Plan is not confirmed, the Debtor will evaluate whether the Lease is necessary to its reorganization efforts.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

"[T]he trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A motion to assume or reject is a summary proceeding, 'intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.'" 3-365 Collier on Bankruptcy ¶ 365.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2017) (quoting *Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)). Under § 365, the Court may authorize the assumption or rejection of an unexpired lease by the trustee if the trustee's rationale for maintaining the contract is supported by sound business judgment and not premised on "bad faith, whim or caprice." *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 669–70 (9th Cir. 2007); *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-1047 (4th Cir. 1985). In reviewing a trustee's decision to assume or reject a lease, the bankruptcy court "need engage in only a cursory review of" the decision. *Pomona Valley*, 476 F.3d at 669 (internal citations omitted). "Thus, in evaluating the [debtor's decision], the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

Applying the business judgment rule, the Court approves the Debtor's decision to assume the Lease. The Lease is necessary to the Debtor's operation, and the Court finds that the Debtor's decision to assume the Lease is a prudent exercise of the Debtor's business judgment.

III. Conclusion

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Based upon the foregoing, the Motion is GRANTED. The Debtor shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbusch
Lane K Bogard
David R Haberbusch

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2:17-18213 Pac Anchor Transportation Consisting of the Merger and

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#5.20 HearingRE: [421] Motion to Assume Lease or Executory Contract Motion to Assume Non-Residential Lease of Real Property Located at 100 Oceangate, Suite 1450, Long Beach, CA 90802; With Proof of Service (Haberbush, Vanessa)

Docket 421

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Motion to Assume Non-Residential Lease of Real Property Located at 100 Oceangate, Suite 1450, Long Beach, CA 90802 Pursuant to 11 U.S.C. § 365 [Doc. No. 421] (the "Assumption Motion")
2. Notice of Assumption Motion [Doc. No. 422]
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Pac Anchor Transportation, Inc., consisting of the Merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc., (the "Debtor") seeks authorization to assume the non-residential lease of real property located at 100 Oceangate, Suite 1450 Long Beach, CA 90802 (the "Property") pursuant to 11 U.S.C. § 365. The Debtor and 100 Oceangate, LLC ("Landlord") are parties to the lease agreement, pursuant to which the Landlord leases the Property to the Debtor (the "Lease"). The Debtor states that it currently rents office space on the Property, which it uses to conduct its office and administrative operations. The Lease commenced on June 1, 2017 and it set to expire on July 31, 2021. The Debtor is current on payments and has not defaulted under the Lease. The current deadline for the Debtor to assume or reject the Lease is December 31, 2018.

The Debtor seeks to assume the Lease only if the Joint Chapter 11 Plan of Reorganization (the "Plan") is confirmed. The hearing on Plan confirmation is set

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concurrently with the hearing on this Assumption Motion. In the event the Plan is confirmed, the Debtor will need use of the Property to operate its business and perform the terms of the Plan. If the Plan is not confirmed, the Debtor will evaluate whether the Lease is necessary to its reorganization efforts.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

"[T]he trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). "A motion to assume or reject is a summary proceeding, 'intended to efficiently review the trustee's or debtor's decision to adhere to or reject a particular contract in the course of the swift administration of the bankruptcy estate.'" 3-365 Collier on Bankruptcy ¶ 365.03[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2017) (quoting *Orion Pictures Corp. v. Showtime Networks (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993)). Under § 365, the Court may authorize the assumption or rejection of an unexpired lease by the trustee if the trustee's rationale for maintaining the contract is supported by sound business judgment and not premised on "bad faith, whim or caprice." *In re Pomona Valley Med. Grp., Inc.*, 476 F.3d 665, 669–70 (9th Cir. 2007); *Lubrizol Enterprises, Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-1047 (4th Cir. 1985). In reviewing a trustee's decision to assume or reject a lease, the bankruptcy court "need engage in only a cursory review of" the decision. *Pomona Valley*, 476 F.3d at 669 (internal citations omitted). "Thus, in evaluating the [debtor's decision], the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate." *Id.*

Applying the business judgment rule, the Court approves the Debtor's decision to assume the Lease. The Lease is necessary to the Debtor's operation, and the Court finds that the Debtor's decision to assume the Lease is a prudent exercise of the Debtor's business judgment.

III. Conclusion

Based upon the foregoing, the Motion is GRANTED. The Debtor shall submit a

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conforming order, incorporating this tentative ruling by reference, within seven days
of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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#5.30 Hearing
RE: [400] Motion RE: Objection to Claim Number 14 by Claimant Carlos Mosquera. Substantive Objection

Docket 400

***** VACATED *** REASON: WITHDRAWAL FILED 11-19-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbusch
Lane K Bogard
David R Haberbusch

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#5.40 Hearing re [432] Motion for order confirming chapter 11 plan *With Proof of Service* Filed by Debtor Pac Anchor Transportation Inc Consisting of the Merger of Pac Anchor Transportation, Inc. and Green Anchor Lines, Inc

Docket 0

Tentative Ruling:

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See Calendar No. 5, incorporated herein by reference.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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#5.50 HearingRE: [452] Motion for administrative claim. Additional attachment(s) added on 12/3/2018 (Lomeli, Lydia R.).

Docket 452

Tentative Ruling:

12/11/2018

For the reasons set forth below, subject to the People's arguments made in Reply at the hearing, the Court is prepared to DENY the Motion and disallow the Administrative Claim in its entirety.

Pleadings Filed and Reviewed

1. Administrative Proof of Claim [Doc. No. 452-1] (the "Administrative Claim")
2. Order (1) Deeming Briefing Submitted by the People of the State of California to Constitute a Motion for Determination of the Allowability of the People's Administrative Claim and (2) Setting Motion for Hearing on December 12, 2018, at 10:00 a.m., Concurrently with the Hearing on the Debtor's Confirmation Motion [Doc. No. 453] (the "Order Setting Hearing on Administrative Claim")
3. Debtor and Debtor-In-Possession's Opposition to Deemed Motion to Determine Allowability of People's Administrative Claim [Docket Number 452] Filed by the State of California, Department of Justice [Doc. No. 459] (the "Opposition")
 - a. Declaration of Alfredo Barajas in Support of Debtor and Debtor-In-Possession's Opposition to Deemed Motion to Determine Allowability of People's Administrative Claim [Docket Number 452] Filed by the State of California, Department of Justice [Doc. No. 460]
 - b. Request for Judicial Notice in Support of Debtor and Debtor-In-Possession's Opposition to Deemed Motion to Determine Allowability of People's Administrative Claim [Docket Number 452] Filed by the State of California, Department of Justice [Doc. No. 461]
 - c. Debtor and Debtor-In-Possession's Evidentiary Objection to Declaration of Timothy J. Kolesnikow in Support of People's Administrative Claim for Penalties Under Business & Professions Code Section 17206 [Doc. No. 462] (the "Evidentiary Objection")

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4. The People may present arguments in reply to the Opposition at the hearing.

I. Facts and Summary of Pleadings

Debtor and Debtor in Possession, Pac Anchor Transportation, Inc., consisting of the merger of Pac Anchor Transportation, Inc., and Green Anchor Lines, Inc. (the "Debtor") filed this voluntary chapter 11 case on July 6, 2017 (the "Petition Date"). A hearing on confirmation of the Debtor and the Official Committee of Unsecured Creditors' (the "Committee," and together with the Debtor, the "Proponents" or "Plan Proponents") *Joint Proposed Chapter 11 Plan of Reorganization* [Doc. No. 282] (the "Plan") is presently scheduled for December 12, 2018 at 10:00 a.m. The People of the State of California, ex rel Attorney General Xavier Becerra (the "People") oppose confirmation of the Plan.

Since the outset of this case, the People have been the primary and now sole objector to the Debtor's efforts to reorganize its affairs. On November 14, 2018, this Court entered an Order approving a settlement between the Debtor, the Debtor's principals, the Committee, and representatives of a body of truck drivers in a pending class action (the "Class Claimants") [Doc. No. 413]. The Court also sustained Debtor's objection to the People's Proofs of Claim 12 and 13 and overruled the People's objection to the Class Claimants' Proof of Claim 14 (the "Class Claim") [Doc. Nos. 414, 415, and 416].

On November 9, 2018, the People responded by filing a second objection to the Class Claim [Doc. Nos. 400, 401, 402 and 403] (the "Second Objection"), which necessitated the Debtor filing a motion to estimate and temporarily allow the Class Claim for plan confirmation voting purposes and requesting a hearing on shortened notice [Doc. Nos. 406, 407 and 408] (the "Estimation Motion"). After the Court granted that request and set a hearing for November 21, 2018, the People withdrew the Second Objection [Doc. No. 430], thereby mooting Estimation Motion.

On November 30, 2018, the People filed an Administrative Proof of Claim asserting a claim for a priority administrative expense claim in the estimated amount of \$4,000,000 for civil penalties pursuant to California Business & Professions Code section 17206 [Doc. No. 452-1] (the "Administrative Claim"). On December 3, 2018, the Court issued an *Order (1) Deeming Briefing Submitted by the People of the State*

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of California to Constitute a Motion for Determination of the Allowability of the People's Administrative Claim and (2) Setting Motion for Hearing on December 12, 2018, at 10:00 a.m., Concurrently with the Hearing on the Debtor's Confirmation Motion [Doc. No. 453]. As set forth in that Order, the Court explained:

- 1) The People incorrectly assert that the Administrative Claim is deemed allowed unless an interested party objects. Claims filed under § 501 are deemed allowed absent an objection; however, "[a]dministrative priority claims under § 503(b)(1)(A) are held to a stricter standard. Because they must be presented to the court by motion, they are not deemed allowed as priority claims." *Bofuff v. Cook Inlet Energy LLC (In re Cook Inlet Energy LLC)*, 583 B.R. 494, 501 (B.A.P. 9th Cir. 2018); *see also* § 503(b)(1) (providing that administrative expense claims are allowable only after notice and a hearing).
- 2) The People attach extensive briefing in support of the allowability of the Administrative Claim. The Court deems the briefing to constitute a motion requesting allowability of the Administrative Claim.
- 3) Opposition to the allowability of the Administrative Claim must be filed by no later than **December 6, 2018**. The People may present arguments in reply to any opposition at the hearing.
- 4) The Court has previously found that if the Plan is not confirmed in 2018, the Debtor could potentially accrue additional tax liability of approximately \$300,000. This reality necessitates a shortened briefing schedule on the issue of the allowability of the People's Administrative Claim.

Summary of Administrative Claim Motion

The People seek allowance and payment of an estimated \$4,000,000 in civil penalties as a priority administrative claim pursuant to California Business & Professions Code section 17206 and 28 U.S.C. § 959(b) based upon the Debtor's alleged post-petition violations of California Labor Code and Unemployment Insurance Code. The People's arguments are summarized as follows:

- 1) Since the inception of this bankruptcy case the Debtor has continued to misclassify and treat a number of its employee drivers as "independent contractors" in violation of California law. As a result, the Debtor has failed

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to pay unemployment insurance and employment training and fund taxes, and to withhold state disability and income taxes, or provide workers' compensation to its drivers. This has benefitted the Debtor in an approximate amount of \$2,500,000.

- 2) Each violation carries with it a mandatory civil penalty of up to \$2,500 (Bus. & Prof. Code § 17206(b)). The actual amount of any civil penalties imposed is within the Court's discretion.
- 3) The People's evidence supports a finding that Debtor has continued to misclassify at least twenty-one employee drivers (and potentially as many as seventy five) as "independent contractors" under the so-called "ABC" test [Note 1] and that the violations are so egregious and numerous to support an award of \$4,000,000.
- 4) The imposition of penalties is in the public's interest because the Debtor's misconduct should be sanctioned and failure to impose appropriate penalties could set a bad precedent that incentivizes employers to violate California labor laws. Further, the People have an interest in preventing any further misclassification because the Debtor's failure to pay applicable employment taxes directly harms the public coffers.

Summary of Debtor's Opposition

Debtor filed an Opposition to the Motion. The Debtor's arguments are summarized as follows:

- 1) The People have failed to carry its burden of proof. The People incorrectly conflate the term "subcontractor" with independent contractor" and, in reliance on that misassumption, makes a series of other misassumptions in support of its requested \$4,000,000 penalties request.
- 2) In reality, Debtor's use of the term "subcontractor" includes "owner-operators" (drivers who own their own trucks) ("Owner Operators"), entities, and non-drivers (e.g. computer serving, maintenance on Debtor's fuel pumps, and vehicle repairs).
- 3) In fact, in response to pending litigation, Debtor began converting its independent contractors to employees in May 2017 and has not used any independent contractors since September 1, 2017. Debtor has utilized some owner-operator drivers, but the People have never alleged that Debtor's use of

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this type of driver violates California law until now.

- 4) The Debtor's post-petition conduct demonstrates it has acted in good faith and not in violation of its debtor-in-possession duties or California law. Further, as part of its settlement with the Committee and Class Claimants, the Debtor agreed to an injunction preventing the use of independent contractors and owner-operators in the future and intends to only subcontract out work from other entities whose employment practices are consistent with the injunction to maintain its business operations.
- 5) The Administrative Claim is unsupported by any admissible evidence to support a finding that Debtor is liable for the alleged violations and the evidence offers no credible support for how the People arrived at its requested \$4,000,000 penalty figure and contains several inaccurate assumptions.
- 6) The alleged penalties are not "actual and necessary expenses" under *Reading*, because the penalties are sought to punish the Debtor and deter others from wrong doing and provide no benefit to the estate.
- 7) The People should be barred from asserting an Administrative Claim by the doctrines of res judicata, estoppel, and laches.
- 8) Even if the Court finds that the People are entitled to an Administrative Claim, (i) the Court has the discretion to disallow the claim in full or significantly reduce the penalty amount; (ii) Debtor requests that any award of penalties be equitably subordinated.

The People's Reply

Pursuant to the Court's Order Setting Hearing on Administrative Claim, the People may present arguments in reply to the Debtor's Opposition at the hearing [Doc. No. 453].

II. Findings of Fact and Conclusions of Law

A. Applicable Standards

Section 507(a)(2) gives priority treatment to "administrative expenses allowed under section 503(b)." Section 503(b)(1)(A) provides, in relevant part:

- (b) After notice and a hearing, there shall be allowed administrative

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expenses, other than claims allowed under section 502(f) of this title,
including –
(1)(A) the actual, necessary costs and expenses of preserving the
estate . . . "

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11 U.S.C. § 503(b)(1)(A).

In order to keep administrative costs to the estate at a minimum, "the actual, necessary costs and expenses of preserving the estate," are construed narrowly. *In re DAK Indus., Inc.*, 66 F.3d 1091, 1094 (9th Cir. 1995). To establish an administrative expense claim, a claimant must show that the debt: (a) arose from a transaction with the debtor . . . ; and (b) directly and substantially benefitted the estate." *Id.*

The People assert that the *Reading* Exception applies in this case. In *Reading Co., v. Brown*, the Supreme Court addressed the allowability of an administrative claim that did not "benefit" the estate in the typical sense. 4 Collier on Bankruptcy, ¶ 503.06 (16th 2018) (citing *Reading Co., v. Brown*, 391 U.S. 471, 88 S. Ct. 1759, 20 L. Ed. 2d 751 (1968)). The Court held that considerations of fundamental fairness and logic required the allowance of a claim of administrative priority for damages resulting from the postpetition negligence of a receiver in a Chapter XI case because such damages were "actual and necessary costs" of administration." *Id.*

In *Gonzalez v. Gottlieb (In re Metro Fulfillment, Inc.)*, 294 B.R. 306 (B.A.P. 9th Cir. 2003), the Ninth Circuit Bankruptcy Appellate Panel (the "BAP") applied *Reading* in support of its finding that penalty wages for debtor's postpetition violation of California law were entitled to administrative expense priority.

B. The People Have Not Proved By A Preponderance Of The Evidence That It Is Entitled To An Administrative Claim

1. The People have not established that the Debtor violated California law

For this Court to find that the People are entitled to an administrative claim for penalties, this Court must first determine that the Debtor's postpetition conduct violated California law. However, the People do not identify what specific California laws it believes Debtor violated. The People simply conclude that the Debtor violated

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California Labor Code and Unemployment Insurance Code as a result of its alleged misclassification of drivers but provide no specific reference to which sections of the California Labor Code and Unemployment Code it contends are implicated or any specific analysis as to how the Debtor's conduct violated each of those provisions. **[Note 2]** On this basis alone, the Court finds that the People have not carried their burden of proof.

Additionally, the People's purported evidence does not support a finding that Debtor has continued to misclassify drivers as "independent contractors" postpetition. The People attach certain declaration testimony and the Debtor's Monthly Operating Reports ("MORs") and Plan projections to prove Debtor's culpability. The Debtor contends that the People have mischaracterized this evidence and that the People's arguments are premised upon speculation and unsupported conclusions. The Court agrees.

First, as the Debtor points out, the People appear to conclude that "subcontractor" is synonymous with "independent contractor" without adequate evidentiary support. Based upon this conflation of terms, the People contend that the Debtor's MORs -- which include a line item for payment to "subcontractors" -- establish the Debtor's postpetition misclassification of its drivers. However, in support of its Opposition, the Debtor submitted the declaration of Debtor's President and CEO, Alfredo Barajas (the "Barajas Decl.") who testifies that the Debtor's use of the term "subcontractors" includes "Owner-Operators, Entities, and non-drivers such as computer serving, maintenance on Debtor's fuel pumps, and vehicle repairs." Barajas Decl., ¶ 11. The Court finds that this sufficiently undermines the People's arguments on this point.

Second, the People rely on the testimony from Mr. Barajas describing the Debtor's post-petition use of Owner-Operator truck drivers to support its contention that the Debtor's misclassification continues. Debtor does not dispute this fact. However, the People have not identified any authority to establish that the Debtor's use of Owner-Operators violates California law. Nor have the People provided persuasive evidence to find that the Debtor's employment practices with respect to the affected Owner-Operator drivers satisfies the ABC Test such that the drivers should have been classified as employee drivers. **[Note 3]**

In support of the People's assertion that these Owner-Operators are misclassified

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employees, the People submitted the following evidence: (i) Mr. Barajas testimony from 2009, 2017 and 2018 describing the Debtor's employment practices [Exhibit 1]; (ii) a copy of an "Independent Contractor Transportation Agreement" [Ex. 7] (the "ICTA") and 2018 testimony from Mr. Barajas establishing that the Debtor's use of the agreement "sometime after 2013" [Ex. 1; Vol. V. pp. 602:10-603:14, 604:10-15]; and (iii) testimony from Mr. Carlos Armando Mosquera describing his experience as a past employee of the Debtor's [Ex. 3]. As discussed below, the Court finds this evidence inadequate.

With respect to the Barajas testimony, the Court finds that most of the testimony was given pre-petition, on January 29, 2009, March 24, 2017, June 21, 2017 which the Court does not find particularly helpful in establishing alleged postpetition violations in light of Debtor's testimony that it has changed its business model since filing this bankruptcy case. Mr. Barajas' postpetition testimony also does not establish by a preponderance of the evidence that the Debtor has violated California law. The People did not provide the full deposition transcript and the excerpts that were provided make it difficult to determine the context in which the People's questions were propounded. As a result, the testimony is at times vague as to whether Mr. Barajas is describing postpetition or prepetition employment practices [Note 4] and whether Mr. Barajas is describing the Debtor's employment practices with respect to all subclasses of drivers (e.g., Owner-Operators, Entities, etc.) or only with respect to employee drivers. [Note 5]

The Court similarly finds that the ICTA does not establish any postpetition violations of California law because the People have not demonstrated that any Owner-Operator drivers signed the agreement or presented any specific evidence concerning the Debtor's postpetition interactions with any Owner-Operators.

Finally, the Court does not find the Mosquera testimony useful because his testimony appears to describe his prepetition employment experience with the Debtor and there is nothing in the testimony establishing that the Debtor's supervision and control of Mr. Mosquera was identical to its supervision and control of Owner-Operator drivers.

In sum, the Court finds that the People have not submitted evidence establishing by a preponderance of the evidence that the Debtor has misclassified drivers

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postpetition in violation of California law.

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**2. The People have not submitted admissible evidence upon which this Court
could quantify the alleged violations**

The Court further finds that the People have failed to carry their burden of proof with respect to the number of any alleged violations. In Debtor's Opposition, the Debtor concedes that after filing for bankruptcy it began transitioning all of its independent contractors to employees through September 1, 2017, after which it states that it has not utilized any independent contractors. However, as discussed above, the People have failed to adequately establish that the Debtor misclassified these drivers in violation of California law. Further, even if the People had shown that there were postpetition misclassifications in violation, the People's evidence provides no meaningful basis for this Court to quantify the number of postpetition violations. The only evidence the People provided in support of its request for \$4,000,000 in penalties is a chart prepared by the People's attorney which this Court has ordered stricken from the record pursuant to the Debtor's Evidentiary Objection as set forth below. With what is left of the record, the People ask this Court to adopt their unsupported speculations underlying the alleged violations and arbitrarily choose a penalty figure. This is something the Court is unwilling to do.

In light of this Court's prior determination that if the Plan is not confirmed in 2018, the Debtor could potentially accrue additional tax liability of approximately \$300,000, the Court is not inclined to provide the People with a further opportunity to submit additional evidence. First, the People failed to file the appropriate motion for allowance of an administrative expense under § 503(b). As a result, the Court has had to characterize it as a motion in order to resolve the issues asserted in the Administrative Claim and the People's related objections to the Plan. Second, given the numerous deficiencies with the People's arguments and evidence, the Court is not confident that additional time would change the outcome. Finally, any continuance of the hearing on the Administrative Claim would necessitate continuing the Plan confirmation hearing and result in prejudice to the estate and its creditors.

For the reasons set forth above, the People's request for an Administrative Claim is denied in full.

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C. Evidentiary Objections

- 1) **Kolesnikow's Decl. ¶4 [Page 2, lines 8-12]. Ruling:** Objection overruled.
- 2) **Kolesnikow's Decl. ¶5 [Page 2, lines 13-17]. Ruling:** Objection overruled.
- 3) **Kolesnikow's Decl. ¶6 [Page 2, lines 19-23]. Ruling:** Objection overruled.
- 4) **Kolesnikow's Decl. ¶10 [Page 3, lines 12-15]. Ruling:** Objection overruled.
- 5) **Kolesnikow's Decl. ¶11 [Page 3, lines 18-22]. Ruling:** Objection sustained.
Lack of foundation, legal conclusion, argumentative.
- 6) **Kolesnikow's Decl. ¶12 [Page 3, lines 23-27 and Page 8, lines 1-15]. Ruling:**
Objection overruled.
- 7) **Kolesnikow's Decl. ¶13 [Page 4, lines 16-17]. Ruling:** Objection overruled.
- 8) **Kolesnikow's Decl. ¶14 [Page 4, lines 19-28 and Page 5, lines 1-4]. Ruling:**
Objection sustained as to "The running totals contained in the monthly operating reports filed with this Court show Pac Anchor paid independent drivers as 'subcontractors' \$4.2 million during the pendency of this bankruptcy case."
Argumentative, legal conclusion, lack of foundation. Objection sustained as to "Mr. Barajas testified in connection with the similar, December, 2017 Monthly Operating Report 6, Main Bankruptcy, Doc. No. 418, that the 'subcontractors' were owner-operator drivers or owners of trucks who provided drivers to Debtor."
Argumentative, legal conclusion, lack of foundation. Objection overruled as to the remaining testimony.
- 9) **Kolesnikow's Decl. ¶15 [Page 5, lines 5-12]. Ruling:** Objection sustained.
Argumentative, legal conclusion.
- 10) **Kolesnikow's Decl. ¶16 [Page 5, lines 15-19]. Ruling:** Objection sustained as to "The projections in support of the plan indicate that the Debtor will continue to use 'Independent Contractor' drivers." Objection overruled as to the remaining testimony.
- 11) **Kolesnikow's Decl. ¶17 [Page 5, lines 20-27 and Page 6, lines 1-4]. Ruling:**
Objection sustained as to the word "drivers" following the word "subcontractor" and as to "Debtor continued to classify drivers as independent contractors throughout the pendency of the bankruptcy." Argumentative, legal conclusion, lack of foundation, lack of personal knowledge. Objection sustained as to Exhibit 6 on the grounds that it lacks foundation, is improper opinion and expert testimony, is argumentative, and because Mr. Kolesnikow has not established that he has the requisite personal knowledge. Objection overruled as to the remaining

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testimony.

- 12) **Kolesnikow's Decl. ¶18 [Page 6, lines 1-4]. Ruling:** Objection sustained. Argumentative, legal conclusion, lack of personal knowledge.
- 13) **Kolesnikow's Decl. ¶19 [Page 6, lines 18-23]. Ruling:** Objection overruled.
- 14) **Kolesnikow's Decl. ¶20 [Page 6, lines 25-28 and Page 7, lines 1-4]. Ruling:** Objection sustained as to "Debtor cannot demonstrate that the drivers were free from direction and control." Argumentative, lack of foundation, lack of personal knowledge. Objection overruled as to the remaining testimony.
- 15) **Kolesnikow's Decl. ¶21 [Page 7, lines 7-28]. Ruling:** Objection sustained. Argumentative, lack of foundation, legal conclusion, lack of personal knowledge.
- 16) **Kolesnikow's Decl. ¶22 [Page 8, lines 1-9]. Ruling:** Objection sustained as to "Debtor admits that it cannot operate their [sic] business without the victim drivers." Argumentative. Objection overruled as to the remaining testimony.
- 17) **Kolesnikow's Decl. ¶23 [Page 8, lines 10-24]. Ruling:** Objection overruled.
- 18) **Kolesnikow's Decl. ¶24 [Page 9, lines 4-16]. Ruling:** Objection sustained. Argumentative, legal conclusion, lack of foundation, lack of personal knowledge.
- 19) **Kolesnikow's Decl. ¶25 [Page 9, lines 18-20]. Ruling:** Objection overruled.

III. Conclusion

For the reasons set forth above, subject to the People's arguments in reply at the hearing, the tentative ruling is to DENY the Motion and disallow the Administrative Claim in its entirety.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1: The ABC test presumptively considers all workers to be employees and permits workers to be classified as independent contractors only if the hiring business demonstrates that the worker in question satisfies *each* of three conditions: (a) that the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of the work and in fact; *and* (b) that the worker performs work that is outside the usual course of the hiring entity's business; *and* (c) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed. *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903, 955-56, 232 Cal. Rptr. 3d 1, 41, 416 P.3d 1, 34 (2018) (emphasis in original).

Note 2: The Court presumes the People's contentions regarding violations of California labor law mirror the claims pled in its state court complaint. However, those claims have not been finally adjudicated in the People's favor and the Debtor continues to dispute that its conduct violated California law. Accordingly, even if the Court presumes the claims pled in the state court complaint are the same state court violations issue here, there is insufficient evidence before this Court to conclude that the Debtor's post-petition employment practices violated California law.

Note 3: The People rely on *Dynamex Operations West, Inc. v. Superior Ct.*, 3 Cal. 5th 903, 912 (Cal. 2018) in support of its contention that the Debtor bears the burden to establish that the drivers were properly classified as independent contractors and/or Owner-Operators. While *Dynamex* might control which party has the burden of proof in establishing liability under state law, under 11 U.S.C. § 503(b), the burden is on the People to establish their entitlement to an administrative claim.

Note 4:

"Q: Okay. So *would* drivers get in trouble if they *didn't* keep the outside of their truck clean?"

A: No. They *would* get pulled over by the police and questioned on why the truck was so dirty."

Barajas Transcript, Monday January 29, 2018, Volume 5, p. 645:16-19 (emphasis added).

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Note 5:

"Q: How do you determine how much you're going to be paying *drivers* for Pac Anchor and Green Anchor? How do you determine the rate schedule specifically?

A: Pretty much according to what the customers pay."

Barajas Deposition Transcript, Wednesday, June 21, 2017, p. 535:1-4 (emphasis added).

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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2:17-18597 Base Architecture Planning & Engr Inc.

Chapter 11

#6.00 Further Interim Hearing
RE: [14] Motion to Use Cash Collateral Notice of Motion and Motion For Authority To Use Cash Collateral;

fr. 8-29-17; 12-19-17; 3-13-18; 3-14-18; 6-20-18; 9-12-18

Docket 14

Tentative Ruling:

12/11/2018

Based upon the Debtor's Status Report filed December 3, 2018, this matter is continued to February 20, 2019 at 10:00 a.m. Debtor shall lodge a stipulation with Citizen's Business Bank and the IRS no later than December 31, 2018 permitting Debtor to use cash collateral on the same terms and conditions as previously order by the Court, through and including February 20, 2019.

Since it appears that no plan will be filed, the Court will likely dismiss or convert the case at the February 20 hearing unless a sale motion has previously been filed.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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2:17-18597 Base Architecture Planning & Engr Inc.

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#7.00 Status Hearing
RE: [91] Disclosure Statement Describing Chapter 11 Plan of Reorganization,
with Proof of Service

fr: 2-21-18; 3-14-18; 6-20-18; 9-19-18

Docket 91

Tentative Ruling:

12/11/2018

See Cal. No. 6, above, incorporated in full by reference.

Party Information

Debtor(s):

Base Architecture Planning & Engr

Represented By
M Jonathan Hayes

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2:18-17345 Fu Kong Inc.

Chapter 11

#8.00 Hearing
RE: [40] Motion to Use Cash Collateral NOTICE OF MOTION AND MOTION FOR ORDER AUTHORIZING FURTHER INTERIM USE OF CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; STATEMENT REGARDING CASH COLLATERAL; DECLARATION OF GEORGE HSU; DECLARATION OF FRANK AVINA; DECLARATION OF TONY HWANG (Lo, Michael)

fr. 8-9-18; 8-16-18; 10-16-18

Docket 40

*** VACATED *** REASON: CONTINUED 1-8-19 AT 10:00 A.M.

Tentative Ruling:

8/15/2018

Hearing required.

8/16/2018

Revised Tentative below:

Amended after hearing. Amendments to the tentative ruling appear in red.

For the reasons set forth below, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further interim use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is

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**CONT... Fu Kong Inc.
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Pleadings Filed and Reviewed:

- 1) Motion for Order Authorizing Further Interim Use of Cash Collateral (the "Renewed Cash Collateral Motion") [Doc. No. 40]
 - a) Declaration of George Hsu (the "Hsu Declaration")
 - b) Declaration of Tony Hwang (the "Hwang Declaration")
- 2) Further Opposition of Creditor, Cathay Bank to the Renewed Cash Collateral Motion (the "Opposition") [Doc. No. 46]
 - a) Supplemental Declaration of David B. Bloom (the "Supplemental Bloom Declaration")
- 3) Reply to the Opposition (the "Reply") [Doc. No. 48]
- 4) Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral (the "Evidentiary Objections") [Doc. No. 49]

I. Facts and Summary of Pleadings

Fu Kong Inc. (the "Debtor"), filed a voluntary Chapter 11 petition on June 26, 2018 (the "Petition") [Doc. No. 1]. The Debtor is an importer, wholesaler, and designer of women's apparel under the brands "Lu Lu" and "Shu Shu." The Debtor has 29 years of experience in the industry and has created designs and sold women's apparel under various labels to high end retailers such as Nordstrom, Saks, Lord & Taylor, Dillard's, Macy's, and Stein Mart. Lillian Yu-Li Hsu is the Debtor's president, sole shareholder, and sole director; George Hsu was, until his termination on August 1, 2018, the Debtor's secretary.

The Petition was precipitated by the Debtor's recent cash flow problems due to a slowdown in business in the last three to six months, and a delayed shipment due to production issues in China which delay resulted in a number of the Debtor's customers to cancel orders. The Debtor's ability to generate income was also interfered with for a few weeks due to the father of George Hsu having an emergency health issue.

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On June 1, 2018, the Debtor's secured lender, Cathay Bank (the "Secured Lender"), filed a lawsuit against the Debtor in Los Angeles Superior Court, Case No. KC070342 (the "State Court Action"), for failing to make payments on a business loan, seeking possession of the Debtor's assets and appointment of a receiver, foreclosure of the commercial warehouse leased by the Debtor, and foreclosure of Lillian and George Hsu's principal residence. Other of the Debtor's creditors have also recently began attempting to collect debts.

On July 9, 2018, the Debtor filed the "Motion for Order: (1) Authorizing Debtor to Use Cash Collateral; (2) Granting Adequate Protection to Secured Creditors" (the "Emergency Cash Collateral Motion") [Doc. No. 11]. The Debtor submitted the "Original Budget" [Doc. No. 11, Ex. 1] in connection with the Emergency Cash Collateral Motion. On July 13, 2018, the Court held a hearing on the Emergency Cash Collateral Motion, and on July 16, 2018, the Court entered the "Order (1) Authorizing Debtor to Use Cash Collateral On An Interim Basis Through and Including August 9, 2018, (2) Granting Adequate Protection to Cathay Bank, and (3) Setting Continued Hearing on the Further Interim Use of Cash Collateral" (the "Interim Order") [Doc. No. 21]. Pursuant to the Interim Order, on July 16, 2018, the Debtor made an adequate protection payment in the amount of \$6,780.32 to Cathay Bank. "Declaration of George Hsu" (the "Hsu Declaration") [Doc. No. 40] at ¶ 13¹ [Note 1].

The Renewed Cash Collateral Motion

On July 26, 2018, the Debtor filed the "Motion for Order Authorizing Further Interim Use of Cash Collateral" (the "Renewed Cash Collateral Motion") [Doc. No. 40].

The Secured Lender is the holder of a promissory note in the total current amount of \$1,574,163.00 (the "Loan"), secured by the Debtor's assets including inventory and accounts receivable. The Secured Lender's Loan is also secured by two real properties: (1) the Loan is secured by a second deed of trust on the Debtor's principals' residence located at 1324 N. Vosburg Dr., Azusa, CA 91702 (the "Vosburg Property"), which was appraised at \$1.225 million on September 20, 2017, with approximately \$975,000.00 in equity to satisfy the Loan; and (2) the Loan is secured by a second deed of trust on the industrial warehouse leased by the Debtor located at

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2455 Lee Avenue, S. El Monte, CA 91733 (the "El Monte Property"), which was appraised at \$2.0 million as of July 22, 2018, *see* "Declaration of Tony Hwang" (the "Hwang Declaration") [Doc. No. 40], Ex. 3, with approximately \$941,919.35 in equity. Based on these figures, the Secured Lender is protected by equity in the approximate amount of \$1,916,919.35 on the \$1,574,163.00 principal balance of the Loan.

The Debtor has four additional working capital lenders that each have UCC-1 security interests in the Debtor's assets and accounts receivable: (1) Funding Metrics, LLC; (2) Landing Club Corp; (3) Wide Merchant Investment Inc.; and (4) Yellowstone Capital West, LLC (collectively, the "Capital Secured Creditors").

As of July 26, 2018, the Debtor has \$11,761.91 in cash, and the Debtor anticipates that as of August 10, 2018, the Debtor will have approximately \$18,949.91 in cash. Renewed Cash Collateral Motion at 7. The Debtor seeks authorization to continue to use the cash collateral in accordance with the "Amended Budget", *see* Hsu Declaration, Ex. 1, for the period of August 10, 2018 through and including December 31, 2018. Beginning in September or October 2018, the Debtor projects up to \$100,000.00 to \$200,000.00 in monthly gross revenue at a 15% to 20% profit margin through selling custom fabrics. The Debtor additionally submits further documentation to support the income projections in the Amended Budget. *See* Renewed Cash Collateral Motion, Ex. 5 ("Purchase Orders and Documentation Supporting Income Projections"). These documents purport to show that the Debtor has received \$438,952.40 in purchase orders, with an additional \$53,400.00 in pending purchase orders; however, the Amended Budget projects \$850,000.00 in income for the period of August through December 2018 "because Debtor believes it will be able to generate such income." Renewed Cash Collateral Motion at 12; Hsu Declaration at ¶ 34. Just over half of the purchase orders, which total \$438,952.40, consist of certain unsigned purchase orders by Pacico, Inc., dated July 26, 2018, which orders collectively total \$298,200.00. *See* Renewed Cash Collateral Motion, Ex. 5. The Debtor further states that its belief in this regard is based on the Debtor anticipating large purchase orders from Intex Usa, Inc., and Casual Express Apparel, Inc. *Id.*

The Amended Budget represents the Debtor's best estimate of the necessary business expenses; however, because the needs of the business may fluctuate, the Debtor requests authority to deviate from the total expenses contained in the Amended

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Budget by no more than 20% and to deviate by expense category without the need for further court order. The Amended Budget reflects certain changes in response to the Court's Interim Cash Collateral Order. Among these changes, the Amended Budget: (1) provides for payment of rent on the El Monte Property in the amount of \$5,000.00 per month, reduced from \$10,000.00 per month in the Original Budget; (2) does not include a line item for payment of property tax on the El Monte Property, because the lessors are responsible for payment of such taxes; (3) the line item for "Auto Expense" is reduced to \$500 per month, which the Debtor explains is a car allowance paid by the Debtor to Lillian Hsu for the business use of her personal car, *see* Renewed Cash Collateral Motion at 9; (4) includes a line item for "Commission" in varying amounts for each of the months August through December 2018, which expense is necessary to pay the Debtor's "road representatives" who travel to various stores around the country to promote and sell the Debtor's products, *see id.* at 10; and (5) includes a line item for "Wages" in the amount of \$26,000.00, which expense is necessary to pay the Debtor's Principals, and which will only be paid after the expiration of the 15-day period required for insider compensation, *see id.* at 11 (on July 25, 2018 the Debtor filed the "Notice of Setting/Increasing Insider Compensation" for each of the Debtor's Principals, *see* Doc. Nos. 35, 36).

The Debtor contends that the use of cash collateral is necessary to continue business operations. The Debtor states that, based on the figures set forth above, the Secured Lender is adequately protected by the Debtor's inventory (which, according to the Debtor, has an approximate value of \$1.4 million), the equity in the Vosburg Property and the El Monte Property, and has an equity cushion of approximately 21.77%. The Debtor disputes the appraisal figures relied on by the Secured Lender in its Opposition to the Emergency Cash Collateral Motion [Doc. No. 18], wherein the Secured Lender contends that its loan is not fully secured. The Debtor contends that the Secured Lender's respective appraisals of the Vosberg Property and the El Monte Property, which were based on exterior viewings, are less reliable than the Debtor's respective appraisals, which were based on full inspections. *Compare* "Declaration of Glenn W. Lee" (the "Lee Declaration") [Doc. No. 18] at ¶ 4, *and* "Declaration of Thomas C. Anderson" (the "Anderson Declaration") [Doc. No. 18] at ¶ 4 (Secured Lender's appraisals), *with* "Declaration of Frank Avina" [Doc. No. 40] at ¶ 2 & Ex. 2, *and* Hwang Declaration, Ex. 3 (Debtor's appraisal of the El Monte Property as of July 22, 2018). Based on its appraisal figures, the Debtor further contends that it should not be required to make any further adequate protection payments to the Secured Lender. Additionally, the Debtor states that the Secured Lender and the Capital

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Secured Creditors are adequately protected by the Debtor's continued business operations because the Debtor will continue to generate revenue and preserve the business.

The Renewed Opposition

On August 2, 2018, the Secured Lender filed the "Further Opposition of Creditor, Cathay Bank to [the Renewed Cash Collateral Motion]" (the "Renewed Opposition") [Doc. No. 46]. The Secured Lender opposes further use of the cash collateral by the Debtor. According to the Renewed Opposition, as of June 29, 2018, the total owing on the Loan is \$1,589,689.04. Both the Vosburg Property and the El Monte Property are owned by Lillian and George Hsu. Renewed Opposition at 4. In addition to the Loan to the Debtor, the Secured Lender has made two additional loans to the Hsus, personally: a home equity line of credit secured by a first deed of trust on the Vosburg Property, and a commercial real estate loan secured by a first deed of trust on the El Monte Property. The Debtor defaulted on the Loan after failing to make the payment due on February 18, 2018. The Loan matured on June 18, 2018.

On June 1, 2018, the Secured Lender commenced the State Court Action, and on June 5, 2018, the State Court entered a temporary restraining order and an order to show cause re: appointment of receiver. During the period from the issuance of the TRO on June 5, 2018, through June 26, 2018, the Secured Lender experienced significant difficulties in its attempts to get the Debtor's compliance with the TRO. Such difficulties included, among other things, multiple delays by the Debtor's principals of the field examination of the Debtor's records, and the Debtor's failure to produce certain documents requested by the Secured Lender. The hearing on the State Court OSC was set for June 27, 2018, and on June 26, 2018, the State Court entered its tentative ruling granting the receivership and related relief. The Debtor filed the Petition shortly thereafter.

The Secured Lender points out the following discrepancies with respect to the Renewed Cash Collateral Motion, the Debtor's Schedules, and certain past representations made to the Secured Lender:

- (1) Schedule A/B, ¶ 11, lists the amount of accounts receivable as \$3,250.00; however, in written financial statements provided by the Debtor to the Secured Lender pre-petition, the Debtor represented that as of December 31, 2017, it

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had \$1,200,370.78 in accounts receivable. The Secured Lender argues that the Debtor has failed to explain this discrepancy. Furthermore, at the 341(a) meeting of creditors on August 1, 2018, Ms. Hsu testified that the December 31, 2017 financial statements were inaccurate. Supplemental Bloom Declaration at ¶ 4(a).

- (2) The Debtor's Statement of Financial Affairs, Part 1, states that the gross sales of the Debtor in 2017 totaled "\$1,200,00.00" [*sic*]; however, in the 2017 Financial Statements provided to the Secured Lender, the gross sales of the Debtor were stated as \$6,250,267.00. Renewed Opposition at 5. The Secured Lender argues that based on the Debtor's failure to explain this discrepancy, it continues to appear that either the 2017 signed financial statement given by the Debtor to the Secured Lender, or the Debtor's Schedules, are fraudulent. *Id.*

The Renewed Opposition further contends that, notwithstanding the changes to the Amended Budget as compared to the Original Budget, the Amended Budget is unrealistic based on the disparity between the Amended Budget's projections and the Debtor's past performance. The Debtor's 2016 tax return shows that the Debtor had gross sales in the amount of \$6,167,200.00, and reported cost of goods sold of \$4,783,280.00 (77.6% cost of goods). The Debtor's unaudited 2017 Financial statements show that the Debtor had gross sales in the amount of \$6,250,267.00, and reported cost of goods sold of \$4,898,057.00 (78.4% cost of goods). In contrast, the Amended Budget projects gross sales of \$850,000.00, with a projected cost of goods sold of 60.06% of the projected gross sales. The Renewed Opposition raises additional issues regarding the assumption in the Budget that the Debtor will be able to obtain new credit, as well as significant discrepancies between the Debtor's net profit before taxes in 2016 and 2017 (.9% and 1.7% of gross sales, respectively), and the projected net profit before taxes of 30.7% of gross sales in the Budget. Furthermore, the Opposition contends that the Amended Budget is not supported by sufficient documentation or business records. Specifically, the Secured Lender argues that the newly provided "purchase orders" from Pacico, Inc., are not signed, and fail to set forth material provisions such as payment terms, delivery terms, and cancellation terms. Furthermore, the Pacico purchase orders only account for part of the \$855,000.00 in projected sales, without any documentation to support the remaining projections. Previously, the Secured Lender discovered that the Debtor "maintained no general ledger and that no accounts receivable ageings were available, no inventory ageings were available, and the Debtor's accounts payable ageings appear[ed] to be

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highly inaccurate" "Declaration of Margaret Waye" ("Waye Declaration") [Doc. No. 18] at ¶¶ 16, 20, 21, 22. The Renewed Opposition also contends that the Debtor still has not provided sufficient information with respect to the lease of the El Monte Property

Lastly, the Renewed Opposition contends that the Secured Lender's interest in the collateral is not adequately protected. The Secured Lender disputes the Debtor's valuation of the Vosburg Property and El Monte Property. First, the Secured Lender points out that the Court previously rejected the Debtor's appraisal of the Vosburg Property, yet the Debtor submits the same appraisal in support of the Renewed Cash Collateral Motion. Thus, the Secured Lender contends that based on the its appraisal of the Vosburg Property on May 7, 2018, the Vosburg Property has a value of \$978,000.00, leaving gross equity in the amount of \$696,258.71 (including a reduction for delinquent property taxes). Regarding the El Monte Property, the Secured Lender argues that the Debtor's appraisal inflates the value of the El Monte Property by simply adding \$200,000.00 to \$250,000.00 in adjustments to the comparable sales. Additionally, the Secured Lender discovered that there is an additional third deed of trust in the amount of over \$1 million recorded against the El Monte Property, which means that the encumbrances greatly exceed the amount of any appraisal.

The Reply

The Debtor filed the Reply to the Renewed Opposition on August 6, 2018 (the "Reply") [Doc. No. 48]. At the outset, the Debtor admits the misconduct of its now-former secretary, George Hsu, who provided false financial information to the Secured Lender pre-petition. The Debtor states that George Hsu has been removed, and that the Debtor is committed to maintaining accurate business records moving forward. Lillian Hsu disclaims having any knowledge of the actions taken by George Hsu regarding the financial statement provided to the Secured Lender pre-petition. The Reply submits additional evidence in support of the Renewed Cash Collateral Motion including, among other evidence: the Declaration of Lillian Hsu (the "L. Hsu Declaration"); signed purchase orders from Pacico, Inc., *see* L. Hsu Declaration, Exhibit 1; and further documentation to substantiate the list of received purchase orders and projected sales, *see id.*, Exhibit 2. The Debtor explains that it anticipates large purchase orders being made by Intex USA, Inc. ("Intex") and Casual Express Apparel Inc. ("Casual Express") in the near future, which orders will account for the

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difference between the total amount of the received purchase orders and the Debtor's projection of gross income. The Reply contends that the Secured Lender's interest in the cash collateral is adequately protected by the equity in the Vosburg Property and the El Monte Property, the Debtor's business operations, and the approximately \$1.4 million in inventory. The Debtor argues that the Debtor's appraisals of each of the Properties are superior to those submitted by the Secured Lender, and that calculation of equity for the purpose of determining adequate protection should be based on the Debtor's appraisals.

The Evidentiary Objections

On August 8, 2018, the Secured Lender filed the "Evidentiary Objections to the Reply Declarations Submitted by Debtor Fu Kong, Inc. In Support of its Motion to Use Cash Collateral" (the "Evidentiary Objections") [Doc. No. 49]. The Secured Lender objects (on various grounds) to the Declaration of Lillian Hsu and the Declaration of George Hsu, submitted in support of the Reply.

II. Findings of Fact and Conclusions of Law

The Evidentiary Objections

For the reasons set forth below, the Secured Lender's Evidentiary Objections to the Declaration of Lillian Hsu and the Declaration of George Hsu are **OVERRULED**. To the extent the Secured Lender objects based on the respective declarations containing numerous statements that end with "to the best of my knowledge," "to the best of my knowledge, information, and belief," or any similar variation, the Court finds the objections lack merit. Additionally, the Court finds that as officers of the Debtor (in the case of George Hsu, a former officer of the Debtor), the Hsu's have the requisite personal knowledge to testify to the Debtor's operations, and the events and circumstances that arose in the ordinary course of business. *See, e.g., Stuart v. UNUM Life Ins. Co. of Am.*, 217 F.3d 1145, 1155 (9th Cir. 2000); *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999, 1018 (9th Cir. 1990) (CEO's personal knowledge of various corporate activities inferred from position).

The Court further notes that to the extent that declaration testimony purports to characterize the contents of evidence set forth in the record, the Court does not rely upon such testimony. Instead the Court has independently reviewed the evidence in

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the record, and draws its own conclusions as to whether the proffered evidence corroborates the position advanced by its proponent.

The Renewed Cash Collateral Motion

Section 363(c)(2) requires court authorization for the use of cash collateral unless "each entity that has an interest in such cash collateral consents." In the Ninth Circuit, satisfaction of Section 363(c)(2)(A) requires the "affirmative express consent" of the secured creditor; "implied consent," resulting from the failure of the secured creditor to object to use of cash collateral, does not satisfy the requirements of the statute. *Freightliner Market Development Corp. v. Silver Wheel Freightlines, Inc.*, 823 F.2d 362, 368-69 (9th Cir. 1987). Absent affirmative express consent, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). A secured creditor's interest is adequately protected if the value of its collateral is not declining; the secured creditor is not entitled to payment to compensate for its inability to foreclose upon the collateral during bankruptcy proceedings. *United Savings Association of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365 (1988).

Here, the Court finds that the Secured Lender is not adequately protected by the equity in the Vosburg Property and the El Monte Property; therefore, the Court finds that the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

First, in connection with the Emergency Cash Collateral Motion the Court accepted the Secured Lender's appraisal of the Vosburg Property; nevertheless, the Debtor still attempts to rely on its appraisal of the Vosburg Property, which the Court previously rejected. The Debtor has failed to show that the Court should reconsider its previous rejection of the appraisal. Based on the Secured Lender's Appraisal, there is only \$627,678.71 of equity in the Vosburg Property.

Secondly, with respect to the El Monte Property, the Court finds that the Secured Lender's Appraisal is the most reliable valuation, particularly because of the ambiguity identified by the Secured Lender with respect to whether the Debtor's appraisal is in fact an appraisal, or just an evaluation. Therefore, the Court finds that

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the value of the El Monte Property is \$1,630,000.00.

In sum, the Secured Lender's Loan is secured by property with available equity of \$1,111,798.06, while the principal balance on the Loan is \$1,589,689.04, leaving \$477,890.98 unsecured by real property. The Debtor argues that the Secured Lender has recourse to the Debtor's inventory, which the Debtor claims has a value of \$1.4 million; however, given the lack of documentary evidence to support the claimed value of the collateral, the Court cannot accept the Debtor's valuation of the inventory for the purposes of determining whether the Secured Lender's interest in the cash collateral is adequately protected. As discussed, there is not sufficient equity in the Vosburg and El Monte Properties to provide adequate protection. Therefore, the Debtor must make monthly adequate protection payments to the Secured Lender in the amount of \$6,780.32.

With respect to the arguments raised by counsel for the Secured Lender at the hearing regarding the viability of the Debtor's business, such arguments are not relevant to the Court's determination of whether to authorize the Debtor to use cash collateral. Rather, in the absence of affirmative express consent by the creditor, the Debtors "may not use" cash collateral absent the Court's determination that the use is "in accordance with the provisions" of Section 363—that is, that the secured creditor's interest in the cash collateral is adequately protected. Section 363(c)(2)(B); Section 363(e). The Secured Lender has not shown that its interest in the cash collateral is not adequately protected by the combination of the equity in the Vosburg and El Monte Properties, the Debtor's inventory, the monthly adequate protection payments ordered by the Court, and the deadline set by the Court for the Debtor to obtain approval of a Chapter 11 disclosure statement.

With respect to the evidence submitted in support of the Renewed Cash Collateral Motion and the Amended Budget, and having considered the Renewed Opposition filed by the Secured Lender, the Court finds that the documentation submitted with the Reply, coupled with the statements of Ms. Hsu regarding the anticipated purchase orders from Intex and Casual Express, *see* L. Hsu Declaration at ¶¶ 11–12, is sufficient to support the further interim use of cash collateral. The evidence submitted as Exhibit 1 to the Lillian Hsu Declaration (the signed Pacico purchase orders) is sufficient to rebut the argument of the Secured Lender with respect to the authenticity of the Pacico purchase orders. Additionally, the documentation submitted as Exhibit 2 to the Lillian Hsu Declaration is sufficient to support the Renewed Cash Collateral

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Motion with respect to the total amount of purchase orders received by the Debtor. While there remains a sizeable difference in the total amount of the purchase orders received (\$492,352.40), and the projected gross sales (\$855,000.00), the Court finds that Ms. Hsu provided sufficient information detailing the status of the Debtor's negotiations with Intex and Casual Express to support the projected gross sales.

The Secured Lender additionally argues that there are significant disparities between the Amended Budget projections and the past performance of the Debtor, however, the Court finds that the Reply offers a sufficient explanation of these discrepancies. Importantly, the Debtor explains that the disparity between the cost of goods in the past and the cost which is set forth in the Amended Budget is attributable to the inclusion of \$30,000.00 per month in projected sales of existing inventory in the Amended Budget, and the Debtor maintains that it will be able to afford the cost of purchasing new goods without third party financing based on its new business model. The Debtor's new business model includes an invoicing system whereby the Debtor's customers are invoiced with 30 days for repayment, while the Debtor's suppliers invoice the Debtor with 60 to 90 days for repayment. This model allows the Debtor to collect payments from its customers before the Debtor it pays its suppliers. Thus, the Debtor has submitted sufficient documentary evidence in connection with the Reply to support the further use of cash collateral on an interim basis.

The Court notes that the Debtor has acknowledged the past misrepresentations made by its former secretary, George Hsu. The Debtor fired George Hsu on August 1, 2018, and the Court expects all future representations to be accurate. **The Court takes the statements of Lillian Hsu at the 341(a) meeting of creditors, as well as in her declaration in support of the Reply that George Hsu was fired as Secretary of the Debtor on August 1, 2018, to mean that George Hsu will not play any role whatsoever in the Debtor's business operations moving forward. And to be clear, the Court expects that George Hsu will not participate in any capacity in the Debtor's ongoing business operations.**

III. Conclusion

In ordering the deadlines set forth below, the Court understands there is a hearing on the Secured Lender's Motion to Appoint a Trustee or Examiner [Doc. No. 28] scheduled for August 21, 2018 at 10:00 a.m. That Motion is not before the Court, and the Court's ruling on the instant motion is unrelated to the merits of the pending

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Motion to Appoint a Trustee or Examiner.

Based on the foregoing, the Court GRANTS the Renewed Cash Collateral Motion. The Debtor is authorized to use the cash collateral in accordance with the terms of the Amended Budget and consistent with this tentative ruling through and including October 16, 2018. The Debtor shall make monthly adequate protection payments to the Secured Creditor in the amount of \$6,780.32, in accordance with the terms and dates set forth in the Parties' Loan Agreement. The Court will hold a hearing on the further use of cash collateral on **October 16, 2018 at 10:00 a.m.** The deadline for the Debtor to file a motion for authorization of further interim use of cash collateral is **October 2, 2018**. The deadline to file any written opposition to the further interim use of cash collateral is **October 9, 2018**. The deadline for the Debtor to obtain approval of a disclosure statement in support of a Chapter 11 plan is **December 19, 2018**.

The Debtor shall lodge a conforming order within seven (7) days of the hearing.

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#9.00 Hearing
RE: [576] Motion to Reject Lease or Executory Contract Debtors Notice Of Motion And Motion To Reject, Pursuant To 11 U.S.C. § 365(A), Professional Services Agreement With All Care Medical Group, Inc. And Related Executory Contracts And Unexpired Lease Nunc Pro Tunc; Memorandum Of Points And Authorities; Declaration Of Stephen Campbell, M.D. [Filed Only To Amend Docket No. 399 In Accordance With Order Docket No. 522] (Moyron, Tania)

fr. 11-7-18

Docket 576

*** VACATED *** REASON: CONTINUED 1-23-19 AT 10:00 A.M.

Tentative Ruling:

12/11/2018

The Court has entered an order approving a stipulated continuance of this matter to **January 23, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#10.00 Hearing
RE: [400] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with Sports, Orthopedic and Rehabilitation Associates (SOAR) and Related Executory Contracts and Unexpired Leases Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

FR. 10-24-18; 11-7-18

Docket 400

***** VACATED *** REASON: CONTINUED 12-19-18 AT 10:00 A.M.**

Tentative Ruling:

12/11/2018

The Court has entered an order approving a stipulated continuance of this matter to **January 23, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#11.00 Hearing

RE: [399] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with All Care Medical Group, Inc. and Related Executory Contracts and Unexpired Lease Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration # 6 Exhibit E (part 2) # 7 Exhibit F # 8 Exhibit G (part 1) # 9 Exhibit G (part 2)) (Moyron, Tania)

FR. 10-24-18; 11-7-18

Docket 399

*** VACATED *** REASON: CONTINUED 1-23-19 AT 10:00 A.M.

Tentative Ruling:

12/11/2018

The Court has entered an order approving a stipulated continuance of this matter to **January 23, 2019, at 10:00 a.m.**

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#11.10 HearingRE: [829] Motion Debtor's Notice of Motion and Motion for Entry of an Order Authorizing Entry Into New Collective Bargaining Agreement with Engineers and Scientists of California Local 20, IFPTE; Memorandum of Points and Authorities; Declaration of Steven C. Sharrer

Docket 829

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Authorizing Entry Into New Collective Bargaining Agreement with Engineers and Scientists of California Local 20, IFPTE [Doc. No. 829] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Docket Numbers 829 and 834 [Doc. No. 866]
- 2) Official Committee of Unsecured Creditors' Response to [Motion] [Doc. No. 973]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors VHS and O'Connor Hospital ("O'Connor") seek authorization to enter into a new collective bargaining agreement (the "CBA") with the Engineers and Scientists of Local 20, IFPTE ("Local 20"). O'Connor's employee physical therapists, physical therapist assistants, occupational therapists, speech language pathologists, registered dietitians, and discharge coordinators have selected Local 20 as their exclusive representative (the "Local 20 Therapy Plus Unit"). There are approximately 45 members of the Local 20 Therapy Plus Unit. These positions are historically difficult to fill. Qualified candidates are scarce as a result of the education, training,

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and licensure that is required.

Certain terms of the CBA have not yet been finalized. The parties have agreed that successorship obligations shall apply in the event of a change of ownership of O'Connor. That means that a purchaser acquiring O'Connor is not required to assume the terms of the CBA. Other principle terms to which the parties have agreed include the following:

- 1) Recognition of Local 20 as the exclusive representative of the Local 20 Therapy Plus Unit.
- 2) Indemnification of O'Connor by Local 20 related to employee membership.
- 3) Prohibition on strikes and lockouts during the term of the CBA.

Terms that remain to be negotiated include wages, certain work rules, and term.

The Debtors assert that entry into the CBA is within the ordinary course of business. In the alternative, the Debtors maintain that entry into the CBA may be authorized under §§363(b)(1) and 105(a). The Official Committee of Unsecured Creditors has no objection to the Motion.

II. Findings and Conclusions

Section 363(c)(1) authorizes the Debtors to enter into transactions in the ordinary course of business without notice or hearing or Court approval. The Ninth Circuit applies two tests to determine whether a transaction has been conducted in the ordinary course of business: the "horizontal" test and the "vertical" or "creditor's expectation" test. See *Burlington Northern Railroad Co. v. Dant & Russell, Inc.* (*In re Dant & Russell, Inc.*), 853 F.2d 700, 704 (9th Cir. 1988). The horizontal test "may be described as involving an industry-wide perspective in which the debtor's business is compared to other like businesses. In this comparison, the test is whether the postpetition transaction is of a type that other similar businesses would engage in as ordinary business." *Id.* The vertical or creditor's expectation test "views the disputed transaction 'from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit.'" *Id.* (internal citation omitted).

Here, both the horizontal and vertical tests are satisfied. With respect to the horizontal test, agreements similar to the CBA are typical in the hospital industry. With respect to the vertical test, "[t]he touchstone of 'ordinariness' is ... the interested parties' reasonable expectations of what transactions the debtor in possession is likely

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to enter in the course of its business.” *Dant & Russell, Inc.*, 853 F.2d at 705. The Debtors were engaged in negotiations with Local 20 prior to the date of the petition. Therefore, a hypothetical creditor would reasonably expect that the debtor in possession would enter into the CBA subsequent to the date of the petition.

Although the Debtors are not required to obtain Court approval to enter into the CBA, the Court will enter an order granting the Motion to provide certainty and to facilitate the parties’ negotiation of the remaining terms. Because no parties have opposed the Motion, the order shall take effect immediately upon entry, notwithstanding Bankruptcy Rule 6004(h).

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit an order incorporating this tentative ruling by reference within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#11.20 HearingRE: [847] Motion Debtors Notice Of Motion And Motion For An Order Authorizing Debtors To Pay Certain Prepetition Conduit Claims; Memorandum Of Points And Authorities; Declaration Of Mary Eileen Drees

Docket 847

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtor's Notice of Motion and Motion for an Order Authorizing Debtors to Pay Certain Prepetition Conduit Claims [Doc. No. 847] (the "Motion")
 - a) Declaration of Service by Kurtzman Carson Consultants, LLC Regarding Debtor's Notice of Motion and Motion for an Order Authorizing Debtors to Pay Certain Prepetition Conduit Claims [Doc. No. 861]
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Motion for an Order Authorizing Debtors to Pay Certain Prepetition Conduit Claims [Doc. No. 885]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtor VHS, a California nonprofit public benefit corporation, is the sole corporate member of the following five California nonprofit public benefit corporations: O'Connor Hospital, Saint Louise Regional Hospital, St. Francis Medical Center, St. Vincent Medical Center, Seton Medical Center, and Seton Medical Center Coastside (collectively, the "Hospitals").

The Debtors in these cases include five philanthropic foundations (the "Philanthropic Foundations"), each an affiliate and supporting organization of their

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CONT... Verity Health System of California, Inc.

Chapter 11

corresponding Hospital. The Philanthropic Foundations are O'Connor Hospital Foundation, Saint Louise Regional Hospital Foundation, St. Francis Medical Center of Lynwood Foundation, St. Vincent Foundation, and Seton Medical Center Foundation.

The Philanthropic Foundations support the philanthropic needs of their corresponding Hospitals. This enables the Hospitals to benefit from gifts, such as funds raised through grants for specified and restricted use by the Hospitals (the "Restricted Funds"). These Restricted Funds are subject to specific program limitations, which vary depending on the grant agreement.

The Philanthropic Foundations have separate bank accounts (the "Foundation Accounts") from their corresponding Hospital. Typically, the Foundations' Restricted Funds are held in the Foundation Account until released to the Hospital's Accounts Payable ("AP") account, to reimburse the Hospital for expenditures made in support of philanthropic programs.

Prior to the Petition Date, the Debtors had cut checks, payable from Hospital AP accounts, to pay various prepetition vendors (the "Prepetition Vendors") on account of services those vendors had furnished in connection with various grant programs. The Debtors seek authorization to pay a total of \$443,468 in non-estate funds to the Prepetition Vendors. The Debtors' position is that the funds held in the Hospital AP accounts are not property of the estate because the Hospitals are merely acting as conduits for the funds. The Debtors file the Motion in abundance of caution because the Prepetition Vendors are creditors of the Debtors. The Debtors state that failure to pay the Prepetition Vendors would threaten the Debtors' relationship with various grant funders.

The Debtors seek authorization to pay a subgroup of eligible Prepetition Vendors (the "Vendor Subgroup") from funds approved for prepetition payments to critical vendors (the "Critical Vendors Program"). *See* Final Order Granting Debtors' Emergency Motion for Entry of an Order Authorizing Debtors to Honor Prepetition Obligations to Critical Vendors (the "Critical Vendor Order") [Doc. No. 436]. The Debtors had intended to pay the Vendor Subgroup prior to the Petition Date using non-estate Restricted Funds. However, those Restricted Funds were deposited in a Hospital AP account and the related checks to the Vendor Subgroup were cut, but ultimately never mailed because of the occurrence of the Petition Date. The Debtors believe that no more than \$40,969 of otherwise Restricted Funds intended for the Vendor Subgroup were trapped in the Hospital AP accounts and therefore commingled with estate funds. To avoid the expense of tracing the Vendor Subgroup

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CONT... Verity Health System of California, Inc.

Chapter 11

funds, the Debtors intend to pay the Vendor Subgroup \$40,969 from funds approved for the Critical Vendor Program.

The Official Committee of Unsecured Creditors has no objection to the Motion.

II. Findings and Conclusions

Section 541(a) provides that “all legal or equitable interests of the debtor in property as of the commencement of the case” constitutes “property of the estate.” “The bankruptcy estate takes whatever interests a debtor has in property as of the petition date, subject to the same limitations and restrictions on the use of the property that existed prepetition.” *In re Roman Catholic Archbishop of Portland in Oregon*, 345 B.R. 686, 705 (Bankr. D. Or. 2006).

Here, the Restricted Funds do not constitute property of the estate, because those funds are held in trust by the Debtors on behalf of the Philanthropic Foundations pending distribution of the funds for purposes consistent with the mission of the Foundations. It is therefore appropriate for the Debtors to use those funds to pay the Prepetition Vendors.

In addition, courts have held that where, as here, a debtor acts as a mere conduit for certain funds, such funds do not constitute property of the estate. *See, e.g., Golden Mortgage Fund #14 v. Kennedy (In re Golden Triangle Capital, Inc.)*, 171 B.R. 79, 82 (9th Cir. BAP 1994). The Court finds that although the Debtors have legal title to the funds, the Debtors are acting only as a conduit for the funds. The Debtors do not have unfettered discretion over how the funds are spent. Instead, the Debtors are obligated to distribute the funds only in accordance with the provisions of the various grant programs.

Based upon the foregoing, the Motion is GRANTED in its entirety. The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court’s tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge’s Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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CONT... Verity Health System of California, Inc.

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-18021 Sultan Financial Corporation

Chapter 11

#12.00 Status conference re chapter 11 case

FR. 7-17-18; 8-8-18; 10-10-18; 11-7-18

Docket 4

Tentative Ruling:

12/11/2018

Tentative Ruling:

Having reviewed the Debtor's Status Report, the Court finds that the Debtor is making sufficient progress toward resolving this case. The Debtor's contemplated motion seeking dismissal pursuant to §1112(b) shall be filed by no later than **December 28, 2018.**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Sultan Financial Corporation

Represented By
Jeffrey N Brown

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Hearing Room 1568

10:00 AM

2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#13.00 Hearing
RE: [1088] Interim Fee Applications

Docket 0

*** VACATED *** REASON: CONTINUED TO 12-19-18 at 10:00 A.M.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Jeffrey I Golden
Jeffrey I Golden (TR)
Beth Gaschen
Philip E Strok
Kyra E Andrassy
Leslie A Cohen
Robert S Altagen
Michael J. Weiland

**United States Bankruptcy Court
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Hearing Room 1568

10:00 AM

2:14-25758 Wesley Brian Ferris

Chapter 11

#14.00 HearingRE: [229] Application for Compensation First And Final Application For Compensation And Reimbursement Of Expenses By Danning, Gill, Diamond & Kollitz, LLP, As Counsel To Debtor And Debtor In Possession; Declaration Of Uzzi O. Raanan In Support Thereof, with Proof of Service for Danning, Gill, Diamond & Kollitz, LLP, General Counsel, Period: 1/1/2017 to 8/1/2018, Fee: \$43,359.00, Expenses: \$375.18.

Docket 229

Tentative Ruling:

12/11/2018

Having reviewed the first and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$43,359 approved on a final basis, but payment is limited to \$17,124.82 at this time (per Applicant's request), with the remaining \$26,234.18 to be paid when funds become available.

Expenses: \$375.18

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Wesley Brian Ferris

Represented By
Diane C Weil

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10:00 AM

2:17-16360 Michael McNulty

Chapter 7

#15.00 Hearing
RE: [167] Motion to Amend (related document(s)118 Order on Motion To Sell (BNC-PDF)) ; Declarations in Support Thereof (Pagay, Carmela)

Docket 167

***** VACATED *** REASON: WILL BE HEARD AT 11:00 A.M. TODAY**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

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10:00 AM

2:18-17353 Maria G Gallarza-Dominguez

Chapter 11

#16.00 Hearing
RE: [29] Notice of Motion and Motion in Individual Ch 11 Case for Order
Employing Professional (LBR 2014-1): Law Offices of Lionel E. Giron as
General Insolvency Counsel

Docket 29

*** VACATED *** REASON: PER ORDER ENTERED 12-11-18

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maria G Gallarza-Dominguez

Represented By
Lionel E Giron

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11:00 AM

2:13-21973 Katherine Bouchard Contreras

Chapter 7

#100.00 APPLICANT: BRAD D KRASNOFF

Hearing Re [87] and [88] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$11,985.24

Total Expenses: \$50.35

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Katherine Bouchard Contreras

Represented By
David A Tilem

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)
Michael T Delaney

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11:00 AM

CONT... Katherine Bouchard Contreras

Chapter 7

Doah Kim
Amy L Goldman
Scott Lee
Lovee D Sarenas

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Hearing Room 1568

11:00 AM

2:13-21973 Katherine Bouchard Contreras

Chapter 7

#101.00 APPLICANT: Attorney for Trustee: LEWIS BRISBOIS BISGAARD & SMITH LLP

Hearing Re [87] and [88] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: **\$3,943.50** (\$4,443.50 requested, minus \$500 anticipated fees for appearing at the hearing based upon the lack of any opposition to the Fee Application = \$3,943.50).

Expenses: **\$104.30**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Katherine Bouchard Contreras

Represented By
David A Tilem

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CONT... Katherine Bouchard Contreras

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By

Brad D Krasnoff (TR)

Michael T Delaney

Doah Kim

Amy L Goldman

Scott Lee

Lovee D Sarenas

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2:13-21973 Katherine Bouchard Contreras

Chapter 7

#102.00 APPLICANT: Accountant for Trustee Fees: Menchaca & Company LLP

Hearing Re [87] and [88] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

Having reviewed the second and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$8,165

Expenses: \$99.40

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Katherine Bouchard Contreras

Represented By
David A Tilem

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

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CONT... Katherine Bouchard Contreras

Chapter 7

Michael T Delaney
Doah Kim
Amy L Goldman
Scott Lee
Lovee D Sarenas

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Wednesday, December 12, 2018

Hearing Room 1568

11:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#103.00 HearingRE: [42] Application for Compensation First Interim Application For Award Of Compensation And Reimbursement Of Expenses Of Danning, Gill, Diamond & Kollitz, LLP, As General Counsel For Chapter 7 Trustee; And Declarations Of Eric P. Israel And Brad D. Krasnoff In Support Thereof, with Proof of Service for Danning, Gill, Diamond & Kollitz, LLP, General Counsel, Period: 12/14/2016 to 9/30/2018, Fee: \$176,405.00, Expenses: \$15,391.14.

Docket 42

Tentative Ruling:

12/11/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$176,405.00

Expenses: \$15,391.14

The Court approves the Trustee's request regarding the payment of interim fees and expenses. The Trustee is authorized to pay at this time a total of \$70,000 to professionals employed by the estate. The payment shall be allocated as follows: 100% of applicant's expenses shall be paid, with the balance to be applied to applicant's *pro rata* share of fees.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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11:00 AM

CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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11:00 AM

2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#103.10 HearingRE: [45] Application for Compensation (First Interim) with Proof of Service for Menchaca & Company LLP, Accountant, Period: 4/18/2018 to 11/6/2018, Fee: \$11,774.00, Expenses: \$0.00.

Docket 45

Tentative Ruling:

12/11/2018

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$11,774.00

Expenses: \$0.00

The Court approves the Trustee's request regarding the payment of interim fees and expenses. The Trustee is authorized to pay at this time a total of \$70,000 to professionals employed by the estate. Applicant shall be paid at this time its *pro rata* share of the total sum of \$70,000 to be paid to professionals, in accordance with the Trustee's proposed interim distribution.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Timothy M Rosen

Represented By

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CONT... Timothy M Rosen and Victoria S Rosen

Chapter 7

Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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2:16-24731 Timothy M Rosen and Victoria S Rosen

Chapter 7

#103.20 Hearing
RE: [44] Application for Compensation Menchaca & Company LLP

Docket 42

Tentative Ruling:

12/11/2018

See Cal. No. 103.1, above, incorporated in full by reference.

Party Information

Debtor(s):

Timothy M Rosen

Represented By
Eliza Ghanooni

Joint Debtor(s):

Victoria S Rosen

Represented By
Eliza Ghanooni

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Sonia Singh

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11:00 AM

2:13-11518 Aida Fuentes

Chapter 7

#104.00 APPLICANT: Attorney for Trustee: Robert A Hessling, APC

Hearing Re [141] and [142] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

For the reasons set forth below, the objections of Aida and Rudy Fuentes to the Trustee's Final Report and to the applications for compensation filed by the estate's professionals are **OVERRULED**. The fees and expenses requested by the Trustee and the estate's professionals are awarded, except that the Trustee's counsel is awarded fees of \$202,111.50 (reduced by \$13,652.00 from the \$215,763.50 requested) and is awarded expenses of \$6,576.75 (reduced by \$34.50 from the \$6,602.25 requested).

Pleadings Filed and Reviewed:

- 1) First and Final Application for Award of Compensation and Reimbursement of Expenses of Robert A. Hessling, APC, as General Counsel for Trustee [Doc. No. 136] (the "Application")
- 2) First and Final Fee Application of Hahn Fife & Company for Allowance of Fees and Expenses from July 20, 2017 through September 12, 2018 [Doc. No. 139]
 - a) Declaration of Trustee in Support of the First and Final Fee Application of Hahn Fife & Company for Allowance of Fees and Expenses from July 20, 2017 through September 12, 2018 [Doc. No. 140]
- 3) Trustee's Final Report [Doc. No. 141]
 - a) Notice of Trustee's Final Report and Applications for Compensation and Deadline to Object [Doc. No. 142]
- 4) Objections to Applications for Fees and Expenses of Chapter 7 Trustee, David M. Goodrich and His Counsel Hessling and Associates [Doc. No. 145] (the "Opposition")
- 5) Replies of: (1) Trustee to Opposition of Aida Fuentes and Rudy E. Fuentes to Trustee's Final Report; and (2) Robert A. Hessling, APC, to Opposition of Aida

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CONT... **Aida Fuentes**

Chapter 7

Fuentes and Rudy E. Fuentes to First and Final Application for Award of Compensation and Reimbursement of Expenses of Robert A. Hessling, APC, as General Counsel for Trustee [Doc. No. 146] (the "Reply")

I. Facts and Summary of Pleadings

Robert A. Hessling, APC (“RAH”), general bankruptcy counsel to Chapter 7 Trustee David M. Goodrich (the “Trustee”), applies for allowance of fees of \$215,763.50 and expenses of \$6,602.25. The Trustee applies for fees of \$21,302.58 and expenses of \$526.46. Hahn Fife & Company, LLP (“Hahn Fife”), the Trustee’s accountant, applies for fees of \$2,176.50 and expenses of \$281.80. All fee applications are brought on a final basis.

Claims against the estate total \$13,772.60. As of July 13, 2018, the estate had cash on hand of \$141,446.42. To enable creditors to receive a 100% distribution, RAH has voluntarily subordinated its administrative expense claim to the claims of general unsecured creditors. To ensure that other administrative expenses are paid in full, RAH has voluntarily subordinated its administrative expense claim to the administrative claim of Hahn Fife and to Court costs and fees.

The Trustee seeks to pay \$127,436.60 in administrative expenses, to be distributed as follows:

Applicant	Total Requested	Proposed Payment
Trustee Fees	\$21,302.58	\$10,565.97
Trustee Expenses	\$526.46	\$526.46
Fees for RAH	\$215,763.50	\$107,017.62
Expenses for RAH	\$6,602.25	\$6,602.25
Fees for Hahn Fife	\$2,176.50	\$2,176.50
Expenses for Hahn Fife	\$281.80	\$281.80
Court Costs	\$293.00	\$293.00

The Trustee proposes to pay the remaining balance of \$13,772.60 to four general unsecured creditors. This payment will provide a 100% dividend to holders of allowed general unsecured claims.

Aida Fuentes (“Aida”) and her husband, Rudy Fuentes (“Rudy”) [Note 1] oppose the Trustee’s proposed distribution. [Note 2] Aida and Rudy argue that the distribution contravenes the *Handbook for Chapter 7 Trustee’s* directive that a “trustee shall not administer an estate or an asset in an estate where the proceeds of

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CONT... Aida Fuentes

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liquidation will primarily benefit the trustee or the professionals” Aida and Rudy contend that the fees awarded to the Trustee and the estate’s professionals should be reduced to some unspecified multiple of the distribution to general unsecured claimants, with the balance returned to Aida.

In reply, the Trustee and RAH (collectively, “Applicants”) argue that they should be commended, not condemned, for providing legal services which ultimately resulted in a 100% distribution to unsecured creditors. Applicants point out that they provided such services despite knowing that they would not receive full compensation. Applicants assert that the services were performed in furtherance of their fiduciary obligation to “collect and reduce to money the property of the estate,” §704, and were necessary only because of Aida and Rudy’s aggressive litigation strategy.

To provide context for the findings made herein, the Court describes the case history and its prior rulings in detail.

A. Case History

In 2002, Aida owned property located at 16335 East Elgenia Street, Covina, CA (the “Property”) as her sole and separate property. In July 2006, Aida married Rudy Fuentes. On September 12, 2011, Aida recorded a grant deed conveying all of her right, title, and interest in the Property to Rudy as his sole and separate property.

Aida commenced a voluntary Chapter 7 petition on January 18, 2013. David M. Goodrich was appointed as the Trustee. On March 12, 2014, the Trustee commenced an adversary proceeding against Rudy and Aida, seeking to avoid the September 2011 transfer of the Property as actually and constructively fraudulent. *See Goodrich v. Fuentes, et al.*, Adv. No. 2:14-ap-01159-ER. On April 30, 2015, the Court entered judgment in favor of the Trustee and against Rudy, and avoided the September 2011 transfer. *See Order: (1) Granting Motion for Summary Judgment Against Defendant Rudy E. Fuentes on Third, Sixth, and Tenth Claims for Relief in Trustee’s Complaint, (2) Dismissing with Prejudice First, Second, Fourth, Fifth, Seventh, Eighth and Ninth Claims for Relief Against Defendant Rudy E. Fuentes in Trustee’s Complaint; and (3) Dismissing Without Prejudice Tenth Claim for Relief Against Defendant Aida Fuentes in Trustee’s Complaint [Doc. No. 61, Adv. No. 2:14-ap-01159-ER] (the “Judgment”).*

With respect to the Trustee’s claim seeking turnover of the Property as against Rudy, the Court ordered that the Trustee was entitled to final judgment in his favor, but further ordered that turnover “shall be subject to Rudy’s homestead exemption in the Property and the Trustee’s acquisition of an order authorizing a sale of the

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CONT...

Aida Fuentes

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Property." *See* Judgment at ¶3. The Judgment that avoided the September 2011 transfer is now final and non-appealable. As a result of the Judgment, Rudy has only a possessory interest in the Property.

On September 8, 2014, Rudy commenced a separate voluntary Chapter 7 petition, and claimed a \$175,000 homestead exemption in the Property. Sam S. Leslie was appointed as the Trustee in Rudy's case. On December 8, 2015, Trustee Goodrich moved to disallow Rudy's homestead exemption (the "Disallowance Motion"). On February 19, 2015, the Court denied the Trustee's Disallowance Motion, finding that Rudy was entitled to an exemption of \$175,000 based on his possessory interest in the Property. *See* Order Denying Motion of David Goodrich for Order: (1) Disallowing Homestead Exemption in Fraudulently Transferred Real Property; or (2) in the Alternative Extending Time to Object to Debtor's Homestead Exemption [Doc. No. 56, Case No. 2:14-bk-27148-ER].

The Trustee appealed the Court's denial of the Disallowance Motion to the District Court, which affirmed the Bankruptcy Court's decision. The Trustee appealed the District Court's affirmance to the Ninth Circuit. On April 17, 2017, the Ninth Circuit issued a Memorandum of Decision affirming the District Court's ruling. However, the Ninth Circuit clarified that although Rudy was entitled to a homestead exemption, that exemption was limited to his possessory interest in the Property:

In order to qualify as a "homestead" under the automatic homestead exemption, certain residency requirements must be satisfied. Cal. Civ. Proc. Code § 704.710(c). If the residency requirements are satisfied, a judgment debtor can claim a homestead exemption in the interest he or she has in the property, "regardless of whether the judgment debtor's interest is a fee, leasehold, or lesser interest." Cal. Civ. Proc. Code § 704.820 Law Revision Commission Comments to 1982 Addition; *see also Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014) ("[T]he [California] automatic homestead exemption applies to any interest in the property if the debtor satisfies the continuous residency requirement.").

The parties do not dispute that [Rudy] Fuentes has satisfied these residency requirements. In addition, [Rudy] Fuentes holds a possessory interest in the Property, which is an interest in real property that California law recognizes. *See, e.g.,* Cal. Rev. & Tax. Code § 107; Cal. Code Regs. tit. 18, § 20. Because [Rudy] Fuentes has satisfied the residency requirements, he can claim a homestead exemption in his bankruptcy for the possessory interest that he

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holds in the Property. However, this possessory interest can be sold by his creditors unless "no bid is received at a sale of [the possessory interest] pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property" Cal. Civ. Proc. Code § 704.800(a).

Further, [Rudy] Fuentes's possessory interest is still subject to all other provisions of California and federal law, which may "extinguish[] . . . [his] equitable possessory interests in the real property at issue." *See Eden Place, LLC v. Perl (In re Perl)*, 811 F.3d 1120, 1128 (9th Cir. 2016).

Memorandum of Decision ("Ninth Circuit Memorandum") at 3–5 [Doc. No. 22, Case No. 15-56618].

In a footnote, the Ninth Circuit explained that "[Rudy] Fuentes is not guaranteed to receive any particular amount of money if any other interest (besides his possessory interest) in the Property is sold." *Id.* at 5. The Ninth Circuit made no statements with respect to the amount of money, if any, that Rudy was entitled to receive on account of his homestead exemption.

Aida claimed a homestead exemption in the Property in the amount of \$175,000. On June 23, 2017, the Court granted the Trustee's motion to disallow Aida's homestead exemption. The Court found that, pursuant to §522(g), Aida was not entitled to a homestead exemption:

Section 522(g) provides:

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

- (1) (A) such transfer was not a voluntary transfer of such property by the debtor; and
(B) the debtor did not conceal such property; or
- (2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

"Section 522(g) ... limits the ability of a debtor to claim an exemption where the trustee has recovered property for the benefit of the estate." *Hitt v.*

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Glass (In re Glass), 164 B.R. 759, 761 (9th Cir. BAP 1994). Its purpose "is to prevent a debtor from claiming an exemption in recovered property which was transferred in a manner giving rise to the trustee's avoiding powers, where the transfer was voluntary or where the transfer or property interest was concealed." *Id.* at 764.

There is no dispute that Aida voluntarily transferred the Property to Rudy prior to the petition. The Trustee obtained a judgment avoiding the transfer as fraudulent and recovering the Property. Because Aida voluntarily transferred property that the Trustee recovered, she is not entitled to a homestead exemption under §522(g). It is not necessary for the Court to find that Aida concealed the transfer; the mere fact that she voluntarily transferred property that the Trustee subsequently recovered is sufficient to defeat her right to a homestead exemption.

Final Ruling Granting Trustee's Motions to Disallow Aida's Homestead Exemption and to Employ a Real Estate Broker to Market the Property [Doc. No. 54, Case No. 2:13-bk-11518-ER] at 7-8.

Over Aida's objection, the Court granted the Trustee's application to employ a real estate broker to market the Property. The Court rejected Aida's contention that there was no equity in the Property to be administered for the benefit of creditors:

Aida's opposition ... is premised upon the inaccurate assumption that Rudy is entitled to payment of his \$175,000 homestead exemption from the proceeds of the Property's sale. Aida's opposition ignores the language of the Ninth Circuit's Memorandum of Decision affirming the allowance of Rudy's homestead exemption. The Ninth Circuit held that Rudy is entitled to a homestead exemption, but only to the extent of his possessory interest in the Property. The Ninth Circuit further noted that Rudy is not guaranteed to receive any money on account of his homestead exemption if an interest in the Property other than his possessory interest is sold.

The Trustee is not seeking to sell Rudy's possessory interest in the Property. The Trustee will either sell the Property subject to Rudy's possessory interest, or will take action to extinguish Rudy's possessory interest prior to the sale. Rudy holds no other interest in the Property aside from his possessory interest. Rudy's homestead exemption cannot attach to the proceeds stemming from the sale of interests in the Property that he does not hold. Because Rudy's

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homestead exemption cannot attach to the sale proceeds, there is equity in the Property for distribution to unsecured creditors, and there is no merit to Aida's contention that the Trustee is pursuing the sale of the Property in bad faith.

This result is compelled by the language of the statute and the decision of the Ninth Circuit. The statute makes clear that a debtor's homestead exemption is limited to the debtor's interest in the property. *See, e.g.*, Cal. Civ. Proc. Code §704.740 (providing that "the *interest* of a natural person in a dwelling may not sold under this division to enforce a money judgment except pursuant to a court order ..."); *id.* at §704.820 (providing that where a judgment debtor holds less than a fee simple interest in the property, only "the *interest* of the judgment debtor in the dwelling and not the dwelling shall be sold," and further providing that where there is more than one judgment debtor, "each of the judgment debtors entitled to a homestead exemption is entitled to apply his or her exemption to his or her own *interest*").

The Ninth Circuit's Memorandum further established that Rudy's homestead exemption applies only to his possessory interest in the Property. The court explained that Rudy "can claim a homestead exemption in his bankruptcy for the possessory interest that he holds in the Property." Memorandum at 4. The court further stated that Rudy "is not guaranteed to receive any particularly amount of money if any other interest (besides his possessory interest) in the Property is sold." *Id.* at 5.

The proposition that a debtor's homestead exemption can apply only to the debtor's interest in property is corroborated by the logic of other cases interpreting California's homestead statute. For example, in *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1323 (9th Cir. 1991), the Ninth Circuit was confronted with a situation in which the debtor held only a one-half interest in property. For purposes of determining whether the debtor's homestead exemption could defeat the Trustee's sale of the property, the court compared the value of the exemption to the value of the debtor's one-half interest. The court did not use the value of the entire property to conduct the equity calculation. The court's approach is consistent with the principle that the homestead exemption applies only to the debtor's interest in the property. If the debtor's homestead exemption could apply to interests in the property that the debtor did not hold, the *Reed* court would have been required to perform the equity calculation using the value of the entire property, not just the value of the debtor's one-half interest. The limitation of a homestead exemption to

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the debtor's interest was also made clear in *Elliot v. Weil (In re Elliott)*, 523 B.R. 188, 196 (B.A.P. 9th Cir. 2014). In that case, the court said that the "homestead exemption applies to any *interest* in the property." *Id.* at 196 (emphasis altered).

Id. at 5–6.

In addition, the Court rejected Aida's contention that the Trustee was attempting to administer the Property solely to generate fees for the estate's professionals:

Aida's request that the Trustee be required to appear and show cause why he should not be removed is denied. There is no merit to Aida's contentions that the motions mischaracterize the record in an attempt to mislead the Court, that the Trustee's pursuit of the sale is motivated by animus and vindictiveness, or that the Trustee is seeking to administer the Property solely to generate administrative fees. Pursuant to §704(a), the Trustee has a fiduciary obligation to creditors to "collect and reduce to money the property of the estate." The Trustee's efforts to administer the Property are wholly consistent with this fiduciary obligation, as there is substantial equity in the Property for distribution to creditors. In fact, the Trustee would be violating his statutory and fiduciary obligations if he elected not to administer the Property.

Id. at 6–7.

The Court overruled Aida's remaining arguments in opposition to the Trustee's application to employ a real estate broker:

Nor is there merit to Aida's assertion that the Trustee has engaged in unreasonable delay in objecting to Aida's homestead exemption now. The Ninth Circuit only recently issued its decision clearing the way for the Trustee to administer the Property. Prior to the Ninth Circuit's decision, it would have made no sense for the Trustee to object to Aida's homestead exemption, because it was not until the Ninth Circuit's decision that it became clear that Rudy's homestead exemption could not attach to the proceeds of the Trustee's sale of the fee simple interest in the Property.

In briefing before the Ninth Circuit, Aida implied that the Trustee might be time-barred from objecting to her homestead exemption. *See* Appellee's Brief

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at 4 (“It is important to note that Goodrich did not request in his objection to Aida’s homestead exemption, for an extension of time to file additional objections to the claimed exemption as mandated under FRBP Rule 4003(b).”). Although Aida does not reiterate that argument here, the Court finds it important to clarify that the argument lacks merit. The order which denied the Trustee’s previous objection to Aida’s exemption as premature provides that the denial was “without prejudice to the Trustee’s right to file another motion based upon 11 U.S.C. §522(g) to disallow the Debtor’s amended homestead exemption ... after the completion of any adversary proceeding filed by the Trustee to avoid and recover the Debtor’s alleged fraudulent transfer of the Property.” Accordingly, the Trustee has preserved his right to object to Aida’s homestead exemption.

Id. at 7.

On September 13, 2017, the Court conducted hearings on the Trustee’s motion seeking to compel Aida to turnover the Property (the "Turnover Motion") and the Trustee’s motion for an order authorizing the sale of the Property free and clear of liens and encumbrances (the "First Sale Motion"). The Court denied the Turnover Motion without prejudice, finding that because Aida, Rudy, and their children all lived at the Property, any turnover order issued by the Court with respect to Aida only would be impossible to enforce. *See* Order Denying Without Prejudice Chapter 7 Trustee’s Turnover Motion (the "Turnover Denial Order") [Doc. No. 86, Case No. 2:13-bk-11518-ER]. The Court denied the First Sale Motion without prejudice since the closing of the sale was contingent upon the Trustee’s ability to deliver the Property to the buyers in vacant condition. *See* Order Denying Without Prejudice Chapter 7 Trustee’s Sale Motion [Doc. No. 85, Case No. 2:13-bk-11518-ER].

In the Turnover Denial Order, the Court found that in light of the unenforceability of a turnover order issued only with respect to Aida, it was necessary for the possessory rights of both Aida and Rudy in the Property to be litigated simultaneously. The Court further held that the issues regarding Rudy’s possessory interest and homestead exemption must be adjudicated before this Court—as opposed to being adjudicated before a state court by way of an unlawful detainer action—because those issues require interpretation of the Judgment avoiding the 2011 transfer of the Property and the application of bankruptcy law. On September 14, 2017, the Court issued an order reopening Rudy’s bankruptcy case to permit such adjudication to occur. *See* Order Reopening Case [Doc. No. 79, Case No. 2:14-bk-27148-ER]. On

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September 28, 2017, the Court denied the Trustee's motion for reconsideration of the Court's finding that it was necessary for the issues regarding Rudy's possessory interest and homestead exemption to be adjudicated before the Bankruptcy Court. *See* Order Denying Chapter 7 Trustee's Motion for Reconsideration [Doc. No. 93, Case No. 2:13-bk-11518-ER].

On September 18, 2017, Rudy filed an *Adversary Complaint For: (1) Declaratory Judgment Re Value of Debtor's Possessory, Equitable and Homestead Interests in Real Property; (2) Valuation of Interests; and (3) Injunctive Relief* [Doc. No. 1, Case No. 2:17-ap-01475-ER] (the "Original Valuation Complaint") in his reopened bankruptcy case. The Trustee moved to dismiss the Original Complaint, for failure to state a claim, based on the fact that the Original Complaint named "David M. Goodrich" as a defendant in his individual capacity rather than in his capacity as the Chapter 7 Trustee of the estate of Aida Fuentes. The Court granted the Motion to Dismiss but gave Rudy leave to amend. The Court explained:

Given the contentious nature of this litigation, the Court finds that the caption of the Complaint must be amended to make it absolutely clear that David M. Goodrich is being sued in his capacity as a Chapter 7 Trustee, not in his individual capacity. Upon reading the Complaint, it is clear that Rudy did not intend to sue David M. Goodrich in his individual capacity; nonetheless, the Complaint's caption is misleading and therefore creates ambiguity.

Ruling Granting Motion to Dismiss with Leave to Amend [Doc. No. 17, Case No. 2:17-ap-01475-ER] at 7.

On November 21, 2017, Rudy filed a *First Amended Complaint* [Doc. No. 16, Case No. 2:17-ap-01475-ER] (the "Valuation Complaint"). The Valuation Complaint alleged that Rudy's possessory interest in the Property had a value of no less than \$175,000; that Rudy held an equitable interest in the Property as a result of community payments on the Property's mortgage; and that the Trustee's attempts to sell the Property without paying Rudy any amount on account of his homestead exemption constituted a taking of Rudy's property without just compensation. Based on these allegations, the Valuation Complaint sought (1) a declaration that Rudy's possessory interest has a value of \$175,000; (2) a declaration that Rudy holds an equitable interest in the Property by virtue of community payments on the Property's mortgage; (3) a declaration that any termination of Rudy's possessory and equitable interests in the Property must provide for payment of or adequate protection of those

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interests; and (4) an injunction preventing the Trustee from selling the Property without paying Rudy \$175,000 on account of his homestead exemption.

On January 31, 2018, the Court conducted a hearing on the Trustee's second motion to sell the Property. *See* Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payment of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding that Purchaser is Good Faith Purchaser Under 11 U.S.C. §363(m) [Doc. No. 95, Case No. 2:13-bk-11518-ER] (the "Second Sale Motion"). Unlike the First Sale Motion, the Second Sale Motion did not require the Trustee to deliver the Property to the buyer in vacant condition. Over Rudy's opposition, the Court approved the sale of the Property to Equity Saver Construction, Inc. ("Equity") for \$360,000. *See* Order Granting Motion of Trustee for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Encumbrances; (2) Approving Overbid Procedures; (3) Authorizing Payment of Any Undisputed Liens, Costs of Sale, and Property Taxes; and (4) Finding that Purchaser is Good Faith Purchaser Under 11 U.S.C. §363(m) [Doc. No. 121, Case No. 2:13-bk-11518-ER] (the "Sale Order") and Memorandum of Decision (1) Granting Trustee's Sale Motion and (2) Dismissing Adversary Proceeding [Doc. No. 107, Case No. 2:13-bk-11518-ER].

On February 15, 2018, the Court denied Rudy's emergency motion for a stay pending appeal of the Sale Order. *See* Order Denying "Emergency Motion for Stay Pending Appeal of Order Granting Motion Authorizing Sale of Real Property Free and Clear of Encumbrances" [Doc. No. 120, Case No. 2:13-bk-11518-ER] and Memorandum of Decision Denying "Emergency Motion for Stay Pending Appeal of Order Granting Motion Authorizing Sale of Real Property Free and Clear of Encumbrances" [Doc. No. 119, Case No. 2:13-bk-11518-ER]. On May 29, 2018, the District Court dismissed Rudy's appeal of the Sale Order. The District Court found that the appeal was statutorily moot pursuant to §363(m). *See* Doc. No. 133, Case No. 2:13-bk-11518-ER (reproducing Doc. No. 13, Case No. 2:18-cv-01241-CAS).

Concurrently with the Sale Order, the Court issued an order dismissing the Valuation Complaint. *See* Order Dismissing Complaint [Doc. No. 39, Adv. No. 2:17-ap-01475-ER] and Memorandum of Decision (1) Granting Trustee's Sale Motion and (2) Dismissing Adversary Proceeding [Doc. No. 40, Adv. No. 2:17-ap-01475-ER] (the "Memorandum Dismissing Valuation Complaint"). The Court found that, as a result of the sale of the Property, it lacked jurisdiction over the claims presented in the Valuation Complaint. The Court explained that its prior finding that issues pertaining

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to Rudy and Aida's possessory interest in the Property needed to be adjudicated before the Bankruptcy Court, as opposed to the State Court, no longer applied given the Court's decision to grant the Second Sale Motion:

It was against the backdrop of the First Sale Motion that the Court determined that it was necessary that Rudy's bankruptcy case be reopened so that the Court could adjudicate issues regarding Rudy's possessory interest and his homestead exemption in that possessory interest. Adjudication of those issues was necessary because the First Sale Motion required the Trustee to deliver the Property to the purchasers in vacant condition, free of Rudy's possessory interest.

The Second Sale Motion completely changes the landscape. The Second Sale Motion does not require the Trustee to deliver the Property to the purchaser free of Rudy's possessory interest. As discussed previously, the Ninth Circuit has found that Rudy is not entitled to payment on account of his homestead exemption in his possessory interest unless that possessory interest is sold to pay his creditors. The Ninth Circuit's finding follows from a straightforward application of California law, which governs the treatment of Rudy's homestead exemption because California has opted out of the federal exemption scheme. *See* Cal. Code Civ. Proc. §703.130; *Elliott v. Weil (In re Elliott)*, 523 B.R. 188, 192 (B.A.P. 9th Cir. 2014). The automatic homestead exemption at issue here "is not an absolute right to retain the homestead itself," but is instead "merely a debtor's right to retain a certain sum of money when the court orders sale of a homestead in order to enforce a monetary judgment." *Schwaber v. Reed (In re Reed)*, 940 F.2d 1317, 1321 (9th Cir. 1991); *see also* Cal. Civ. Proc. Code §704.800(a) (providing that a homestead can be sold if a "bid is received at a sale of [the] homestead pursuant to a court order for sale that exceeds the amount of the homestead exemption plus any additional amount necessary to satisfy all liens and encumbrances on the property"). Here, Rudy holds only a possessory interest in the Property, and his homestead exemption applies only to that possessory interest. Rudy's right to be paid on account of his homestead exemption in the possessory interest is not triggered because the possessory interest is not being sold.

Because the Trustee is not seeking to sell Rudy's possessory interest and is not seeking to terminate that interest, the Court lacks "related to" jurisdiction to determine the value, if any, of Rudy's possessory interest or his homestead

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exemption in that possessory interest. Rudy has received a discharge and his estate has been fully administered. Issues pertaining to Rudy's possessory interest no longer affect the handling or administration of Rudy's bankruptcy case in any way.

There is no other jurisdictional basis for the Court to consider Rudy's claims regarding his possessory interest or his homestead exemption therein. The Court lacks "arising under" jurisdiction because Rudy's claims arise under state law, not under title 11. The Court lacks "arising in" jurisdiction because the claims are not an administrative proceeding of the type that has no existence outside of bankruptcy.

Rudy argues that the Court has jurisdiction over the remaining claims because adjudication of those claims will require interpretation of orders issued by this Court, the District Court, and the Ninth Circuit. Rudy is mistaken. State courts are often called upon to adjudicate issues requiring interpretation of orders issued by federal courts; the fact that such interpretation may be required does not automatically give rise to federal jurisdiction.

Civil Rule 12(h)(3) provides: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Based upon its determination that it lacks jurisdiction, the Court *sua sponte* dismisses the Complaint's remaining claims. Rudy's argument that it is improper for the Court to dismiss the remaining claims *sua sponte* lacks merit. "Subject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts *on their own initiative* even at the highest level." *Ruhrigas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (emphasis added).

Memorandum Dismissing Valuation Complaint at 15–16 (footnotes omitted).

II. Findings and Conclusions

A. The Court Awards the Fees and Expenses Requested by the Trustee's Counsel

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

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nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

There can be no question that the services provided by RAH generated a material benefit to the estate. As a result of RAH's efforts, the Trustee was able to liquidate the Property for the benefit of creditors. Liquidation of the Property allowed all unsecured creditors to be paid in full.

The Court does not agree with Aida and Rudy's contention that the Trustee's decision to liquidate the Property primarily benefited the trustee and the estate's professionals in contravention of guidelines set forth in the *Handbook for Chapter 7 Trustees* (the "Handbook"). The relevant portion of the Handbook states:

A chapter 7 case must be administered to maximize and expedite dividends to creditors. A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. The trustee must be

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guided by this fundamental principle when acting as trustee. Accordingly, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case.

Handbook at 4-1.

Aida and Rudy argue that administration of the Property in this case primarily benefited the Trustee and professionals, because the fees sought by Applicants significantly exceed the distribution to unsecured creditors. By focusing solely on the ratio between the costs of administration and the distribution to creditors, Aida and Rudy pay insufficient attention to the Handbook's directive that the "trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors ... before administering a case as an asset case." Here, the Trustee's decision to administer the Property resulted in unsecured creditors being paid in full. Under these circumstances, it cannot be said that the Trustee or his general counsel have disregarded the Handbook's guidelines.

Debtors who voluntarily elect to pursue relief under Chapter 7 of the Bankruptcy Code are subject to a tradeoff: in exchange for a discharge, all of a debtor's non-exempt property is subject to liquidation to pay creditors. Aida and Rudy seek to evade the burdens imposed by that tradeoff by contending that where administrative claims are high relative to the claims of creditors, Trustees are required to relinquish their fiduciary obligations to creditors and allow the debtors to retain assets that would otherwise be subject to liquidation. There is no support in the Bankruptcy Code or in caselaw for such a result.

Aida and Rudy's reliance upon *Jubber v. Bird (In re Bird)*, 577 B.R. 365, 369 (B.A.P. 10th Cir. 2017) is misplaced. In *Jubber*, the court declined to award compensation to the estate's professionals for attempting to administer an over-encumbered property. Unlike the real property at issue in *Jubber*, the Property here was not over-encumbered and had substantial realizable equity. *Jubber* is easily distinguishable.

The Court finds that RAH's fees and expenses are subject to a reduction as a result of deficiencies in the First Sale Motion. As discussed, the First Sale Motion required the Trustee to deliver the Property to the prospective purchasers in vacant condition. To effectuate the contemplated sale, RAH filed the Turnover Motion (defined above) against Aida only. The Court denied the Turnover Motion, finding that because Aida, Rudy, and their children all lived at the Property, any turnover order issued by the

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Court with respect to Aida only would be impossible to enforce. *See* Turnover Denial Order. The Court denied the First Sale Motion without prejudice since the closing of the sale was contingent upon the Trustee's ability to deliver the Property to the buyers in vacant condition.

RAH ultimately effectuated a successful sale by modifying the transaction so that it did not require delivery of the Property to the purchasers in vacant condition. Given the contentious nature of the litigation, RAH should have been aware of the issues posed by the structure of the First Sale Motion. In particular, RAH should have realized the inherent unsoundness of a Turnover Order issued only against Aida, where the Trustee's objective was to evict Aida, Rudy, and all other occupants from the Property.

Between August 4, 2017 and September 27, 2017, RAH billed \$13,652 in fees for services performed in connection with the First Sale Motion, the Turnover Motion, and a failed attempt to obtain reconsideration of the Turnover Denial Order. RAH is not entitled to compensation on account of these services. *See* Doc. No. 136-2, Ex. 1, at pp. 9–14. **[Note 3]** During this same period, RAH billed \$35.40 in expenses for these same services. *See* Doc. No. 136-3, Ex. 2, at pp. 21–22.

For these reasons, RAH's fees are reduced by \$13,652 and RAH's expenses are reduced by \$35.40. RAH is awarded fees, on a final basis, of \$202,111.50 (reduced from the \$215,763.50 requested). RAH is awarded expenses, on a final basis, of \$6,576.75 (reduced from the \$6,602.25 requested).

The Trustee's proposed distribution provides for payment to the Trustee of only \$10,565.97, notwithstanding the fact that the Court has awarded the Trustee fees in the amount of \$21,302.58 (see Section II.B, below). To enable the Trustee to recover more of the fees he has been awarded, the \$35.40 in RAH's disallowed expenses shall be paid to the Trustee.

B. The Court Awards the Fees and Expenses Requested by the Trustee

Section 326 allows the Court to award compensation to a Chapter 7 Trustee, and provides in relevant part:

In a case under chapter 7 ..., the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first \$5,000 or less, 10 percent on any amount in excess of \$5,000 but not in excess of \$50,000, 5 percent on any amount in excess of \$50,000 but not in excess of

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11:00 AM

CONT...

Aida Fuentes

Chapter 7

\$1,000,000, and reasonable compensation not to exceed 3 percent of such moneys in excess of \$1,000,000, upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims.

Section 330(a)(7) provides:

In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.

The Ninth Circuit Bankruptcy Appellate Panel (“BAP”) explains the proper application of §326(a) as follows:

Section 326(a) provides a formula for determining the maximum compensation a trustee may receive in a chapter 7 case. In our decision in *Salgado–Nava*, we analyzed the interaction between this maximum compensation formula and the provision of § 330(a)(7) that the bankruptcy court must “treat [a trustee's] compensation as a commission, based on section 326.” *In re Salgado–Nava*, 473 B.R. at 915–22. We held that a trustee’s request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. “[A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review.” *Id.* at 921. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to “determine whether there exists a rational relationship” between the compensation requested and the services rendered.

Fear v. United States Trustee (In re Ruiz), 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015).

As discussed above, the efforts of the Trustee and his counsel resulted in a 100% distribution to creditors. The extraordinary circumstances warranting a departure from the §326 formula are not present in this case. Aida and Rudy’s objections to the Trustee’s fees and expenses are overruled. The Court awards the fees and expenses requested by the Trustee.

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C. The Court Awards the Fees and Expenses Requested by the Trustee's

Accountant

Aida and Rudy do not object to the fees and expenses requested by Hahn Fife, the Trustee's accountant. Having reviewed Hahn Fife's *First and Final Fee Application*, the Court approves the application and awards the fees and expenses requested, on a final basis.

III. Conclusion

Based upon the foregoing, the Trustee's proposed distribution to administrative claimants, set forth below, is approved, except that the amount to be paid to the Trustee has been increased by \$34.50 on account of the partial disallowance of RAH's expenses.

Applicant	Total Requested	Total Allowed	Authorized Payment
Trustee Fees	\$21,302.58	\$21,302.58	\$10,600.47
Trustee Expenses	\$526.46	\$526.46	\$526.46
Fees for RAH	\$215,763.50	\$202,111.50	\$107,017.62
Expenses for RAH	\$6,602.25	\$6,602.25	\$6,576.75
Fees for Hahn Fife	\$2,176.50	\$2,176.50	\$2,176.50
Expenses for Hahn Fife	\$281.80	\$281.80	\$281.80
Court Costs	\$293.00	\$293.00	\$293.00

The Trustee shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

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Note 1

Given names are used to distinguish Aida Fuentes from her spouse, Rudy Fuentes. No disrespect is intended.

Note 2

Aida and Rudy do not object to the fees and expenses requested by Hahn Fife.

Note 3

All citations refer to the page numbers that are automatically affixed to the top of each page by the Electronic Case Filing (ECF) system upon filing, rather than to the pagination used by the document's preparer.

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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2:13-11518 Aida Fuentes

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#105.00 APPLICANT: Trustee: David M Goodrich

Hearing Re [141] and [142] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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2:13-11518 Aida Fuentes

Chapter 7

#106.00 APPLICANT: Charges, U.S. Bankruptcy Court

Hearing Re [141] and [142] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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2:13-11518 Aida Fuentes

Chapter 7

#107.00 APPLICANT: Accountant for Trustee: Hahn Fife & Company

Hearing Re [141] and [142] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/11/2018

See Cal. No. 104, above, incorporated in full by reference.

Party Information

Debtor(s):

Aida Fuentes

Represented By
Robert G Uriarte

Trustee(s):

David M Goodrich (TR)

Represented By
Robert A Hessling

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11:00 AM

2:17-16360 Michael McNulty

Chapter 7

#108.00 HearingRE: [160] Application for Compensation For Legal Services Rendered, and Reimbursement of Expenses Incurred by Attorney for Debtor-in-Possession; Declaration of Onyinye N. Anyama in Support thereof for Onyinye N Anyama, Debtor's Attorney, Period: 5/30/2017 to 11/6/2018, Fee: \$22805, Expenses: \$1021.74.

Docket 160

Tentative Ruling:

12/11/2018

For the reasons set forth below, the Court finds that Applicant is entitled to fees and expenses of \$2,500 for work performed in connection with the Second Case (defined below).

Pleadings Filed and Reviewed:

- 1) First and Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses Incurred by Attorney [Doc. No. 160] (the "Fee Application")
- 2) United States Trustee's Objection to First and Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses Incurred by Attorney [Doc. No. 173] (the "Opposition")
- 3) Debtor's Response to the United States Trustee's Objection to the First and Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses Incurred by Attorney [Doc. No. 175] (the "Reply")

I. Facts and Summary of Pleadings

Anyama Law Firm ("Applicant") applies for allowance of fees and expenses. Applicant initially sought fees of \$22,805 and expenses of \$1,021.74, for a total award of \$23,826.74. After the United States Trustee (the "UST") objected to Applicant's fees as unreasonable, Applicant reduced the total fees and expenses requested to \$17,000.

This is the second Chapter 11 bankruptcy case in which Michael McNulty (the "Debtor") has been represented by Applicant. The first case (Case No. 2:15-bk-22962-ER) (the "First Case") was commenced on August 8, 2015. At a hearing held on

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February 8, 2017, the Court declined to confirm the Chapter 11 Plan drafted by Applicant. The Court found the Plan to be deficient in numerous respects, including without limitation the following:

- 1) Applicant failed to file, on behalf of the Debtor, a summary of the ballots indicating how creditors had voted on the Plan.
- 2) Applicant represented that the Debtor intended to file a stipulation resolving various general unsecured claims, but failed to file the stipulation by the date of the confirmation hearing.
- 3) The Plan did not satisfy the “best interests of creditors” test imposed by § 1129(a)(7).
- 4) The Plan was not feasible because the budget filed in support of the Plan failed to account for increased payments required under a stipulation the Debtor had reached with a creditor.

See generally Final Ruling Denying Motion for Plan Confirmation [Doc. No. 84, Case No. 2:15-bk-22962-ER].

On March 28, 2017, the Court dismissed the First Case pursuant to § 1112(b). The Court found that the Debtor’s failure to file any post-petition tax returns or pay any post-petition taxes, as well as the failure to obtain confirmation of a Plan notwithstanding the fact that the case had been pending for almost two years, constituted cause for dismissal. *See* Final Ruling Dismissing Case [Doc. No. 98, Case No. 2:15-bk-22962-ER].

On May 4, 2017, the Court denied Applicant’s request for compensation in the First Case. The Court based the denial on Applicant’s failure to correct various deficiencies in the Fee Application, even though the Court had continued the hearing on the application to provide Applicant an opportunity to correct the errors. *See* Final Ruling Denying Fee Application [Doc. No. 107, Case No. 2:15-bk-22962-ER].

On May 23, 2017—shortly after dismissal of the First Case—Applicant filed the instant Chapter 11 petition on Debtor’s behalf (Case No. 2:17-bk-26460-ER) (the “Second Case”). On January 29, 2018, the Court declined to approve Debtor’s Disclosure Statement. On June 15, 2018, the Court entered an order approving the Debtor’s sale of real property (the “Sale Order”).

On September 19, 2018, the Court entered an *Order Requiring the Debtor To Appear and Show Cause Why This Case Should Not Be Dismissed or Converted* [Doc. No. 137, Case No. 2:17-bk-24606-ER] (the “OSC”). In connection with the hearing on

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the OSC, it was revealed that notwithstanding the issuance of the Sale Order, the Debtor had been unable to close on the sale of the rental property (the "Rental Property") which was the estate's primary asset. The Court determined that conversion to Chapter 7 was warranted as a result of Applicant's failure to diligently prosecute the case on the Debtor's behalf:

The Court finds that "cause" exists to convert this case to a case under chapter 7. First, the Court finds it troubling to learn that the Debtor has been unable to close escrow, presumably because title to the Rental Property is in both the Debtor's late wife's and Debtor's name. Either Debtor has not been entirely truthful in his schedules and relevant pleadings regarding the Rental Property, or his counsel's and his conduct has been negligent in reviewing necessary documents to determine the true nature of ownership. The Court is further troubled by the Debtor's lack of candor relating to the probate case. For example, the Debtor does not explain what the issue was that prevented consummation of the sale, what steps Debtor is taking to remedy that issue, how long the probate proceedings are expected to take, or whether the buyer is willing to wait for those issues to be resolved and move forward with the sale. Instead, the Court and creditors are left to guess about these issues.

Next, the Debtor concedes that the sole asset with any value in this case is the Debtor's Rental Property. However, in the seventeen months since this case was filed, the Debtor has been unable to obtain approval of a disclosure statement, confirm a plan, or administer the Rental Property. These failings are exacerbated by the fact that the Debtor has essentially had the benefit of the automatic stay for over three years. See Case No. 2:15-bk-22962-ER. Meanwhile, the Debtor continues to accrue administrative fees that reduce the potential payout to creditors.

Final Ruling Converting Case [Doc. No. 153, Case No. 2:17-bk-16360-ER].

Heide Kurtz has been appointed as the Chapter 7 Trustee (the "Trustee") and is now administering the Rental Property. As a result of Applicant's failure to diligently prosecute the Second Case, the Trustee has been required to file a motion to amend the Sale Order. Deficiencies with respect to the sale of the Rental Property that Applicant failed to address include the following:

- 1) Applicant failed to address in the Sale Motion the co-ownership interest of

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Debtor's now-deceased fiancée.

- 2) While the Sale Motion specifically requested that the sale be free and clear of all liens, the Sale Order was silent regarding a junior deed of trust recorded in favor of AKT American Capital Corporation.

II. Findings and Conclusions

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
- (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

As the recitation of the case history set forth in Section I illustrates, Applicant has failed to competently represent the Debtor. The Second Case was commenced on May 23, 2017 and was converted to Chapter 7 on October 25, 2018. During this seventeen-month period, Applicant made no meaningful progress toward either reorganization or a sale of the Rental Property. Applicant's failure to diligently pursue the sale transaction has required the Trustee to incur administrative costs to correct Applicant's oversights.

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Because the vast majority of Applicant's services were not competently performed, they were not beneficial to the estate. Having reviewed the Fee Application, the Court finds that Applicant is entitled to only \$2,500 in fees and expenses.

Many of the services billed by Applicant were necessary only because Applicant failed to competently represent Debtor in the First Case, and therefore was required to file additional motions in this case. Applicant is not entitled to compensation on account of any of these services, which included filing a motion to impose the automatic stay, filing a motion for authorization to use cash collateral, and filing an employment application.

Applicant is not entitled to any compensation on account of objecting to the Internal Revenue Service's Proof of Claim (the "IRS Claim"). The Claim Objection was overruled because it was directed to an earlier version of the IRS Claim, but failed to address an updated Proof of Claim which incorporated the Debtor's latest tax returns. Diligent investigation of the Debtor's tax situation would have enabled Applicant to file a Claim Objection which could have addressed the merits of the Debtor's tax issues.

In view of oversights and errors made by Applicant in connection with the Sale Motion, the Court finds that Applicant is entitled to receive only \$1,000 in connection with work performed regarding the sale of the Rental Property. As noted above, these errors have required the Trustee to incur administrative expenses to correct Applicant's oversights. The errors were significant and prevented the sale from closing. Most egregiously, Applicant failed to account for the co-ownership interest held by the estate of the Debtor's deceased fiancée.

Applicant is not entitled to any compensation for work performed in connection with the Debtor's Disclosure Statement. As set forth in the Court's *Final Ruling Disapproving Disclosure Statement* [Doc. No. 86, Case No. 2:16-bk-16360-ER], the Disclosure Statement contained multiple deficiencies. Among other problems, the Disclosure Statement failed to provide creditors adequate information with respect to the estate's assets, the estimated return to creditors under a Chapter 7 liquidation, of financial information and financial projections. *Id.* After the Court granted several continuances of the hearing on the Debtor's motion to approve the Disclosure Statement, Applicant withdrew the Disclosure Statement.

Applicant opposed the UST's Motion to Dismiss (the "UST MTD"), which was brought based on the Debtor's failure to pay UST quarterly fees. Since the failure to pay quarterly fees is attributable to the Debtor rather than Applicant, the Court finds

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that Applicant is entitled to compensation of \$500 for work performed opposing the UST MTD. Applicant's work preparing a very brief opposition to the UST MTD does not warrant fees in excess of \$500.

Applicant did file and prepare Monthly Operating Reports ("MORs"). These services provided some benefit to the estate. However, the extent of such benefits is qualified by the fact that Applicant would not have been required to prepare nearly as many MORs had she diligently pursued this case to completion. Consequently, the Court finds that Applicant is entitled to receive only \$1,000 for work performed preparing MORs.

III. Conclusion

Based upon the foregoing, the Court finds that Applicant is entitled to fees and expenses of only \$2,500 in connection with the Second Case. The Court will prepare and enter an appropriate order.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:17-16360 Michael McNulty

Chapter 7

#109.00 Hearing
RE: [167] Motion to Amend (related document(s)118 Order on Motion To Sell
(BNC-PDF))

Docket 167

Tentative Ruling:

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Chapter 7 Trustee's Motion to Amend Order Approving Sale of Real Property [Doc. No. 167] (the "Motion to Amend")
 - a) Notice of Errata to Chapter 7 Trustee's Motion to Amend Order Approving Sale of Real Property [Doc. No. 170]

I. Facts and Summary of Pleadings

Michael McNulty (the "Debtor") filed a voluntary Chapter 11 petition on May 23, 2017. As a result of the failure of Debtor's counsel to diligently prosecute the case on his behalf, the case was converted to Chapter 7 on October 25, 2018. Doc. No. 154.

Prior to conversion, Debtor obtained authorization to sell the estate's principal asset, a rental property (the "Rental Property"). *See* Order Granting Motion for Order Approving Sale of Real Property Free and Clear of Designated Lien, Providing for Overbids, and for Ancillary Relief [Doc. No. 118] (the "Sale Order"). The Debtor was unable to close the sale because the Sale Order did not address the ownership interest of the Debtor's now-deceased fiancée, Ms. Obrien, and failed to account for a junior deed of trust recorded in favor of AKT American Capital Corporation ("AKT").

The Trustee moves to amend the Sale Order to address the oversights attributable to Debtor's former Chapter 11 counsel. The proposed amended Sale Order will authorize the Trustee to sell the Rental Property pursuant to §363(h), with 50% of the sale proceeds to be distributed to the estate of Ms. O'Brien. The order will be further amended to provide that the sale is free and clear of the junior lien of AKT. The Sale Motion requested a sale free and clear of AKT's lien, but this provision was omitted from the Sale Order.

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CONT... Michael McNulty

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No opposition to the Motion is on file.

II. Findings and Conclusions

Civil Rule 60(b) permits the Court to amend an order containing errors resulting from excusable neglect. The Court finds that the amendments sought by the Trustee are necessary to facilitate the sale of the Rental Property. The Motion is GRANTED in its entirety.

The Trustee shall submit an order granting this Motion, as well as an Amended Sale Order, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Michael McNulty

Represented By
Onyinye N Anyama

Trustee(s):

Heide Kurtz (TR)

Represented By
Carmela Pagay

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Monday, December 17, 2018

Hearing Room 1568

10:00 AM

2:18-22337 Lannette Denise Johnson

Chapter 7

#1.00 HearingRE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Nonresidential .

Docket 13

Tentative Ruling:

12/14/2018

Tentative Ruling:

This Motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d)(2). The failure of the Debtor, the trustee, and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the Motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion is GRANTED pursuant to 11 U.S.C. § 362(d)(1). The stay is terminated as to the Debtor and the Debtor's bankruptcy estate with respect to the Movant, its successors, transferees and assigns. Movant may enforce its remedies to obtain possession of the property in accordance with applicable law, but may not pursue a deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The Movant filed an unlawful detainer action on August 29, 2018.

This Motion has been filed to allow the Movant to proceed with the unlawful detainer proceeding in state court. The unlawful detainer proceeding may go forward because the Debtor's right to possess the premises must be determined. This does not change simply because a bankruptcy petition was filed. See In re Butler, 271 B.R. 867, 876 (Bankr. C.D. Cal. 2002).

This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States

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CONT... Lannette Denise Johnson

Chapter 7

Code. All other relief is denied.

Movant shall upload an appropriate order via the Court's Lodged Order Upload system within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel, the Judge's law clerks at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing.

Party Information

Debtor(s):

Lannette Denise Johnson

Pro Se

Trustee(s):

Heide Kurtz (TR)

Pro Se

**United States Bankruptcy Court
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Monday, December 17, 2018

Hearing Room 1568

10:00 AM

2:16-12145 Arto Atmadjian

Chapter 11

#2.00 Hearing
RE: [187] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2016 Fiat 500X .

fr. 11-26-18

Docket 187

Tentative Ruling:

12/14/2018

Hearing Required. The parties stipulated to continue this hearing to allow additional time to resolve an accounting issue which would dispose of the motion. The parties are directed to appear (in person or by telephone) to provide an update on the status of their negotiations.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

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Hearing Room 1568

10:00 AM

2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#3.00 Hearing

RE: [26] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1258 North Virgil Avenue, Los Angeles, CA 90029 . , creditor c/o Seterus, Inc. (Attachments: # 1 Request for Judicial Notice) (Ryan, Timothy)

FR. 11-26-18

Docket 26

***** VACATED *** REASON: RESCHEDULED 12-4-18 AT 11:00 A.M.**

Tentative Ruling:

11/22/2018:

The Motion is CONTINUED to **December 17, 2018 at 10:00 a.m.** for proper notice. The Motion was not served on all lienholders in a manner authorized by Fed. R. Bankr. P. ("FRBP") 7004 or on the 20 largest creditors as required by FRBP 4001(a)(1) and 1007(d). The Movant is directed to re-serve the Motion and a notice of continued hearing upon all lienholders in a manner authorized by FRBP 7004 and on the 20 largest creditors by **November 26, 2018** and to file a proof of service reflecting service in accordance with this ruling.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

**United States Bankruptcy Court
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Judge Ernest Robles, Presiding
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Tuesday, December 18, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#1.00 HearingRE: [101] Application for Compensation First Interim Application For Award Of Compensation And Reimbursement Of Expenses Of Danning, Gill, Diamond & Kollitz, LLP, As General Counsel To Chapter 7 Trustee, Declarations Of Eric P. Israel And Brad D. Krasnoff In Support Thereof, with Proof of Service for Danning, Gill, Diamond & Kollitz, LLP, General Counsel, Period: 7/6/2016 to 11/13/2018, Fee: \$152,611.00, Expenses: \$9,598.10.

Docket 101

Tentative Ruling:

12/17/2018

For the reasons set forth below, the Trustee is authorized to pay administrative expenses from the estate's community property. DGDK is awarded, on an interim basis, fees of \$152,611.00 and expenses of \$9,598.10.

Pleadings Filed and Reviewed:

- 1) Trustee's Notice of Motion and Motion to Authorize Payment of Allowed Administrative Expenses from Community Property Proceeds [Bankr. Doc. No. 108] [**Note 1**]
 - a) Trustee's Notice of Hearing on Motion to Authorize Payment of Allowed Administrative Expenses from Community Property Proceeds [Bankr. Doc. No. 109]
- 2) First Interim Application for Award of Compensation and Reimbursement of Expenses of Danning, Gill, Diamond & Kollitz, LLP, as General Counsel to Chapter 7 Trustee [Bankr. Doc. No. 101]
 - a) Notice of Hearing on Interim Applications for Compensation and Reimbursement of Expenses by Professionals [Bankr. Doc. No. 102]
- 3) Opposition to Interim Application for Award of Compensation and Reimbursement of Expenses Filed by Chapter 7 Trustee [Bankr. Doc. No. 115] (the "Opposition")
 - a) Schedule C Filed by Former Co-Owner of Real Property Pursuant to 11 U.S.C. Section 522(l), in Connection with Opposition to Trustee Fee Application [Doc. No. 124]

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Hearing Room 1568

10:00 AM

CONT...

Anne Lan Peterson

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- 4) Trustee's Reply Memorandum of Points and Authorities in Support of: (1) Interim Application for Compensation and Reimbursement of Expenses filed by Danning, Gill, Diamond & Kollitz, LLP; and (2) Trustee's Motion to Authorize Payment of Allowed Administrative Expenses from Community Property Proceeds [Doc. No. 122] (the "Reply")
 - a) Evidentiary Objections to Declaration of Ronald Peterson filed with Ronald Peterson's Opposition, and in Support of Trustee's Reply, to: (1) Interim Application for Compensation and Reimbursement of Expenses filed by Danning, Gill, Diamond & Kollitz, LLP; and (2) Trustee's Motion to Authorize Payment of Allowed Administrative Expenses from Community Property Proceeds [Doc. No. 123]

I. Facts and Summary of Pleadings

A. Background

Anne Lan Peterson (the "Debtor") commenced a voluntary Chapter 7 petition on December 14, 2011. On April 16, 2012, the Debtor received a discharge, and on April 30, 2012, the Debtor's case was closed as a "no asset" case. Bankr. Doc. Nos. 18 and 20.

The Debtor was married to Ronald Peterson ("Ronald") [Note 2] from 1997 to 2010. Divorce proceedings between the Debtor and Ronald have been lengthy and contentious. In an apparent attempt to gain a tactical advantage in the divorce litigation, Ronald notified the Chapter 7 Trustee (the "Trustee") of undisclosed assets, and the Debtor's case was reopened.

1. The Trustee's Complaint and Ronald's Purported Cross-Complaint

On January 22, 2018, the Chapter 7 Trustee (the "Trustee") filed the *Trustee's First Amended Complaint: (1) For Declaratory Relief; (2) In the Alternative, for Sale of Real Property Pursuant to 11 U.S.C. §363(h); (3) For Turnover; (4) For Violation of Automatic Stay; and (5) For Dissolution of Limited Liability Company* [Adv. Doc. No. 21] (the "Complaint") against Ronald Peterson ("Ronald") and two limited liability companies—Maitreya, LLC, a Nevada LLC ("Maitreya Nevada") and Maitreya, LLC, an Arizona LLC ("Maitreya Arizona") (Ronald, Maitreya Nevada, and Maitreya Arizona collectively, the "Defendants"). The Complaint sought a declaration that real property located at 359 W. Langston Street, Upland, California 91786 (the "Property") is community property of the Debtor and Ronald, and therefore property of the estate pursuant to §541(a)(2). The Complaint sought turnover of the Property,

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avoidance of the post-petition transfer of the Property to Maitreya Arizona, and dissolution of Maitreya Nevada pursuant to Nevada Revised Statute §86.495, on the grounds that the Trustee, as the sole owner, is entitled to liquidate Maitreya Nevada.

On February 26, 2018, Ronald, Maitreya Nevada, and Maitreya Arizona filed an Answer to the Complaint. Adv. Doc. No. 42. The Answer asserted four affirmative defenses but did not assert any counterclaims.

On June 7, 2018, the Court conducted a hearing on the Trustee's motion for summary judgment (the "MSJ") on the Complaint's first, third, and fifth claims for relief. On June 6, 2018—the day prior to the hearing on the MSJ—the Court posted, at 12:20 p.m., a tentative ruling indicated its intent to grant the MSJ. Approximately eleven hours later, at 11:03 p.m., Ronald filed a *Cross-Complaint for: (1) Breach of Fiduciary Duty 1; (2) Breach of Fiduciary 2; (3) Breach of Contract; and (4) Negligence* [Bankr. Doc. No. 64; Adv. Doc. No. 66] (the "Purported Cross-Complaint") [**Note 3**] against the Trustee and the Debtor.

On June 14, 2018, the Court entered summary judgment, in the Trustee's favor, on the Complaint's first, third, and fifth claims for relief. Adv. Doc. No. 64 (the "Judgment"). Among other things, the Judgment provided that the Property is "community property of the Debtor and Ronald," and further provided that the Property is "property of the Debtor's bankruptcy estate under 11 U.S.C. §541(a)(2)" Judgment at ¶¶2–3. The Court found that the filing of the Purported Cross-Complaint was not cause to delay entry of the Judgment. In addition, the Court found, pursuant to Civil Rule 54(b), that there was no just reason to delay entry of final judgment in the Trustee's favor with respect to the first, third, and fifth claims for relief. The Court ordered the Defendants to turnover the Property to the Trustee by no later than July 6, 2018, at 5:00 p.m. Judgment at ¶5.

Defendants failed to turnover the Property to the Trustee as ordered by the Court. On July 12, 2018, the Court denied Defendants' motion for reconsideration of the Judgment (the "Motion for Reconsideration"). See Memorandum of Decision Denying Motion for Reconsideration [Adv. Doc. No. 96] and Order Denying Motion for Reconsideration [Adv. Doc. No. 97]. In the Motion for Reconsideration, Defendants asserted that the only claims filed in the Debtor's bankruptcy case were on account of debts the Debtor incurred after she separated from Ronald. Defendants maintained that as a result, the claims were not payable from property of the estate because they did not qualify as "community claims" within the meaning of §101(7). Defendants' theory was that the absence of any creditors entitled to receive a distribution from the estate precluded the Trustee from administering estate property. In denying the

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Motion for Reconsideration, the Court noted that Defendants had been provided an opportunity to present their arguments before the Court entered the Judgment, but had failed to do so. Observing that Defendants had offered no explanation whatsoever for their failure to timely raise these arguments, the Court determined that the "extraordinary circumstances" necessary to support reconsideration were not present. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007).

Concurrently with the denial of the Motion for Reconsideration, the Court directed the Clerk of the Court to issue a Writ of Possession, authorizing the United States Marshal (the "U.S. Marshal") to enforce the Judgment by placing the Trustee in possession of the Property. Adv. Doc. No. 98. On August 10, 2018, the U.S. Marshal evicted Ronald, his fiancée, and their two children from the Property.

On July 26, 2018, Ronald appealed the Court's denial of his Motion to Reconsideration to the District Court. Adv. Doc. No. 110. On November 16, 2018, the District Court dismissed Ronald's appeal with prejudice for failure to prosecute. Adv. Doc. No. 145.

The Purported Cross-Complaint filed by Ronald on the eve of the summary judgment hearing alleged, among other things, that Ronald and the Trustee had entered into a contract providing that Ronald would purchase the estate's interest in the Property for \$125,000, but that the Trustee breached the contract notwithstanding Ronald's fulfillment of all his obligations thereunder. Purported Cross-Complaint at ¶¶30–33. [Note 4]

On June 18, 2018, the Court issued an order requiring Ronald to appear and show cause why the Court should not (1) construe the Purported Cross-Complaint as a Counter-Complaint, (2) find that the claims asserted in the Counter-Complaint are compulsory, and (3) dismiss the Counter-Complaint as untimely. Adv. Doc. No. 69. In its *Preliminary Findings and Conclusions*, the Court first found that the Purported Cross-Complaint was more properly characterized as a Counter-Complaint, because it sought relief against an opposing party (the Trustee), not a co-party. The Court next found that the claims asserted in the Purported Cross-Complaint were compulsory counterclaims, because they arose from the same set of operative facts as the claims asserted in the Complaint.

On July 27, 2018, the Court entered an order adopting its *Preliminary Findings and Conclusions* and dismissing the Purported Cross-Complaint, as to the Trustee, with prejudice. Adv. Doc. No. 113 (the "Dismissal Order"). The Dismissal Order is now final and non-appealable.

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2. Ronald's Claim Objections

On August 16, 2018, the Court overruled Ronald's objections to Proofs of Claim filed by Shaco, Inc. ("Shaco") and Kathy K. Settle ("Ms. Settle"). The Court found that Ronald's claim objections were an improper attempt to gain a litigation advantage in the adversary proceeding brought by the Trustee:

In his Claim Objections, Ronald asserts that the claims do not qualify as "community claims" and therefore may not be paid from the estate's community property. The estate's primary community property asset is the Property. As discussed above, Ronald has vigorously contested the Trustee's attempts to enforce the Judgment and gain possession of the Property. Ronald's objective in prosecuting the Claim Objections is to prevent the Trustee from enforcing the Judgment.

Ronald raised the arguments he asserts now in his motion for Reconsideration of the Judgment. In denying Ronald's Motion for Reconsideration, the Court found that Ronald had failed to show that "extraordinary circumstances" excused his failure to timely raise his arguments regarding the allowability of the claims. *See Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 941 (9th Cir. 2007). Based upon this finding, the Court refused to consider the arguments. Ronald cannot procedurally circumvent the Court's determination by now seeking to present these identical arguments in a different context.

The Court declines to find that Ronald lacks standing to object to the claims. It would be more precise to say that the Ronald has interposed the Claim Objections for the improper purpose of attempting to escape the consequences of his failure to timely raise the arguments he now presents. Had Ronald timely raised these arguments in opposition to the Trustee's motion for summary judgment, they would have been properly before the Court. But raising the arguments now—after the Court's express determination that the arguments would not be considered because they were untimely—is not proper.

Final Ruling Overruling Objection to Claim Number 2 [Bankr. Doc. No. 81] at 4–5.
[Note 5]

The Court went on to find that even had Ronald's claim objections been properly

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before it, the objections lacked merit. With respect to Ronald's argument that the Trustee was barred from administering any of the estate's community property because there were no creditors eligible to receive a distribution from such property, the Court stated:

Where an estate includes community property, distribution of such property is governed by §726(c). Section 726(c) provides a framework for the distribution of community property to holders of community claims.

A "community claim" is a "claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) is liable [estate community property], whether or not there is any such property at the time of the commencement of the case." §101(7).

"The Bankruptcy Code's distribution scheme regarding community property is generally intended to parallel state law." *In re Cohen*, 522 B.R. 232, 240 (Bankr. C.D. Cal. 2014). California Family Code §910(a) provides that "the community estate is liable for a debt incurred by either spouse before or during marriage, regardless of which spouse has the management and control of the property and regardless of whether one or both spouses are parties to the debt or to a judgment for the debt." For purposes of §910(a), "during marriage" does not include the period after the parties are separated.

The Court assumes without deciding that the indebtedness asserted by the claimants was incurred by the Debtor after she separated from Ronald. As such, the claims would not constitute community claims.

To provide for the distribution of community property, §726(c) creates four "sub-estates," described in §726(c)(A), (B), (C), and (D). Only holders of community claims are eligible to receive a distribution from sub-estates (A), (B), and (D). However, sub-estate (C) provides for a distribution to holders of all claims against the Debtor, provided that such distribution is not from the estate's community property.

The distribution contemplated by the Trustee is consistent with the § 726(c). First, the Trustee will liquidate the Property, the estate's primary community asset. Once the Property has been liquidated, costs of administration will be paid from cash on hand. Subsequent to the payment of costs of administration, the remaining funds will be divided in half, with one half allocable to the Debtor, and the other allocable to Ronald. Once the remaining funds have been divided, the Debtor's share of such funds will no

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longer constitute community property. Instead, such funds will be property of the estate liable for separate property claims against the Debtor—such as the claims asserted by Shaco and Settle (provided that such claims are in fact properly characterized as separate property claims). Such funds may be distributed to the claimants pursuant to §726(c)(2)(C).

Faced with similar facts, this was exactly the result reached by the court in *In re Herrera*, No. AP 16-90131-MM, 2017 WL 5473768, at *10 (Bankr. S.D. Cal. Nov. 13, 2017), aff'd sub nom. *Herrera v. Pons*, No. 17-CV-2392-GPC-NLS, 2018 WL 2229369 (S.D. Cal. May 16, 2018). The *Herrera* court found that proceeds of a community property asset could be distributed to pay the Debtor's post-separation debts pursuant to §726(c)(2), but only after the non-debtor had received his half of those proceeds. *Id.* at *10. The precise manner in which funds will be distributed is not yet before the Court. However, contrary to Ronald's contention, funds can be distributed to claimants in a manner consistent with §726(c) and other applicable provisions of the Bankruptcy Code.

Id. at 5–7.

3. The Trustee's Sale Motion

On December 6, 2018, the Court approved, over Ronald's opposition, the Trustee's motion to confirm the sale of the Property to Jose Miclat and Cristina Criss (the "Sale Motion"). Bankr. Doc. Nos. 119–20. The Trustee is holding net sales proceeds of approximately \$530,000.

4. Ronald's Assertion of a Homestead Exemption

In opposition to the Sale Motion, Ronald contended that the Trustee was required to pay him 50% of the sales proceeds directly from escrow on account of Ronald's purported \$100,000 homestead exemption in the Property. The Court rejected Ronald's contention:

It is not procedurally proper for Ronald to assert his alleged entitlement to a homestead exemption in this context. The Bankruptcy Code and Bankruptcy Rules contain detailed procedures setting forth the manner in which a homestead exemption in community property may be asserted by a non-debtor such as Ronald. *See* §522(l) (authorizing a dependent of the debtor to claim

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property as exempt if the debtor fails to do so); *see also* Michael G. D'Alba, *Non-Filing Spouses, Homestead Exemptions, and Voidable Transactions*, 34 Cal. Bankr. J. 77 (2017); *see also* *Burman v. Homan (In re Homan)*, 112 B.R. 356 (BAP 9th Cir. 1989) (discussing circumstances under which a non-debtor spouse may claim a homestead exemption in community property). In certain instances, a non-debtor spouse such as Ronald is not permitted to claim an exemption in community property. *See Homan*, 112 B.R. at 359 ("The conclusion that [non-Debtor] Carolyn is bound by [Debtor] Daniel's failure to file a homestead exemption in the Island Property is not subject to modification under the provision of the Bankruptcy Code which permits a nondebtor spouse to declare exemptions as a *dependent* of a debtor spouse. 11 U.S.C. § 522(a)(1) and § 522(l). Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions."). If and when Ronald properly asserts an exemption in the Property, the Court will determine whether Ronald is entitled to claim an exemption, and if so, whether the exemption is valid.

Final Ruling Granting Sale Motion [Bankr. Doc. No. 119] at

On December 29, 2011, Debtor filed Schedule C, claiming various property as exempt. Bankr. Doc. No. 11. Debtor did not assert an exemption in the Property. On February 1, 2012, Debtor filed an Amended Schedule C, but again did not assert an exemption in the Property. Bankr. Doc. No. 15. On December 14, 2018, Ronald filed a Schedule C, pursuant to §522(l), asserting a \$100,000 exemption in the Property.

B. Summary of Papers filed in Connection with the Trustee's Interim Fee Application and Motion for Authorization to Pay Administrative Expenses from Community Property Proceeds Held by the Estate

Danning, Gill, Diamond & Kollitz LLP, the Trustee's general bankruptcy counsel ("DGDK"), applies for allowance of fees of \$152,611.00 and expenses of \$9,598.10, on an interim basis. The Trustee moves for authorization to pay such proceeds from the community property proceeds generated by sale of the Property.

Ronald opposes both motions on several grounds. First, Ronald argues that the requested fees and expenses are unreasonable compared to the approximately \$137,000 to be paid to creditors, and contends that payment of DGDK's fees

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contravenes the *Handbook for Chapter 7 Trustee's* directive that a "trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals"

Second, Ronald reiterates essentially the same argument that he raised in the Claim Objections and Motion for Reconsideration and in opposition to the Sale Motion. That is, Ronald contends that he has no liability for the two claims that have been filed in this case, because they are not community claims, and that consequently, he is entitled to receive 50% of the Property's sales proceeds before any of those proceeds are used to pay administrative expenses. Ronald further asserts that he holds a \$100,000 homestead exemption in the Property which likewise immediately be paid.

Third, Ronald claims that he offered to settle with the Trustee for an amount which would have provided for payment in full of the claims filed against the estate; that the Trustee refused this settlement offer without good cause; and that accordingly, the Trustee is not entitled to receive fees which were incurred only as a result of the Trustee's unjustified rejection of Ronald's settlement offer.

The Trustee and DGDK (collectively, "Movants") filed a joint reply to Ronald's opposition. Movants assert that the opposition is another attempt by Ronald to relitigate issues that have already been determined against him on multiple previous occasions. Movants assert that Ronald mischaracterizes the settlement discussions, and maintain that the Court's dismissal with prejudice of Ronald's allegations regarding his settlement offer bars Ronald from raising the issue. Finally, Movants contend that pursuant to §726, it is permissible to pay the costs of administration from community property proceeds held by the estate before distributing to Ronald his *pro rata* share of such proceeds.

II. Findings and Conclusions

A. The Trustee is Authorized to Pay Administrative Expenses from Community Property Proceeds Held by the Estate

Section 726(c)(1) provides that administrative expense claims shall be paid either from community property of the estate, or from other property of the estate, "as the interest of justice requires." The legislative history contains specific examples of how this may be done:

First, administrative expenses are to be paid, as the court determines on any reasonable equitable basis, from both kinds of property. The court will divide administrative expenses according to such factors as the amount of each kind

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of property in the estate, the cost of preservation and liquidation of each kind of property, and whether any particular administrative expenses are attributable to one kind of property or the other.

House and Senate Reports to Bankruptcy Reform Act of 1978 (H.R. Rep. No. 595, 95th Cong., 1st Sess. 383–384 (1977); S. Rep. No. 989 95th Cong., 2d Sess. 97–98 (1978)).

Here, all property held by the estate is community property. The Court finds that the interests of justice permit payment of the estate’s administrative expenses from community property. The vast majority of administrative costs were incurred in connection with the Trustee’s fraudulent transfer litigation against Ronald, the Trustee’s efforts to enforce the Judgment against Ronald, and other litigation made necessary as a result of actions taken by Ronald. As set forth above, the Court found that all the arguments asserted by Ronald lacked merit. Under the circumstances, it does not offend the interests of justice for the Trustee to first pay administrative costs from the estate’s community property proceeds before distributing to Ronald his *pro rata* share of such proceeds, even though such a distribution will reduce the funds that Ronald ultimately receives.

B. DGDK’s Fee Application is Approved

Section 330(a)(1) allows the Court to award "reasonable compensation for actual, necessary services rendered" by a professional. In determining the amount of compensation to award, the Court considers the

nature, the extent, and the value of such services, taking into account all relevant factors, including—

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the

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bankruptcy field; and
(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

§330(a)(3).

"The statute does not require that the services result in a material benefit to the estate in order for the professional to be compensated; the applicant must demonstrate only that the services were 'reasonably likely' to benefit the estate at the time the services were rendered." *Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000).

There can be no question that the services provided by DGDK generated a material benefit to the estate. As a result of DGDK's efforts, the Trustee was able to liquidate the Property for the benefit of creditors. Liquidation of the Property will most likely allow all unsecured creditors who have filed Proofs of Claim to be paid in full. Having reviewed DGDK's Fee Application, the Court finds that the fees and expenses requested are reasonable based upon the work performed.

The Court does not agree with Ronald's contention that the Trustee's decision to liquidate the Property primarily benefited the trustee and the estate's professionals in contravention of guidelines set forth in the *Handbook for Chapter 7 Trustees* (the "Handbook"). The relevant portion of the Handbook states:

A chapter 7 case must be administered to maximize and expedite dividends to creditors. A trustee shall not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. The trustee must be guided by this fundamental principle when acting as trustee. Accordingly, the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case.

Handbook at 4-1.

Ronald argues that administration of the Property in this case primarily benefits DGDK, because the fees sought by DGDK are roughly equal to the distribution to creditors. By focusing solely on the ratio between the costs of administration and the distribution to creditors, Ronald pays insufficient attention to the Handbook's

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directive that the "trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors ... before administering a case as an asset case." Here, the Trustee's decision to administer the Property will most likely result in unsecured creditors being paid in full. Under these circumstances, it cannot be said that the Trustee or his general counsel have disregarded the Handbook's guidelines.

In support of his contention that he is entitled to receive his *pro rata* share of the estate's community property prior to payment of costs of administration, Ronald asserts that he is entitled to a \$100,000 homestead exemption in the Property. Ronald filed a Schedule C claiming the homestead exemption on December 14, 2018.

Section 522(l) provides:

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

Ronald is not entitled to assert an exemption on the Debtor's behalf pursuant to § 522(l). First, a claim of exemption asserted under §522(l) must be filed within 44 days of the date of the petition. Bankruptcy Rule 4003(a). Here, the petition was filed on December 14, 2011. Ronald did not file a claim of exemption until approximately seven years later, well beyond the applicable deadline. Second, Ronald may not assert exemptions on the Debtor's behalf because the Debtor did file claims of exemption. The Debtor's failure to exempt the Property does not permit Ronald to supplement the Debtor's exemptions. As explained in *In re Homan*, 112 B.R. 356, 359 (B.A.P. 9th Cir. 1989): "Where a debtor files a list of property exemptions claimed under federal law, even an incomplete list, nothing in the language or legislative history of Section 522(l) suggests that nondebtor dependents may supplement this list with state exemptions or further federal exemptions." *See also Kapila v. Morgan (In re Morgan)*, 286 B.R. 678, 683-84 (Bankr. E.D. Wis. 2002) ("Section 522(l) provides that a dependent of the debtor, including the debtor's spouse, whether or not actually dependent, may file a list of claimed exemptions if the debtor fails to do so. However, he did so. Since the right is his alone, she may not supplement that list, even if she disagrees with his choices."); *In re Duncan*, 294 B.R. 339, 344 (B.A.P. 10th Cir. 2003) (citing *In re Morgan* with approval).

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Next, Ronald contends that he has no liability for the two claims that have been filed in this case, because they are not community claims, and that consequently, he is entitled to be paid his *pro rata* share of the estate's community property prior to payment of any costs of administration. Ronald's argument lacks merit.

As set forth in Section I.A.2, above, the Court has previously indicated its preliminary approval of the Trustee's proposal with respect to the distribution of the estate's community property. With respect to the payment of administrative expenses, the Court now adopts its prior preliminary findings on a final basis. Assuming without deciding that the claims on file constitute community claims, there is nothing about the Trustee's contemplated distribution that violates §726(c). As explained in Section II.A., above, §726(c)(1) provides that administrative expenses may be paid from estate community property prior to the division of such property between the debtor and non-debtor. For the reasons set forth in Section II.A., the interests of justice support payment of administrative expenses from estate community property prior to the division of the remaining community property between Ronald and the Debtor.

Finally, Ronald claims that the Trustee refused in bad faith a settlement offer which would have provided the estate with funds sufficient to pay creditors in full. Ronald contends that the Trustee is not entitled to receive fees which were incurred only as a result of the Trustee's unjustified rejection of Ronald's settlement offer.

In his Purported Cross-Complaint, Ronald alleged that he and the Trustee had entered into a contract providing that Ronald would purchase the estate's interest in the Property for \$125,000, but that the Trustee breached the contract notwithstanding Ronald's fulfillment of all his obligations thereunder. Purported Cross-Complaint at ¶¶30–33. The Court dismissed the Purported Cross-Complaint, as to the Trustee, with prejudice on June 27, 2018. Adv. Doc. No. 133 (the "Dismissal Order"). The Dismissal Order is now final and non-appealable. As a result, Ronald is precluded from raising any arguments regarding the Trustee's alleged failure to entertain a settlement.

III. Conclusion

Based upon the foregoing, the Trustee is authorized to pay administrative expenses from the estate's community property. DGDK is awarded, on an interim basis, fees of \$152,611.00 and expenses of \$9,598.10. The Trustee and DGDK shall submit conforming orders, incorporating this tentative ruling by reference, within seven days of the hearing.

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IV. Evidentiary Rulings

The Trustee objections to those portions of Ronald's testimony which contain legal argument and legal conclusions. Specifically, Ronald testifies that he is the co-owner of the Property; that as a co-owner, he holds a homestead exemption; and that he is not liable for claims filed against the Debtor because they are post-separation debts rather than community property claims. The Court construes this testimony only as legal argument, not as evidence.

Ronald testifies regarding the harmful effects that the eviction from the Property has had on his business and family. The Trustee's objection to this testimony as irrelevant is SUSTAINED. The issue before the Court is the appropriateness of DGDK's Fee Application and the Trustee's motion seeking authorization to pay administrative expenses, not the merits of the Court's order directing the U.S. Marshal to enforce the Judgement by evicting Ronald from the Property.

Ronald testifies regarding the Trustee's alleged bad-faith refusal to entertain a settlement. Because the dismissal of the Purported Cross Complaint precludes Ronald from raising arguments regarding the settlement, the Court does not rely upon this testimony, and therefore finds it unnecessary to rule upon the Trustee's objections to such testimony. *See Operating Engineers' Pension Trust Fund v. Clark's Welding & Mach.*, 688 F. Supp. 2d 902, 907 (N.D. Cal. 2010) ("Because the Court does not rely on the statements in this declaration, it is not necessary for the Court to rule on these objections.").

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Unless otherwise indicated, "Bankr. Doc." citations are to Case No. 2:11-bk-60846-ER and "Adv. Doc." citations are to 2:17-ap-01505-ER.

Note 2

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A given name is used to distinguish Ronald Peterson from Anne Lan Peterson. No disrespect is intended.

Note 3

Ronald initially filed the Purported Cross-Complaint in the main bankruptcy case rather than the adversary proceeding. After being advised of the error by the Clerk of the Court, Ronald subsequently re-filed the Purported Cross-Complaint in the adversary proceeding.

Note 4

A more detailed description of the allegations contained in the Purported Cross-Complaint is set forth in the Court's *Order Requiring Ronald Peterson to Appear and Show Cause Why the Court Should Not Construe Ronald Peterson's Purported Cross-Complaint as a Counter-Complaint, Find that the Claims Asserted in the Counter-Complaint are Compulsory, and Dismiss the Counter-Complaint as Untimely* [Adv. Doc. No. 69] (the "Order to Show Cause").

Note 5

The Court made identical findings with respect to Ronald's objection to the Proof of Claim filed by Shaco, Inc. *See* Final Ruling Overruling Objection to Claim Number 1 [Bankr. Doc. No. 82] at 4-5.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 18, 2018

Hearing Room 1568

10:00 AM

2:11-60846 Anne Lan Peterson

Chapter 7

#1.10 HearingRE: [108] Motion Trustee's Notice of Motion and Motion to Authorize Payment of Allowed Administrative Expenses From Community Property Proceeds; Memorandum of Points and Authorities, Request for Judicial Notice, and Declaration of Brad D. Krasnoff in Support Thereof, With Proof of Service (Israel, Eric)

Docket 108

Tentative Ruling:

12/17/2018

See Cal. No. 1, above, incorporated in full by reference.

Party Information

Debtor(s):

Anne Lan Peterson

Pro Se

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Eric P Israel
Zev Shechtman

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
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Tuesday, December 18, 2018

Hearing Room 1568

10:00 AM

2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#2.00 Status Hearing re [1327] Post-Confirmation Status Conference

Docket 0

***** VACATED *** REASON: CONTINUED 12-19-18 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, December 18, 2018

Hearing Room 1568

10:00 AM

2:18-20151 Verity Health System of California, Inc.

Chapter 11

#3.00 Hearing

RE: [365] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Debtors Notice Of Motion And Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances; Memorandum Of Points And Authorities In Support Thereof (Moyron, Tania)

fr. 10-24-18

Docket 365

*** VACATED *** REASON: CONTINUED TO 12-19-18 AT 10:00 A.M.

Tentative Ruling:

10/23/2018 (amended after hearing)

For the reasons set forth below, the Bidding Procedures Motion is GRANTED with agreed to amendments as set forth on the record.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 365] (the "Bidding Procedures Motion")
 - a) Notice of Sale of Estate Property [Doc. No. 366]

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- b) Declaration of Richard G. Adcock in Support of [Bidding Procedures Motion] [Doc. No. 393]
- c) Declaration of James Maloney in Support of [Bidding Procedures Motion] [Doc. No. 394]
- 2) Opposition Papers:
 - a) Limited Objection of the Federal Communications Commission to [Bidding Procedures Motion] [Doc. No. 437]
 - b) Limited Objection of Pension Benefit Guaranty Corporation to [Bidding Procedures Motion] [Doc. No. 439]
 - c) Reservation of Rights of Premier, Inc. and its Subsidiaries in Relation to [Bidding Procedures Motion] [Doc. No. 444]
 - d) Objection of Cigna Entities to [Bidding Procedures Motion] [Doc. No. 445]
 - e) Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to [Bidding Procedures Motion] [Doc. No. 447]
 - i) Stipulation to Postpone Hearing on Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors' Sale Procedures Motion and Allow Further Briefing [Doc. No. 613]
 - f) SEIU-UHW's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 450]
 - i) Declaration of David Miller in Support of SEIU-UHW's Objection [Doc. No. 453]
 - g) Conditional Opposition to [Bidding Procedures Motion] [filed by OCH Forest 1] [Doc. No. 452]
 - i) Declaration of Charles Toeniskoetter in Support of Conditional Opposition to [Bidding Procedures Motion] [Doc. No. 456]
 - h) Local 39's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 458]
 - i) Limited Objection of Retirement Plan for Hospital Employees to Debtors' Motion for Entry of an Order Approving Bidding Procedures, Etc. [Doc. No. 460]
 - j) Response to Debtors' [Bidding Procedures Motion] [filed by the California Attorney General] [Doc. No. 463]
 - i) Sur-Reply to Debtor's Reply to Response of California Attorney General to Bid Procedures Motion [Doc. No. 619]

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- k) California Nurses Association Objection to Debtors' [Bidding Procedures Motion] [Doc. No. 465]
- l) Official Committee of Unsecured Creditors' Limited Objection to Debtor's Sale Motion [Doc. No. 490]
 - i) Declaration of Cynthia A. Nelson in Support of Official Committee of Unsecured Creditors' Limited Objection to Debtors' Sale Motion [Doc. No. 491]
- m) Limited Objection and Reservation of Rights of Verity MOB Financing LLC and Verity MOB Financing II LLC to [Bidding Procedures Motion] [Doc. No. 500]
- n) Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557]
 - i) Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557-1]
- o) Limited Objection and Reservation of Rights of U.S. Bank National Association, as Series 2017 Note Trustee, to [Bidding Procedures Motion] [Doc. No. 577]
- p) Reservation of Rights of INFOR (US), Inc. [Doc. No. 592]
- q) Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 597]
 - i) Declaration of Danielle Lucido in Support of Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 598]
- 3) Reply Papers:
 - a) Debtors' Reply to Response of California Attorney General to Debtors' Bid Procedures Motion [Doc. No. 560]
 - b) Omnibus Reply to Objections to [Bidding Procedures Motion] [Doc. No. 561]
 - c) Debtors' Reply to Objection of U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors Bid Procedures Motion [Doc. No. 562]
 - d) Reply to Objections of UMB Bank and US Bank to [Bidding Procedures Motion] [Doc. No. 621]
 - i) Objection to Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A., as Master Trustee and Wells Fargo Bank, N.A., as Bond

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Trustee, to [Bidding Procedures Motion] [Doc. No. 622]

- 4) Papers filed in Connection with the California Attorney General's Motion to Continue the Hearing on the Bidding Procedures Motion:
- a) Notice of Motion and Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 599]
 - b) Debtors' Opposition to Attorney General's Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 605]
 - c) Official Committee of Unsecured Creditors' Objection to Motion to Continue Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 608]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

Debtors seek approval of procedures governing the sale of Saint Louise Regional Hospital ("St. Louise"), O'Connor Hospital ("O'Connor"), and related assets. Both hospitals are located in Santa Clara County. *See generally* Doc. No. 365 (the "Bidding Procedures Motion"). Pursuant to an Asset Purchase Agreement (the "APA") dated October 1, 2018, the assets to be sold (the "Assets") consist of:

all assets, businesses, real property, personal property, equipment, supplies, software, contracts, leases, licenses/permits, books, records, offices, facilities, and all other tangible and intangible property (a) whatsoever and wherever located that is owned, leased, or used primarily in connection with the Businesses by a Hospital Seller, (b) located in Santa Clara County, California that is owned, leased, or used primarily in connection with the Businesses by Verity Holdings, and (c) whatsoever and wherever located that is owned, leased, or used by Verity primarily in connection with the Businesses, in each case, except for the Excluded Assets.

APA at ¶1.8.

Certain of the Debtors' liabilities are excluded from the sale. Most significant is the exclusion of all "Labor Obligations," defined in the APA to include all "collective bargaining agreements ... that are in place with any labor unions" APA at ¶8.13.

Under the APA, the County of Santa Clara is the stalking horse bidder (the "Stalking Horse Bidder"). The proposed Breakup Fee is \$9.4 million, or 4.0% of the

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\$235 million purchase price. The Stalking Horse Bidder is also entitled to reimbursement for its reasonable due diligence expenses (the "Expense Reimbursement"). The Stalking Horse Bidder has agreed to cap the sum of the Breakup Fee and the Expense Reimbursement at 5% of the purchase price (i.e., the Breakup Fee is 4% of the purchase price and therefore the Expense Reimbursement cannot exceed 1% of the purchase price, or \$2.35 million).

Qualified overbidders (the "Overbidders") may participate in an auction to be held at the offices of the Debtors' counsel on December 10, 2018, at 10:00 a.m. To qualify to participate in the auction, Overbidders must provide a good-faith deposit in the amount of \$23.5 million. The proposed minimum overbid amount is the Breakup Fee (\$9.4 million) plus an additional bidding increment of \$7.5 million. Overbids will be evaluated based upon several factors, including (1) the amount of such bid; (2) the risks and timing associated with consummating such bid; (3) any proposed revisions to the form of the APA; and (4) any other factors deemed relevant by the Debtors in their reasonable discretion, in consultation with the Official Committee of Unsecured Creditors (the "Committee"). If an auction is conducted, a hearing before the Court to approve the results of the auction (the "Sale Hearing") will take place on December 18, 2018.

The Debtors will seek to assume and assign certain contracts and leases to be identified in the Purchase Agreement (the "Assumed Executory Contracts"). Initially, the Assumed Executory Contracts will be those contracts and leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the Assets. The successful bidder may choose to exclude (or to add) certain contracts or leases to the list of Assumed Executory Contracts.

The Debtors will file with the Court and serve a Cure Notice upon each counterparty to the Assumed Executory Contracts. The Cure Notice will state the date, time, and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Executory Contracts must be filed and served. The Cure Notice will also identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Executory Contract in order to cure any defaults that exist under such contract (the "Cure Amounts"). To the extent that there is a contract added to the list of contracts to be assumed by the successful bidder selected at the auction, the Bidding Procedures Motion shall be deemed to constitute a separate motion to assume and assign that contract to the successful bidder pursuant to §365.

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A. Summary of the Objections Filed to the Bidding Procedures Motion and the Debtors' Replies in Support of the Motion

The objections to the Bidding Procedures Motion, and the Debtors' reply to each objection, are summarized below. [Note 1]

1. Objection of the Federal Communications Commission [Doc. No. 437]

The Federal Communications Commission (the "FCC") states that certain of the Debtors hold wireless licenses, the transfer of which is subject to FCC approval. To preserve its rights, the FCC requests that any order approving the Bidding Procedures Motion (the "Bidding Procedures Order") contain the following language:

Notwithstanding any other provision of this Order or any other Order of this Court, no sale, transfer or assignment of any rights and interests of a regulated entity in any federal license or authorization issued by the Federal Communications Commission ("FCC") shall take place prior to the issuance of FCC regulatory approval for such sale, transfer or assignment pursuant to the Communications Act of 1934, as amended, and the rules and regulations promulgated thereunder. The FCC's rights and powers to take any action pursuant to its regulatory authority, including, but not limited to, imposing any regulatory conditions on such sales, transfers and assignments and setting any regulatory fines or forfeitures, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority to the extent provided by law.

The Debtors assert that the FCC's objection is premature because any Licenses that may be subject to FCC regulation have not yet been designated for assumption and assignment.

2. Objection of the Pension Benefit Guaranty Corporation [Doc. No. 439]

The Pension Benefit Guaranty Corporation (the "PBGC") argues that the proposed Bidding Procedures should be modified to require that all bidders expressly state whether they intend to assume the Debtors' pension obligations. PBGC asserts that a bidder's assumption of pension liabilities would effectively eliminate or reduce PBGC's claims against each of the Debtors, thereby providing value to the Debtors' respective estates and increasing recoveries for other creditors. Accordingly, PBGC contends that when evaluating overbids, the Debtors should give credit for the value of the pension plans' liabilities that an Overbidder agrees to assume.

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In reply, the Debtors assert that they have repeatedly stated that in assessing the highest and best offers, they will consider all forms of consideration, including the assumption of pension liabilities. The Debtors state that the inclusion of any particular language providing whether or not a bidder will assume particular liabilities is unnecessary, and that given the scope of pension liabilities, it would be remarkable if any Qualified Bidder's bid failed to indicate whether pension liabilities would be assumed.

3. Objection of Cigna Entities [Doc. Nos. 445 and 561]

The Debtors are parties to various agreements with Cigna Healthcare of California, Inc. ("Cigna CA") and Life Insurance Company of North America ("LINA," and together with Cigna CA, "Cigna"). The Cigna Provider Agreements provide covered healthcare services to eligible participants within the Cigna Provider Network who receive treatment at the Debtors' hospitals. The agreements with LINA provide group disability benefits for the Debtors' employee benefits program (the "LINA Contracts").

Cigna objects to the Bidding Procedures Motion on the following grounds:

- 1) The proposed Bidding Procedures do not provide Cigna sufficient time to object to the assignment and assumption of executory contracts. If the successful purchaser does not assume the Cigna Provider Agreements, patients receiving treatment at the hospitals will be severely prejudiced, because they will no longer be part of the Cigna Provider Network and therefore will no longer be eligible to receive healthcare at the hospitals. Cigna must receive at least sixty days' notice of any decision to assume or reject the Cigna Provider Agreements.
- 2) Similarly, the proposed Bidding Procedures do not provide Cigna with sufficient notice of the disposition of the LINA Contracts. The Bidding Procedures should be altered to provide that, absent consent from Cigna, unequivocal and irrevocable notice of the proposed assumption and assignment of the LINA Contracts must be provided to Cigna and its counsel at least ten days prior to any hearing thereon.

In reply, the Debtors state that the notice demanded by Cigna is unreasonable, unduly burdensome to the estate, and could potentially delay the closing of the sale by up to two months. The Debtor states that the assumption and assignment procedures it has proposed are customary and reasonable, and that Cigna has failed to offer any

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support for the extraordinary divergence from customary practice that it requests.

4. Objection of the U.S. Department of Health and Human Services [Doc. Nos. 447, 562, and 613]

The United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services (collectively, "HHS") objects to the APA's characterization of Medicare Provider Agreements held by St. Louise and O'Connor as licenses rather than as executory contracts. According to HHS, the Medicare Provider Agreements are executory contracts which may only be assumed and assigned in conformance with the requirements of §365.

The Debtors assert that HHS should be judicially estopped from arguing that the Medicare Provider Agreements are executory contracts, because HHS has argued before other federal courts that Medicare Provider Agreements are licenses.

On October 22, 2018, the Debtors and HHS entered into a stipulation, which provides that the issues raised by HHS' objection should be addressed in connection with the Sale Hearing rather than the Bidding Procedures Motion.

5. Objection of OCH Forest 1 [Doc. Nos. 452 and 561]

OCH Forest 1 ("OCH") entered into a Partnership Agreement with O'Connor, under which OCH is the General Partner and O'Connor is the Limited Partner. The purpose of the Partnership Agreement was to develop and invest in a medical office building located at 455 O'Connor Drive, San Jose, CA (the "455 Property"). Under the Partnership Agreement, OCH holds a right of first refusal with respect to the transfer of the 455 Property. OCH does not object to the proposed sale, but objects to any modification of the Partnership Agreement.

Debtors assert that nothing in the Bidding Procedures Motion impairs OCH's rights and that OCH's objection is premature and should be addressed in connection with the Sale Hearing.

6. Objection of the California Attorney General and the Attorney General's Motion to Continue the Hearing on the Bidding Procedures Motion [Doc. Nos. 463, 599, 605, 608, and 619]

In July 2015, the California Attorney General (the "Attorney General") reviewed a transaction between the Debtors' predecessor, Daughters of Charity Ministry Services Corporation ("Daughters") and BlueMountain Capital Management, LLC ("Blue Mountain"). In connection with the July 2015 transaction, the Attorney General

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imposed various conditions governing the operation of the Debtors' hospitals (the "2015 Conditions"). Among other things, the 2015 Conditions require the hospitals to furnish specified amounts of charitable care, to continue to provide certain types of health care services, and to continue to operate emergency departments in accordance with minimum requirements.

The Attorney General asserts that any purchaser of the Assets remains bound by the 2015 Conditions. The Debtor disputes this contention, arguing that pursuant to § 363, the sale of the Assets may be free and clear of the 2015 Conditions. However, the Debtor further asserts that any disputes regarding the applicability of the 2015 Conditions are premature because it is possible that the winning purchaser will voluntarily agree to abide by the 2015 Conditions.

On October 19, 2018, the Attorney General filed a motion seeking to continue the hearing on the Bidding Procedures Motion by at least three weeks. The Attorney General contends that he is unable to adequately review the APA because the schedules to the APA have not yet been supplied.

The Debtors and the Official Committee of Unsecured Creditors (the "Committee") oppose any continuance of the Bidding Procedures Motion on the grounds that the Attorney General will have adequate time to review the APA schedules prior to the final Sale Hearing.

7. Objections of Entities Who Are Parties to or Benefit from Various Collective Bargaining Agreements with Certain of the Debtors [Doc. Nos. 450, 458, 460, 465, and 597]

The International Union of Operating Engineers, Stationary Engineers Local 39 ("Local 39"), the Service Employees International Union, United Healthcare Workers-West ("SEIU-UHW"), the California Nurses Association (the "CNA"), and the Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC ("IFPTE Local 20") (collectively, the "Unions") are parties to collective bargaining agreements ("CBAs") with certain of the Debtors. The Debtors have filed a motion seeking to enter into a new CBA with Local 39, which is currently set for hearing on November 6, 2018.

Debtor VHS participates in a multi-employer defined benefit pension plan, the Retirement Plan for Hospital Employees (the "RPHE"). Pursuant to CBAs with the Unions, the Debtors are obligated to make pension contributions to the RPHE.

RPHE asserts that the Bidding Procedures should be modified as suggested by the PBGC, in order to encourage Overbidders to assume obligations arising under the

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RPHE. The Unions object to the Stalking Horse Bidder's proposal to purchase the Assets free and clear of the Debtors' pension obligations and the obligations under the unrejected CBAs. According to the Unions, any attempt to sell the assets free and clear of the CBAs constitutes an impermissible end-run around the requirements of § 1113. CNA further asserts that any purchaser of the Assets should be required to assume all pension obligations under the RPHE, given that the assumption of such obligations would avoid the accrual of a large withdrawal liability claim against the Debtors under 29 U.S.C. §1384.

Debtors dispute the Union's contention that they must obtain relief under §1113 before proceeding with the sale. Debtors rely upon *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001):

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

Debtors state that they will continue to work with the Unions to achieve a transfer of the hospitals in a manner that is in the best interest of all constituents. Debtors state that any bids that assume CBAs will be given appropriate weight and deference.

8. Objection of the Official Committee of Unsecured Creditors [Doc. Nos. 490, 491, and 561]

The Official Committee of Unsecured Creditors (the "Committee") objects to the Bidding Procedures Motion on the following grounds:

- 1) The proposed Breakup Fee is too high and will chill bidding. The Breakup Fee should be reduced from 4% to 3%. A study conducted by Cynthia Nelson, a Senior Managing Director in the Corporate Finance & Restructuring group at

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FTI Consulting, Inc. (the “FTI Fee Study”) shows that in bankruptcy sales of between \$50 million to \$250 million, breakup fees are generally set at 3% or less.

- 2) The minimum overbid increment should be reduced from \$7.5 million to \$5 million to encourage bidding.
- 3) The proposed sale includes more than just the assets necessary to operate the O’Connor and St. Louise hospitals. The APA also includes an urgent care facility containing medical office space located in Morgan Hill, CA (the “De Paul Property”). If the De Paul Property is not separately valued as part of the stalking horse bid, creditors will be unable to ascertain whether the highest price was obtained for this property. The Stalking Horse Bidder and all other Overbidders should be required to allocate with specificity the portion of the overall purchase price attributable to the De Paul Property.

In response to the Committee’s objection, the Debtor asserts that the Breakup Fee and minimum overbid increment are consistent with relief granted by other Bankruptcy Courts, were negotiated between the Debtors and the Stalking Horse Bidder in good faith, and were agreed to in the exercise of the Debtors’ reasonable business judgment. Regarding the allocation of the purchase price, the Debtors assert that the APA already contemplates that the Stalking Horse Bidder will provide schedules allocating the purchase price among the various Assets being sold.

9. Objections of UMB Bank, Wells Fargo, and U.S. Bank [Doc. Nos. 557, 621, and 622]

UMB Bank, N.A., in its capacity as successor master trustee for certain master trust indenture obligations (“UMB”), and Wells Fargo Bank, N.A., in its capacity as indenture trustee for the series 2005 revenue bonds (“Wells Fargo”) object to the Bidding Procedures Motion on the following grounds:

- 1) Based upon a study prepared by Benjamin Ilhardt, the Senior Vice President of Houlihan Lokey Capital, Inc. (the “HL Fee Study”), the Breakup Fee is too high. The Houlihan Study shows that in comparable cases, breakup fees ranged from a minimum of 1.5% to a maximum of 3.8%, with a mean of 2.8% and a median of 3.0%. An appropriate break-up fee in this case would not exceed 3% of the stalking horse bid—that is, \$7.05 million.
- 2) The HL Fee Study further demonstrates that the proposed Expense Reimbursement of \$2.35 million is excessive. An appropriate expense

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reimbursement would be no more than \$1.4 million.

- 3) The minimum overbid increment of \$7.5 million should be reduced to \$1 million.

Similar to UMB and Wells Fargo, U.S. Bank, N.A., in its capacity as Note Trustee for the Series 2017 Notes (“U.S. Bank”), asserts that the Bid Protections proposed by the Debtors are not reasonable and will chill competition.

Debtors reply to the objections of UMB, U.S. Bank, and Wells Fargo as follows:

- 1) The Bid Protections provided to Santa Clara County were necessary to induce it to serve as the stalking horse purchaser. Retaining Santa Clara as the stalking horse purchaser was essential given that a sale to Santa Clara can close rapidly, as it is not subject to review by the California Attorney General under Cal. Corp. Code §5914.
- 2) Santa Clara is not purchasing certain excluded assets, including accounts receivable, which should generate an additional \$65 million in incremental proceeds to the estate. When the Breakup Fee is computed as a percentage of the sale price plus the \$65 million in incremental proceeds, it is only 3.1%.
- 3) The testimony of Benjamin Ilhardt in support of the HL Fee Study is objectionable because Mr. Ilhardt is not qualified as an expert, and the types of sales cited in the HL Fee Study are not comparable as they do not involve health care or public entities.

10. Reservation of Rights of Premier and Infor [Doc. Nos. 444, 561, and 592]

Premier, Inc. and its subsidiaries (collectively, “Premier”) provides information technology and related services to the Debtors. Infor (US), Inc. (“Infor”) licenses copyrighted software to the Debtors and provides related maintenance and support services. Both Premier and Infor assert that the Debtors may not assume or assign any of their intellectual property absent consent.

Debtors state that nothing in the Bidding Procedures Motion prevents Premier and Infor from presenting their objections in connection with the Sale Hearing.

11. Reservation of Rights of Verity MOB Financing II [Doc. No. 500]

Verity MOB Financing LLC and Verity MOB Financing II LLC (collectively, the “MOB Financing Entities”) assert security interests in certain of the Debtors’ assets. The MOB Financing Entities filed a Reservation of Rights, stating that they are in

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ongoing negotiations with the Debtors regarding their right to credit-bid and hope to resolve their issues prior to the October 24 hearing on the Bidding Procedures Motion.

II. Findings and Conclusions

A. The Attorney General's Motion for a Continuance is Denied

The Attorney General's motion for a three week continuance of the Bidding Procedures Motion is DENIED. The hospitals that are the subject of the Bidding Procedures Motion are operating at a loss, meaning that every day that a future sale is postponed imposes significant costs upon the estate and upon creditors. The fact that APA schedules have not yet been provided does not constitute sufficient cause for a continuance.

On a related note, certain parties have suggested that the sale timeline proposed by the Debtors is too aggressive and that professionals require more time to review various matters pertaining to the sale. It is important for the Court to point out that sales on a rapid timeline are routine in bankruptcy, since delay almost always imposes additional costs upon creditors. The sale timeline proposed here affords professionals a sufficient opportunity to represent their client's interests.

B. Certain Objections Are Premature and Will Not be Decided in Connection with this Hearing

This hearing involves only the approval of the Bidding Procedures that will be used at the auction of the Assets. The Court finds that many of the objections are more appropriately considered at the final Sale Hearing, at which point the identity of the successful purchaser will be known. Many objections are based upon hypothetical future events and raise issues that may never ripen. For example, it is unknown whether the successful purchaser will assume the Debtors collective bargaining obligations; nor does the Court know which executory contracts or unexpired leases will be assumed.

For these reasons, the Court does not at this time rule upon the objections asserted by the Federal Communications Commission, the Pension Benefit Guaranty Corporation, the U.S. Department of Health and Human Services, the California Attorney General, the Unions who are parties to various CBAs (Local 39, SEIU-UHW, CNA, IFPTE Local 20), the Retirement Plan for Hospital Employees, OCH Forest 1, Premier, Infor, and the MOB Financing Entities. All such objections are preserved for the Sale Hearing and may be raised at that time.

The Court declines to require the Debtors to include the language proposed by the

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Federal Communications Commission (the “FCC”) in the Bidding Procedures Order. The FCC’s language pertains to the final transfer of assets, which is not at issue in the Bidding Procedures Motion. The FCC’s ability to assert that such language should be included in a final order approving the sale is preserved.

C. Additional Language Regarding Overbidders’ Intent with Respect to the Assumption or Rejection of Pension Obligations is Not Required

The PBGC argues that the Bidding Procedures Order must include additional intended to encourage potential Overbidders to assume the Debtors’ pension obligations. The Court finds that the Debtors have made abundantly clear that they are soliciting offers that provide for the assumption of pension obligations. No additional language in the Bidding Procedures Order is required.

D. The Bidding Procedures Are Approved

The objections to the proposed Bidding Procedures are overruled. The Court finds that the Bidding Procedures are likely to maximize the proceeds received by the estate. *See Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005) (“The court’s obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances.”).

The Committee and secured creditors UMB, Wells Fargo, and U.S. Bank (collectively, the “Secured Creditors”) assert that the proposed Breakup Fee is too high. The objections to the Breakup Fee are overruled.

In evaluating the Breakup Fee, the Court first must rule upon the Debtors’ evidentiary objections to the HL Fee Study. The Court finds that Benjamin Ilhardt, as a Senior Vice President in the Financial Restructuring Group of Houlihan Lokey Capital, Inc., is qualified to introduce expert testimony regarding the reasonableness of breakup fees. However, the Court affords the HL Fee Study only minimal weight. The sale transactions selected for the HL Fee Study are comparable in amount to the instant sale, but do not involve companies in the healthcare industry.

This distinction is key in view of the significantly greater regulatory compliance obligations placed upon healthcare entities. More due diligence is required to adequately value entities that are subject to additional regulations. Regulations introduce additional complication in assessing an entity’s future cash flow; this issue is of particular salience in the healthcare sector, where regulations are frequently subject to change. For instance, buyers of a healthcare entity are required to assess the possibility that the Affordable Care Act could be subject to significant revision, and to

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consider the impact of such possible revision on the viability of any healthcare entity's continuing operations. Against this backdrop, it is not surprising that the Debtors would be required to negotiate a higher than average Breakup Fee to induce Santa Clara County to become the Stalking Horse Bidder.

For similar reasons, the Court accords only minimal weight to the FTI Fee Study submitted by the Committee. Only three of the twenty sales examined in the FTI Fee Study are from the healthcare industry: Orixigen Therapeutics (a biopharmaceutical company), 4 West Holdings Inc. (an operator of skilled nursing facilities), and Angelica Corp. (a provider of medical laundry and linen management services). However, the due diligence required to value a biopharmaceutical company such as Orixigen Therapeutics or a provider of healthcare support services such as Angelica is very different from the due diligence required to value an operating hospital. Thus, the FTI Fee Study contains only one sale (that of 4 West Holdings) that is arguably comparable to the sale at issue here. As such, the probative value of the FTI Fee Study is limited.

~~—For the same reasons, the Court accords only minimal weight to the FTI Fee Study submitted by the Committee. Like the HL Fee Study, the FTI Study does not involve any sales in the healthcare industry. The breakup fees for such sales do not afford a truly comparable yardstick for assessing the Breakup Fee at issue here.~~

The Committee and the Secured Creditors similarly contend that the proposed Expense Reimbursement is too high. These objections, which once again are premised upon comparing this healthcare sale to sales in other industries, are overruled. Where more due diligence is required, a higher Expense Reimbursement amount will be necessary.

The Committee and the Secured Creditors contend that the minimum overbid increment of \$7.5 million should be reduced. The Court finds that the Debtors exercised reasonable business judgment in establishing the overbid increment, and declines the invitation of the parties to overrule the Debtors' business judgment. However, it may be prudent for the Debtor to allow itself the leeway to accept incremental bids at less than \$7.5 million should the bidding process become stalled.

E. Cigna's Objections are Overruled

The Court finds that the procedures proposed by the Debtor regarding the assumption of executory contracts and unexpired leases are customary and reasonable for sales of this type. Cigna demands 60 days' notice regarding an assumption/rejection decision pertaining to the Cigna Provider Agreements. Such a

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lengthy notice period would unduly delay the closing of the sale, to the detriment of the estate and creditors. The ten day notice period demanded by Cigna with respect to the disposition of the LINA Contracts would likewise impose unreasonable delay.

III. Conclusion

Based upon the foregoing, the Bidding Procedures Motion is GRANTED. The hearing to approve the sale and authorize the assumption and assignment of Assumed Executory Contracts shall take place on **December 18, 2018, at 10:00 a.m.**

The Court will sign enter the Bidding Procedures Order in the form proposed by the Debtors. Because bids must be solicited on a shortened timeframe, no objections to the form of the Bidding Procedures Order will be entertained subsequent to this hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Certain of the objections propounded by various parties have now been resolved. Only objections that remain unresolved are discussed herein.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-19180 Mallory Regina Jones and Douglas Ryan Jones

Chapter 7

#4.00 Show Cause Hearing RE: [15] Order Requiring Debtor To Appear And Show Cause Why Case Should Not Be Dismissed Because Of Debtor's Failure To Pay The Filing Fee In Installments.

Docket 16

Tentative Ruling:

12/17/2018

The case is dismissed based on the Debtors' failure to pay the filing fee as ordered by the Court. Fees are delinquent in the amount of \$200.

Pleadings Filed and Reviewed:

- 1) Order Approving Payment of Filing Fee in Installments (the "Fee Installment Order") [Doc. No. 7]
- 2) Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments (the "OSC") [Doc. No. 15]
 - a) Notice of OSC [Doc. Nos. 18-19]

On August 9, 2018, the Court entered an order requiring Mallory Regina Jones and Douglas Ryan Jones (the "Debtors") to pay the filing fee according to the following schedule:

- First installment payment: \$20 on or before 8/09/2018;
- Second installment payment: \$105 on or before 9/07/2018;
- Third installment payment: \$105 on or before 5/10/2017; and
- Fourth installment payment: \$105 on or before 11/09/18.

See Fee Installment Order.

The Debtors made the first and second installment payments, but failed to make the third and fourth installment payments. Fees are delinquent in the amount of \$200.

The Chapter 7 Trustee (the "Trustee") has noticed a Motion to Dismiss the case for January 8, 2019. The Trustee states that notwithstanding several requests, the

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CONT... Mallory Regina Jones and Douglas Ryan Jones Chapter 7

Debtors have failed to file Amended Schedules, as requested by the Trustee, and have failed to make arrangements with the Trustee to verify their Social Security numbers.

On November 8, 2018, the Court issued an *Order Requiring Debtor to Appear and Show Cause Why Case Should Not be Dismissed Because of Debtor's Failure to Pay the Filing Fee in Installments* [Doc. No. 15] (the "OSC"). The OSC ordered the Debtors to make the delinquent installment payments by no later than one week prior to the hearing. The Debtors have not made the delinquent payment and has not responded to the OSC.

Bankruptcy Rule 1017(b)(1) provides: "If any installment of the filing fee has not been paid, the court may, after a hearing on notice to the debtor and the trustee, dismiss the case."

Further, as set forth in the Installment Order:

"The debtor must pay the entire filing fee.... The debtor must also pay the entire filing fee to receive a discharge. If the debtor does not make any payment when it is due, the bankruptcy case may be dismissed and the debtor's right in future may be affected."

The Debtor's case is dismissed based on the Debtor's failure to comply with the Court's Fee Installment Order and OSC. The Court will enter an order dismissing the case.

Party Information

Debtor(s):

Mallory Regina Jones	Pro Se
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Joint Debtor(s):

Douglas Ryan Jones	Pro Se
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Trustee(s):

Sam S Leslie (TR)	Pro Se
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2:18-14619 Roberto Kai Hegeler

Chapter 7

Adv#: 2:18-01234 Maground, GmbH v. Hegeler

#5.00 Show Cause Hearing RE: [13] Order Requiring Debtor/Defendant To Appear And Show Cause Why The Court Should Not *Sua Sponte* Lift The Automatic Stay To Allow The District Court Action To Proceed.

Docket 1

***** VACATED *** REASON: PER ORDER ENTERED 12-17-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Roberto Kai Hegeler

Represented By
Kirk Brennan

Defendant(s):

Roberto Kai Hegeler

Represented By
Michael F Chekian

Plaintiff(s):

Maground, GmbH

Represented By
Christopher C Barsness
Michael F Chekian

Trustee(s):

Heide Kurtz (TR)

Pro Se

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#1.00 HearingRE: [117] Application for Compensation Application of Levene, Neale, Bender, Yoo & Brill L.L.P., counsel to John J. Menchaca, Chapter 7 Trustee, for Payment of Interim Fees and Expenses (with Exhibits A, B, C, D, E and F) (with proof of service) for Levene, Neale, Bender, Rankin & Brill L.L.P., Trustee's Attorney, Period: 1/1/2010 to 10/31/2018, Fee: \$420,272.00, Expenses: \$14,914.51.

Docket 117

Tentative Ruling:

12/18/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses as set forth below.

Fees: \$420,272

Expenses: \$14,914.51

The Trustee is authorized to pay Applicant \$357,290.43 [\$420,272 (current fees) + 14,914.51 (current expenses) - \$75,000 (fees previously paid) - \$2,896.08 (expenses previously paid) = \$357,290.43]. See Doc. No. 80.

Applicant's request for \$4,156 in fees and \$279.82 in expenses incurred by Robinson, Diamant and Wolkowitz, APC ("RDW") for the period of October 19, 2009 through December 31, 2009 is approved. [Note 1]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the

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hearing.

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Note 1: On November 23, 2009, RDW filed an application seeking approval of its employment [Doc. No. 14] which was heard on January 6, 2010. The Court's ruling was to approve that employment, but no order was ever lodged. The absence of an order appears to be an oversight on RDW's part, in light of its merger with Levene, Neale, Bender, Rankin & Brill, LLP. during this time period. Therefore, the Court finds it appropriate and consistent with its tentative ruling to approve the employment application to approve fees and expenses incurred prior to RDW's merger with LNBYB. **An order should be lodged for the January 6, 2010 hearing as soon as possible.**

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#2.00 HearingRE: [120] Application for Compensation (Second Interim) with Proof of Service for Menchaca & Company LLP, Accountant, Period: 5/17/2011 to 11/26/2018, Fee: \$40,473.00, Expenses: \$103.04.

Docket 120

Tentative Ruling:

12/18/2018

Having reviewed the second interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses as set forth below.

Fees: \$40,473

Expenses: \$103.04

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

Trustee(s):

John J Menchaca (TR)

Represented By

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Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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2:09-26761 SB 246 & Cebada Group Inc

Chapter 7

#3.00 HearingRE: [115] Application for Compensation With Proof of Service. for John J Menchaca (TR), Trustee Chapter 7, Period: 6/30/2009 to 11/28/2018, Fee: \$166,962.59, Expenses: \$1,840.50. (Menchaca (TR), John)

Docket 115

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Interim Application by Chapter 7 Trustee for Order Approving Payment of Trustee Compensation for the Period of June 30, 2009 through November 28, 2018 [Doc. No. 115] (the "Fee Application")
2. Notice of Hearing on Applications by Professionals for Allowance of Compensation and Reimbursement of Expenses
3. As of the preparation of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

SB 246 & Cebada Group, Inc. ("Debtor") filed this voluntary chapter 7 case on June 30, 2009. John J. Menchaca, the duly appointed chapter 7 trustee (the "Trustee"), seeks approval of and authorization to pay interim Trustee fees and expenses in the amount of \$166,962.59 in fees and \$1,840.50 in expenses incurred during the period of June 30, 2009 through November 28, 2018 pursuant to §§ 326 and 331.

The Trustee states that he is presently holding approximately \$1,206,196.49 in estate funds. The Trustee further states that he believes he has sufficient funds to pay all creditors in full and to close the case during the first quarter of 2019. However, prior to performing the final wind down of the estate, the Trustee needs to prepare and file tax returns. The Trustee states that in order to reduce or eliminate the Estate's tax burden, the Trustee needs to pay out the allowed administrative expenses of the Estate

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prior to filing such returns so that such expenses can be deducted from the Estate's income.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Pursuant to § 326(a) the Court may award reasonable compensation under section 330 to a trustee for the trustee's services. *See* 11 U.S.C. § 326(a). A trustee's fees are calculated based upon the total amount of moneys disbursed or turned over by the Trustee. *Id.* Section 331 authorizes the Court to allow such compensation or reimbursement on an interim basis. *See* 11 U.S.C. § 331.

Here, the Trustee states that the anticipated total disbursements to parties other than the debtor are expected to be \$4,790,419.81 and that he has incurred expenses in the total amount of \$1,840.50. Accordingly, the Court finds it appropriate to approve fees in the total amount of \$166,962.59 and reimbursement of expenses in the total amount of \$1,840.50 on an interim basis and authorize the Trustee to disburse fees and expenses in accordance with this ruling.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

SB 246 & Cebada Group Inc

Represented By
Philip L Nadler - INACTIVE -
Varand Gourjian

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Trustee(s):

John J Menchaca (TR)

Represented By
Jeremy Faith
Edward M Wolkowitz
Lindsey L Smith
Jacqueline L James
Carmela Pagay

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2:09-28606 Jayampath P Dharmasuriya

Chapter 7

#4.00 HearingRE: [1092] Application for Compensation Fifth Interim Application for Allowance and Payment of Fess and Reimbursement of Expenses of Weiland Golden Goodrich LLP, Counsel for the Chapter 7 Trustee; Memorandum of Points of Authorities; and Declaration of Beth E. Gaschen in Support (with Proof of Service) for Weiland Golden Goodrich LLP, Trustee's Attorney, Period: 11/29/2016 to 10/31/2018, Fee: \$83,175.00, Expenses: \$1,077.36.

Docket 1092

Tentative Ruling:

12/18/2018

Having reviewed the fifth interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$83,175

Expenses: \$1,077.36

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Jayampath P Dharmasuriya

Represented By
William H Brownstein
Robert S Altagen

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CONT... Jayampath P Dharmasuriya

Chapter 7

Trustee(s):

Jeffrey I Golden (TR)

Represented By

Jeffrey I Golden

Jeffrey I Golden (TR)

Beth Gaschen

Philip E Strok

Kyra E Andrassy

Leslie A Cohen

Robert S Altagen

Michael J. Weiland

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2:18-22799 Bricks Hospitality Group, L.L.C.

Chapter 7

#5.00 Show Cause Hearing
RE: [1] Chapter 7 Involuntary Petition Against a Non-Individual. L.L.C. : Union & Grattan Properties, LLC

Docket 1

***** VACATED *** REASON: ORDER REASSIGNING CASE TO
JUDGE BLUEBOND ENTERED 11-29-18**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bricks Hospitality Group, L.L.C.

Pro Se

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2:16-12145 Arto Atmadjian

Chapter 11

#6.00 HearingRE: [193] Motion For Final Decree and Order Closing Case. Memorandum of Points and Authorities; Declaration of Arto Atmadjian in support thereof

Docket 193

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Motion is GRANTED. In the event the Debtor makes all payments required under the Plan and is eligible for a discharge, such discharge shall not affect the Debtor's liability under the Judgment (defined below) entered in the adversary proceeding *Linda Strause et al. v. Atmadjian*, Case No. 2:16-ap-01250-ER.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion of Arto Atmadjian for Entry of an Order for Final Decree Closing the Debtor's Chapter 11 Case [Doc. No. 193] (the "Motion")
2. Debtor's Fifth-Post Confirmation Status Report [Doc. No. 195]

I. Facts and Summary of Pleadings

Arto Atmadjian (the "Debtor") filed a voluntary chapter 7 petition on February 22, 2016 (the "Petition Date"). On June 28, 2016, this Court entered an order converting this case to a case under chapter 11 [Doc. No. 70]. The Debtor successfully obtained an order confirming his amended chapter 11 plan of reorganization (the "Plan") on May 10, 2017 [Doc. No. 135]. The source of funding for the Plan was a \$50,000 new value contribution and income generated from the Debtor's business operations for a period of five years.

The Debtor states that he has made all required Effective Date payments contemplated in the Plan and is current on all other payments required under the Plan. Aside from a motion for relief from stay, which Debtor anticipates will be resolved prior to the hearing on this Motion, the Debtor states that there are no other pending matters or open proceedings. The Debtor states that he is current with all UST

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requirements and payments or will be current prior to entry of the final decree.

Based upon the foregoing, the Debtor submits that the Plan has been substantially consummated and therefore requests that the Court authorize the closing of this case and entry of a final decree.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Under 11 U.S.C. § 350(a) and Fed. R. Bankr. P. 3022, the Court shall enter a final decree closing a chapter 11 case after the estate is fully administered. In determining whether an estate is fully administered, a court should consider:

- (1) whether the order confirming the plan has become final;
- (2) whether deposits required by the plan have been distributed;
- (3) whether the property proposed by the plan to be transferred has been transferred;
- (4) whether the debtor or the successor of the debtor under the plan has assumed the business of the management of the property dealt with by the plan;
- (5) whether payments under the plan have commenced; and
- (6) whether all motions, contested matters, and adversary proceedings have been finally resolved.

In re Ground Systems, Inc., 213 B.R. 1016, 1019 (9th Cir. BAP 1997), *quoting* Fed. R. Bankr. P. 3022 advisory committee's notes (1991).

The Court finds that entry of a final decree closing this case is warranted as follows: (i) the order confirming the Plan is now final; (ii) all deposits required by the Plan have been made; (iii) the Plan does not propose the transfer of any property; (iii) payments under the Plan have commenced; and (iv) all pending motions have been resolved and there are no outstanding adversary proceedings or other contested matters. In sum, the Court's involvement in the case is no longer required and the Court finds the case has been "fully administered."

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Chapter 11

On November 29, 2017, the Court entered judgment against the Debtor in the non-dischargeability action *Linda Strause, David Strause, and Colin Strause v. Arto Atmadjian* [Doc. No. 74, Case No. 2:16-ap-01250-ER] (the "Judgment"). The Court found that Debtor was indebted to Linda and David Strause, jointly and severally, in the amount of \$14,000, and that such indebtedness was non-dischargeable pursuant to § 523(a)(2)(A), (a)(4) (on the grounds of embezzlement), and (a)(6). Judgment at ¶1. The Court further found that Debtor was indebted to Colin Strause in the amount of \$14,500, and that such indebtedness was non-dischargeable pursuant to § 523(a)(2)(A), (a)(4) (on the grounds of embezzlement), and (a)(6). Judgment at ¶2. On February 6, 2018, the Court denied Debtor's motion seeking reconsideration of the Judgment. Doc. Nos. 79–80, Case No. 2:16-ap-01250-ER. Debtor did not appeal the denial of his motion for reconsideration. As a result, the Judgment is now final and non-appealable.

Pursuant to § 1141(d)(5), the Debtor is not entitled to a discharge until all payments contemplated by the Plan have been made. *See* Plan, Section IV.A. In the event Debtor becomes eligible to receive a discharge, the discharge shall not affect the Debtor's liability in connection with the Judgment. *See* § 1141(d)(2) ("A discharge under this chapter does not discharge a debtor who is an individual from any debt excepted from discharge under section 523 of this title"); *see also Comput. Task Grp. v. Brotby*, 303 B.R. 177 (B.A.P. 9th Cir. 2003) ("The reference to § 1141(d)(2) in § 1141(a) makes it clear that while all creditors are bound by the provisions of a confirmed plan, this binding effect cannot operate to discharge an otherwise nondischargeable debt"). However, payments made to the Strauses in accordance with the terms of the Plan will result in a reduction of the amounts owed.

The Plan provides that any creditor who accepts a distribution under the Plan "will be deemed to have specifically consented" to an injunction barring such creditor from taking any action to enforce its indebtedness. Plan at Section II.D.7. To the extent that the Strauses have accepted distributions under the Plan, this language could be construed to enjoin the Strauses from enforcing the unpaid portion of the Judgment. This construction contravenes the plain language of § 1141(d)(2), which clearly provides that a Plan cannot discharge any judgment excepted from discharge under § 523. There is nothing in the record suggesting that Debtor construes the Plan in this manner. However, the Court finds it important to emphasize that any such construction, being in direct contravention of § 1141(d)(2), would be unenforceable.

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CONT... Arto Atmadjian

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Upon completion of all plan payments, the Debtor shall file a motion to reopen the case, accompanied by a motion for entry of a discharge.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

The Debtor is directed to lodge a conforming proposed order, incorporating the tentative ruling by reference, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

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2:16-12145 Arto Atmadjian

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#6.10 Status Hearing
RE: [131] post confirmation status conference

fr. 5-2-17; 8-30-17; 12-27-17; 1-3-18; 4-4-18; 9-18-18; 12-12-18

Docket 131

Tentative Ruling:

12/18/2018

See Calendar No. 6, incorporated herein by this reference.

9/17/2018

No appearances are required. This is a post-confirmation status conference. Based upon this Court's review of the Debtor's Post Confirmation Report on Status of Reorganization [Doc. No. 185], the Court CONTINUES the status conference to December 12, 2018 at 10:00 a.m. A further post-confirmation status report is due 14 days prior to the hearing. If an order closing the case is entered by the Court prior to the date of the continued status conference, the status conference will be taken off calendar.

Party Information

Debtor(s):

Arto Atmadjian

Represented By
Kristine Theodesia Takvoryan
Ovsanna Takvoryan

**United States Bankruptcy Court
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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#7.00 HearingRE: [1382] Application for Compensation Application for Payment of Final Fees and/or Expenses (11 U.S.C. § 330) (with Proof of Service) for Weiland Golden Goodrich LLP, Creditor Comm. Atty, Period: 8/20/2018 to 11/28/2018, Fee: \$1,200.00, Expenses: \$9.40.

Docket 1382

Tentative Ruling:

12/18/2018

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On August 5, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Weiland, Golden, Goodrich LLP ("Weiland") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Weiland has submitted two Monthly Applications, none of which have been opposed.

On September 17, 2018, the Court awarded Weiland, on an interim basis, fees of \$73,685.00 and expenses of \$2,890.43. *See* Doc. No. 1326.

No objections have been filed to Weiland's *Application for Payment of Final Fees and/or Expenses* [Doc. No. 1382] (the "Application"). Having reviewed the Application, the Court approves, on a final basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate. Fees previously awarded on an interim basis are now confirmed as final.

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CONT... Gardens Regional Hospital and Medical Center, Inc.

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Fees: \$74,885.00 (consisting of \$73,685.00 previously awarded on an interim basis, and \$1,200.00 sought in connection with this application) [**Note 1**]

Expenses: \$2,899.83 (consisting of \$2,890.43 previously awarded on an interim basis, and \$9.40 sought in connection with this application)

Note 1

In connection with a global settlement of various issues, the Debtor's professionals, and the Committee's professionals agreed to a 10% reduction of their respective accrued but unpaid fees incurred as of the last day of the month in which the Court granted the Settlement Motion (the "Professional Contribution"). Fees to be paid to Weiland may be less than the amounts set forth above as a result of the Professional Contribution.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#8.00 HearingRE: [1383] Application for Compensation (Second and Final) for Bienert, Miller & Katzman, PLC for OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Creditor Comm. Aty, Period: 6/1/2018 to 10/9/2018, Fee: \$43,689, Expenses: \$1,727.44. (Bisconti, Anthony)

Docket 1383

Tentative Ruling:

12/18/2018

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On September 20, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Bienert, Miller & Katzman, PLC ("BMK") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, BMK has submitted 22 Monthly Applications [Doc. Nos. 418, 477, 545, 589, 645, 672, 699, 750, 837, 872, 910, 945, 957, 979, 1031, 1068, 1081, 1128, 1144, 1169, 1196, 1248, 1264, and 1301], none of which have been opposed.

On September 13, 2018, the Court awarded BMK, on an interim basis, fees of \$168,514.50 and expenses of \$5,951.74. *See* Doc. No. 1322.

No objections have been filed to *Bienert, Miller & Katzman, PLC's Second and Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses* [Doc. No. 1383] (the "Application"). Having reviewed the Application, the Court approves, on a final basis, the fees and expenses set forth below, which may

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CONT... Gardens Regional Hospital and Medical Center, Inc. Chapter 11

be paid (to the extent not previously paid) subject to available cash on hand in the estate. Fees previously awarded on an interim basis are now confirmed as final.

Fees: \$212,203.50 (consisting of \$168,514.50 previously awarded on an interim basis, and \$43,689.00 sought in connection with this application) **[Note 1]**

Expenses: \$7,679.18 (consisting of \$5,951.74 previously awarded on an interim basis, and \$1,727.44 sought in connection with this application)

Note 1

In connection with a global settlement of various issues, BMK, the Debtor's professionals, and the Committee's professionals agreed to a 10% reduction of their respective accrued but unpaid fees incurred as of the last day of the month in which the Court granted the Settlement Motion (the "Professional Contribution"). Fees to be paid to BMK may be less than the amounts set forth above as a result of the Professional Contribution.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#9.00 HearingRE: [1384] Application for Compensation For Kathryn M. Stanton, A Professional Corporation, For Remaining Fees And Expenses As An Ordinary Course Professional for John A Moe II, Other Professional, Period: 12/14/2017 to 4/30/2018, Fee: \$5240.75, Expenses: \$0.

Docket 1384

Tentative Ruling:

12/18/2018

On August 16, 2016, the Court entered an order authorizing the Debtor to retain, employ, and compensate certain professionals used in the ordinary course of the Debtor's business (the ordinary course professionals or "OCPs"). *See* Doc. No. 320 (the "OCP Order"). The OCP Order authorized the Debtor to pay, without formal application to or order from this Court, 100% of the fees and expenses of each Ordinary Course Professional upon submission to, and approval by, the Debtor of an appropriate billing statement.

Kathryn M. Stanton, a Professional Corporation ("Stanton") provided services as an ordinary course professional. Stanton has submitted invoices to the Debtor in the total amount of \$5,822.50, which remain unpaid. Pursuant to an agreement with the Debtor and the Official Committee of Unsecured Creditors, Stanton will reduce her fees by 10% in exchange for payment. Stanton seeks payment of fees in the amount of \$5,240.75.

On September 18, 2018, the Court entered an order confirming the Debtor's *Joint Chapter 11 Plan of Liquidation* (the "Plan"). *See* Doc. No. 1327-1. Michael R. Lane was appointed as the Liquidating Trustee.

No objection to Stanton's application for payment of her fees is on file. The Liquidating Trustee is authorized and directed to pay Stanton fees in the amount of \$5,240.75.

Stanton shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the

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Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#10.00 HearingRE: [1385] Application for Compensation Dentons US LLP's Final Application For Allowance And Payment Of Compensation And Reimbursement Of Expenses; Declaration Of Samuel R. Maizel In Support Thereof for Samuel R Maizel, Debtor's Attorney, Period: 6/6/2016 to 10/9/2018, Fee: \$3,279,815.60, Expenses: \$135,569.37. (Maizel, Samuel)

Docket 1385

Tentative Ruling:

12/18/2018

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On August 10, 2016, the Court entered an order approving the Debtor's application to employ Dentons US LLP ("Dentons") as its general bankruptcy counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Dentons has submitted 25 Monthly Applications [Doc. Nos. 416, 478, 551, 595, 642, 683, 703, 776, 849, 905, 932, 949, 972, 994, 1042, 1064, 1112, 1140, 1159, 1201, 1246, 1270, 1305, 1349], none of which have been opposed.

On October 9, 2018, the Court awarded Dentons, on an interim basis, fees of \$3,179,815.60 and expenses of \$109,170.60. *See* Doc. No. 1350.

On September 18, 2018, the Court entered an order confirming the Debtor's *Joint Chapter 11 Plan of Liquidation* (the "Plan"). *See* Doc. No. 1327-1. Michael R. Lane was appointed as the Liquidating Trustee.

The Liquidating Trustee has agreed not to object to Denton's Final Fee

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Application in exchange for Dentons' offer to discount its fees by \$70,361.00. No other objections to Dentons' *Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses* [Doc. No. 1385] (the "Application") have been filed. Having reviewed the Application, the Court approves, on a final basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate. Fees previously awarded on an interim basis are now confirmed as final.

Fees: \$3,279,815.60 (consisting of \$3,179,815.60 previously awarded on an interim basis, and \$100,000.00 sought in connection with this application)

Expenses: \$135,561.47 (consisting of \$109,170.60 previously awarded on an interim basis, and \$26,390.87 sought in connection with this application)

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#11.00 HearingRE: [1386] Application for Compensation First and Final Application of Wilshire Pacific Capital Advisors, LLC, for Services Rendered and Reimbursement of Expenses as Financial Advisor to the Debtor for the Period From June 6, 2016, Through October 10, 2018; Declaration of Mr. Stan Otake for John A Moe II, Financial Advisor, Period: 6/6/2016 to 10/10/2018, Fee: \$1,192,908.50, Expenses: \$708.61.

Docket 1386

Tentative Ruling:

12/18/2018

On August 16, 2016, the Court entered an order approving the Debtor's application to employ Wilshire Pacific Capital Advisors, LLC ("WPCA") as its financial advisor. See Doc. No. 319.

On September 18, 2018, the Court entered an order confirming the Debtor's *Joint Chapter 11 Plan of Liquidation* (the "Plan"). See Doc. No. 1327-1. Michael R. Lane was appointed as the Liquidating Trustee.

The Liquidating Trustee has agreed not to object to WPCA's Final Fee Application, in exchange for WPCA's offer to reduce its fees by \$71,481.00. No other objections to WPCA's Final Fee Application have been filed. Having reviewed the Application, the Court approves, on a final basis, the fees and expenses set forth below, which may be paid (to the extent not previously paid) subject to available cash on hand in the estate.

Fees: \$1,121,427.50

Expenses: \$708.61 [**Note 1**]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to

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make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

The figures set forth above are based upon the Liquidating Trustee's representation that WPCA agreed to reduce its final fee request of \$1,192,908.50 by \$71,481.00. The *Liquidating Trustee's Statement Concerning Final Fee Applications of Dentons US LLP and Wilshire Pacific Capital Advisors, LLC* [Doc. No. 1401] (the "Final Statement") states that the Liquidating Trustee and WPCA have agreed that WPCA shall be entitled to fees and expenses totaling \$1,122,137.00. The Court notes that the sum of fees and expenses set forth above is \$1,122,136.11 (that is, \$0.89 less than the figure set forth in the Final Statement). This *de minimis* discrepancy appears to be the result of a mathematical error.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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#12.00 Hearing re [1374] re final applications for allowance and payment of fees and reimbursements of expenses to be paid by the estate

Docket 0

Tentative Ruling:

12/18/2018

Duplicate entry.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 Gardens Regional Hospital and Medical Center, Inc.

Chapter 11

#13.00 HearingRE: [1378] Application for Compensation (Final) for Sills Cummis & Gross P.C. for OFFICIAL COMMITTEE OF UNSECURED CREDITORS, Creditor Comm. Atty, Period: 6/6/2016 to 10/9/2018, Fee: \$1,274,685.80, Expenses: \$33,840.73. (Bisconti, Anthony)

Docket 1378

Tentative Ruling:

12/18/2018

Hearing required.

The Court is inclined to award the fees and expenses requested in the Application; however, Sills Cummis & Gross P.C. is required to appear to explain the mathematical discrepancy discussed below.

On September 20, 2016, the Court entered an *Order on Debtor's Motion for Order Establishing Procedures for Monthly Payment of Fees and Expense Reimbursement* [Doc. No. 406] (the "Fee Procedures Order"). Pursuant to the Fee Procedures Order, each professional employed by the estate may file a monthly fee application (each, a "Monthly Application") seeking payment of interim compensation in an amount equal to 80% of the fees sought and 100% of the expenses incurred during the prior month. If no objection is timely filed and served within ten calendar days after the date of the filing of the notice of the Monthly Application, the Monthly Application is deemed approved on an interim basis, and the Debtor is authorized to pay 80% of the fees and 100% of the expenses requested in the Monthly Application without further order of the Court.

On August 5, 2016, the Court approved the application submitted by the Official Committee of Unsecured Creditors (the "Committee") to employ Sills Cummis & Gross P.C. ("Sills") as its co-counsel. Pursuant to the procedures set forth in the Fee Procedures Order, Sills has submitted 22 Monthly Applications [Doc. Nos. 417, 476, 544, 588, 644, 671, 700, 753, 838, 837, 911, 946, 980, 1032, 1067, 1080, 1118, 1145, 1170, 1197, 1249, 1288, and 1302], none of which have been opposed.

On September 13, 2018, the Court awarded Sills, on an interim basis, fees of \$1,148,827.50 and expenses of \$32,455.22, for the period of June 5, 2016 through

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May 31, 2018. *See* Doc. Nos. 1317 and 1321.

Sills seeks final allowance of the fees and expenses previously awarded on an interim basis. In addition, Sills seeks final allowance of fees of \$74,902.00 and expenses of \$382.14 for the period August 1, 2018 through October 9, 2018. Including fees and expenses previously awarded on an interim basis, Sills seeks final allowance of fees of \$1,274,685.80 and expenses of \$33,840.73.

No objections have been filed to *Sills Cummis & Gross P.C.'s Final Application for Allowance and Payment of Compensation and Reimbursement of Expenses* [Doc. No. 1378] (the "Application"). The Court is prepared to award the fees and expenses requested, on a final basis. However, the Court requires clarification with respect to a mathematical discrepancy in the Application. The Court has previously awarded interim fees of \$1,148,827.50. Sills seeks allowance of additional fees of \$74,902.00 to cover the remaining work. The sum of these figures would yield a total final award of \$1,223,729.50 (\$1,148,827.50 + \$74,902.00). Yet Sills seeks a total final fee award of \$1,274,865.80. A similar discrepancy exists with respect to the final expenses sought by Sills.

It appears that Sills may have omitted a request for the payment of fees and expenses incurred between June 1, 2018 and July 31, 2018. Sills has previously been awarded interim fees for work performed through May 31, 2018. Yet in the Application, Sills requests final fees for the period beginning August 1, 2018 (not the period beginning June 1, 2018).

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:16-17463 **Gardens Regional Hospital and Medical Center, Inc.**

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#13.10 Status Hearing re [1327] Post-Confirmation Status Conference

fr. 12-18-18

Docket 0

Tentative Ruling:

12/18/2018

Summary of Status Report:

The Liquidating Trustee has distributed \$25,576.34 to holders of Convenience Claims. The Liquidating Trustee is in the process of examining general unsecured claims, which total approximately \$49 million. No distributions have been made to holders of general unsecured claims.

On June 21, 2017, the Court held that the principles of equitable recoupment permitted the State of California to withhold approximately \$4 million in Medi-Cal payments and supplemental hospital quality assurance payments owed to the Debtor, for the purpose of recovering unpaid hospital quality assurance fees that the Debtor was required to pay to the State under the Medi-Cal Hospital Reimbursement Improvement Act of 2013. *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 569 B.R. 788, 790 (Bankr. C.D. Cal. 2017), *aff'd*, No. 2:16-BK-17463-ER, 2018 WL 1354334 (B.A.P. 9th Cir. Mar. 12, 2018). An appeal of the decision is currently pending before the Ninth Circuit. The appeal has been fully briefed but has not yet been set for oral argument.

To conserve costs, the Liquidating Trustee requests that the Court not require a further post-confirmation Status Conference until at least ninety days after the Ninth Circuit issues its opinion in the appeal of the recoupment decision.

Tentative Ruling:

Having reviewed the Liquidating Trustee's post-confirmation Status Report, the Court finds that the Liquidating Trustee is sufficiently fulfilling its obligations under the *Joint Chapter 11 Plan of Liquidation*.

Pursuant to the Liquidating Trustee's request, a further post-confirmation Status Conference shall not be held until at least ninety days after the Ninth Circuit decides

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the pending appeal of *In re Gardens Reg'l Hosp. & Med. Ctr., Inc.*, 569 B.R. 788, 790 (Bankr. C.D. Cal. 2017). The Court will set a continued Status Conference once the Ninth Circuit has issued a decision.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Gardens Regional Hospital and

Represented By
Samuel R Maizel
John A Moe II

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2:17-22786 Beach Dans, Inc.

Chapter 11

#14.00 HearingRE: [156] Motion Notice Of Motion And Motion For Order Approving Payment Of Administrative And Priority Claims; Memorandum Of Points And Authorities And Declaration Of Peter Yoon In Support Thereof with proof of service

Docket 156

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

1. Notice of Motion and Motion for Order Approving Payment of Administrative and Priority Claims [Doc. No. 156] (the "Motion")
2. As of the date of this tentative ruling, no opposition is on file

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession, Beach Dans, Inc. (the "Debtor"), seeks an order allowing it to use a portion of the \$541,324.68 in estate funds presently being held in the Debtor's attorney's trust account that were generated from the Debtor's sale of its personal property and business (the "Sale Proceeds") to pay certain administrative and priority claims pursuant to §§ 503 and 507 as follows:

Administrative Claims:

- Enrique Vasquez for post-petition landscaping services: \$1,425.00
- California Department of Tax and Fee Administration ("CDFTA") (Claim No. 9): \$59,251.86
- Southern Fresh Produce for post-petition goods: \$8,132.63

Pre-Petition Priority Claims:

- Internal Revenue Service ("IRS") (Claim No. 1, priority portion, as amended): \$145,496.95

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- Franchise Tax Board ("FTB") (Claim No. 3, priority portion): \$2,039.16
- CDFTA (Claim No. 8): \$93,001.68
- Employment Development Department ("EDD") (Claim No. 7, priority portion): \$21,652.04

Total: \$330,999.32

Debtor states that the claims of Enrique Vazquez, CDFTA and Southern Fresh Produce are properly classified as administrative claims under § 503(b)(1)(A) because the claimants provided goods or services that were actual and necessary costs and expenses to preserve the estate. Debtor states that the only other administrative claims are those held by the estate's professionals and those entities consent to these proposed payments. Declaration of Peter Yoon.

Further, Debtor states that the IRS, FTB and CDFTA and EDD hold priority claims that should be paid now in order to avoid any additional expenses to the estate.

As of the preparation of this tentative ruling, no opposition is on file.

II. Findings of Fact and Conclusions of Law

Section 503(b) states in relevant part:

(b) After notice and a hearing, there shall be allowed, administrative expenses, other than claims allowed under section 502(f) of this title, including –

(1)(A) the actual, necessary costs and expenses of preserving the estate . . .

11 U.S.C. § 503(b)(1)(A).

A claimant must show that the debt: (1) arose from a transaction with the debtor-in-possession and (2) directly and substantially benefitted the estate. *In re BCE W, L.P.*, 319 F.3d 1166, 1172 (9th Cir. 2003).

Here, the Debtor states that Mr. Vasquez, CDFTA and Southern Fresh Produce

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provided post-petition goods or services to the Debtor that directly and substantially benefitted the estate.

Moreover, as of the date of this Tentative Ruling, the court has not received any opposition. Pursuant to LBR 9013-1(h), failure to file a timely opposition may be deemed consent to the granting of the motion. Therefore, the Debtor's request to treat those claims as administrative claims under § 503(b)(1)(A) is granted.

The Court also finds it appropriate to grant the Debtor's request to pay the priority claims of the IRS, FTB, CDFTA and EDD. Pursuant to § 502(a), those claims are deemed allowed because no party in interest has objected.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

The Debtor is directed to lodge a conforming proposed order, incorporating this tentative ruling by references, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Beach Dans, Inc.

Represented By
Robert P Goe
Charity J Manee

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2:18-17345 Fu Kong Inc.

Chapter 11

#15.00 Hearing
RE: [89] U.S. Trustee Motion to dismiss or convert under 11 U.S.C. Sec.
1112(b) . (united states trustee (hy))

Docket 89

***** VACATED *** REASON: CONTINUED 1-8-19 AT 10:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Fu Kong Inc.

Represented By
Michael Y Lo

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2:18-20151 Verity Health System of California, Inc.

Chapter 11

#16.00 HearingRE: [899] Motion to Extend Exclusivity Period for Filing a Chapter 11 Plan and Disclosure Statement Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances; Declaration of Samuel R. Maizel

Docket 899

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Motion is GRANTED in its entirety.

Pleadings Filed and Reviewed:

- 1) Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 899] (the "Motion")
- 2) Official Committee of Unsecured Creditors' Response to Debtors' Notice of Motion and Motion for Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances [Doc. No. 988]

I. Facts and Summary of Pleadings

On August 31, 2018, Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

The Debtors move for entry of an order extending the exclusivity periods to file a Chapter 11 Plan and solicit acceptances thereof for 120 days, through and including April 30, 2019 (filing a plan) and June 27, 2019 (obtaining acceptances). Debtors state that the requested extension is necessary because they are currently exploring options to sell some or all of their remaining hospitals.

The Official Committee of Unsecured Creditors (the "Committee") does not object to the requested extension, subject to the Committee's statutory right to seek to

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terminate exclusivity for cause pursuant to 11 U.S.C. §1121(d).
No opposition to the Motion is on file.

II. Findings and Conclusions

Section 1121(b) gives the Debtor the exclusive right to file a plan during the first 120 days after the date of the order for relief. If the debtor files a plan within the 120-day exclusivity period, §1121(c)(3) provides that exclusivity is extended for an additional 60 days to maintain exclusivity during the plan solicitation period. If the plan has not been accepted by holders of impaired claims before 180 days after the date of the order for relief, then the exclusivity period terminates, unless the debtor has obtained an extension. §1121(c)(3). Section 1121(d) permits the Court to reduce or increase the exclusivity period "for cause." Section 1121 provides the bankruptcy court "maximum flexibility to suit various types of reorganization proceedings." *In re Public Service Company of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988).

The Court finds that cause exists to extend the exclusivity periods in accordance with the Debtors' request. This case is complex and has been pending for only a short time. An extension of the exclusivity period is appropriate to provide the Debtors additional time to explore the possibility of selling their remaining assets.

The exclusive period for the Debtors to file a Plan is extended to and including April 30, 2019. The exclusive period for the Debtors to solicit acceptances of a Plan is extended to and including June 27, 2019. The requested extension is subject to the Committee's statutory right to seek to terminate exclusivity for cause pursuant to § 1121(d).

The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

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Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:18-20151 Verity Health System of California, Inc.

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#17.00 Hearing

RE: [365] Motion For Sale of Property of the Estate under Section 363(b) - No Fee Debtors Notice Of Motion And Motion For The Entry Of (I) An Order (1) Approving Form Of Asset Purchase Agreement For Stalking Horse Bidder And For Prospective Overbidders To Use, (2) Approving Auction Sale Format, Bidding Procedures And Stalking Horse Bid Protections, (3) Approving Form Of Notice To Be Provided To Interested Parties, (4) Scheduling A Court Hearing To Consider Approval Of The Sale To The Highest Bidder And (5) Approving Procedures Related To The Assumption Of Certain Executory Contracts And Unexpired Leases; And (II) An Order (A) Authorizing The Sale Of Property Free And Clear Of All Claims, Liens And Encumbrances; Memorandum Of Points And Authorities In Support Thereof (Moyron, Tania)

fr. 10-24-18; 12-18-18

Docket 365

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Sale Motion is GRANTED.

Pleadings Filed and Reviewed:

- 1) Papers filed in connection with the Bidding Procedures Motion:
 - a) Debtors' Notice of Motion and Motion for the Entry of (I) An Order (1) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) An Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 365] (the "Bidding Procedures Motion")

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- i) Notice of Sale of Estate Property [Doc. No. 366]
- ii) Declaration of Richard G. Adcock in Support of [Bidding Procedures Motion] [Doc. No. 393]
- iii) Declaration of James Maloney in Support of [Bidding Procedures Motion] [Doc. No. 394]
- b) Opposition Papers:
 - i) Limited Objection of the Federal Communications Commission to [Bidding Procedures Motion] [Doc. No. 437]
 - ii) Limited Objection of Pension Benefit Guaranty Corporation to [Bidding Procedures Motion] [Doc. No. 439]
 - iii) Reservation of Rights of Premier, Inc. and its Subsidiaries in Relation to [Bidding Procedures Motion] [Doc. No. 444]
 - iv) Objection of Cigna Entities to [Bidding Procedures Motion] [Doc. No. 445]
 - v) Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to [Bidding Procedures Motion] [Doc. No. 447]
 - (1) Stipulation to Postpone Hearing on Objection of the U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors' Sale Procedures Motion and Allow Further Briefing [Doc. No. 613]
 - vi) SEIU-UHW's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 450]
 - (1) Declaration of David Miller in Support of SEIU-UHW's Objection [Doc. No. 453]
 - vii) Conditional Opposition to [Bidding Procedures Motion] [filed by OCH Forest 1] [Doc. No. 452]
 - (1) Declaration of Charles Toeniskoetter in Support of Conditional Opposition to [Bidding Procedures Motion] [Doc. No. 456]
 - viii) Local 39's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 458]
 - ix) Limited Objection of Retirement Plan for Hospital Employees to Debtors' Motion for Entry of an Order Approving Bidding Procedures, Etc. [Doc. No. 460]
 - x) Response to Debtors' [Bidding Procedures Motion] [filed by the California Attorney General] [Doc. No. 463]

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- (1) Sur-Reply to Debtor's Reply to Response of California Attorney General to Bid Procedures Motion [Doc. No. 619]
- xi) California Nurses Association Objection to Debtors' [Bidding Procedures Motion] [Doc. No. 465]
- xii) Official Committee of Unsecured Creditors' Limited Objection to Debtor's Sale Motion [Doc. No. 490]
 - (1) Declaration of Cynthia A. Nelson in Support of Official Committee of Unsecured Creditors' Limited Objection to Debtors' Sale Motion [Doc. No. 491]
- xiii) Limited Objection and Reservation of Rights of Verity MOB Financing LLC and Verity MOB Financing II LLC to [Bidding Procedures Motion] [Doc. No. 500]
- xiv) Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557]
 - (1) Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A. as Master Trustee and Wells Fargo Bank, N.A. as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 557-1]
- xv) Limited Objection and Reservation of Rights of U.S. Bank National Association, as Series 2017 Note Trustee, to [Bidding Procedures Motion] [Doc. No. 577]
- xvi) Reservation of Rights of INFOR (US), Inc. [Doc. No. 592]
- xvii) Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 597]
 - (1) Declaration of Danielle Lucido in Support of Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC's Objection and Reservation of Rights to [Bidding Procedures Motion] [Doc. No. 598]
- c) Reply Papers:
 - i) Debtors' Reply to Response of California Attorney General to Debtors' Bid Procedures Motion [Doc. No. 560]
 - ii) Omnibus Reply to Objections to [Bidding Procedures Motion] [Doc. No. 561]
 - iii) Debtors' Reply to Objection of U.S. Department of Health and Human Services and Centers for Medicare and Medicaid Services to Debtors Bid Procedures Motion [Doc. No. 562]
 - iv) Reply to Objections of UMB Bank and US Bank to [Bidding Procedures

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Motion] [Doc. No. 621]

(1) Objection to Declaration of Benjamin Ilhardt in Support of Objection of UMB Bank, N.A., as Master Trustee and Wells Fargo Bank, N.A., as Bond Trustee, to [Bidding Procedures Motion] [Doc. No. 622]

- d) Papers filed in Connection with the California Attorney General's Motion to Continue the Hearing on the Bidding Procedures Motion:
- i) Notice of Motion and Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 599]
 - ii) Debtors' Opposition to Attorney General's Motion to Continue the Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 605]
 - iii) Official Committee of Unsecured Creditors' Objection to Motion to Continue Hearing on Debtors' [Bidding Procedures Motion] [Doc. No. 608]
- 2) Assumption Objections:
- a) Smith & Nephew, Inc.'s Objection to Proposed Cure Amounts for Assumed Executory Contracts [Doc. No. 882]
 - i) Smith & Nephew, Inc.'s Supplemental Objection to Proposed Cure Amounts and Limited Objection to Assumption and Assignment of Executory Contracts [Doc. No. 1057]
 - b) Limited Objection and Reservation of Rights of Roche Diagnostics Corporation to (I) Debtors' Proposed Cure Amount for Potential Assumption and Assignment of Agreements and (II) Sale Motion [Doc. No. 889]
 - i) Supplemental Objection and Reservation of Rights of Roche Diagnostics Corporation with Respect to Debtors' Supplemental Cure Notice [Doc. No. 1085]
 - c) Stanford's Omnibus Objection to Cure Notice [Doc. No. 904]
 - d) Objection of Cigna Entities to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 905]
 - i) Declaration in Support of Objection of Cigna Entities to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 1071]
 - e) OCH Forest 1 and O'Connor Health Center 1 Response to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 913]
 - i) Declaration of Charles J. Toeniskoetter in Support of OCH Forest 1 and

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- O'Connor Health Center 1 Response to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 914]
- f) C.R. Bard, Inc.'s Limited Objection and Reservation of Rights to Proposed Cure Amounts for Executory Contracts [Doc. No. 919]
 - i) C.R. Bard, Inc.'s Limited Objection and Reservation of Rights to Proposed Cure Amounts on Supplemental Executory Contracts [Doc. No. 1080]
 - g) Blue Shield's Objection to Cure Amount Stated in Debtor's Notice to Counterparties to Executory [Doc. No. 920]
 - h) Objection to Cure Amounts Proposed in Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [filed by SpecialtyCare Cardiovascular Resources, LLC] [Doc. No. 923]
 - i) Objection of Surgical Information Systems, LLC to Debtors' Notice to Counterparties to Executory Contracts and Unexpired Leases of Debtors that May be Assumed and Assigned [Doc. No. 928]
 - i) [Supplemental] Objection of Surgical Information Systems, LLC to Debtors' Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases that May be Assumed and Assigned [Doc. No. 1046]
 - j) Care 1st Health Plan's Objection to Cure Amount Stated in Debtor's Notice to Counterparties to Executory Contracts and Unexpired Leases that May be Assumed and Assigned [Doc. No. 929]
 - k) Abbott Laboratories Inc.'s Objection to Proposed Cure Amounts and Preliminary Objection to Proposed Assumption and Assignment of Various Contracts [Doc. No. 931]
 - i) Abbott Laboratories Inc.'s Supplemental Objections to Proposed Assumption and Assignment of Various Contracts and Reservation of Rights [Doc. No. 1059]
 - l) Response of Cerner Corporation to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 933]
 - m) Objection of Humana Inc. and its Affiliates to Proposed Cure Amounts [Doc. No. 946]
 - n) Objection of GE HFS, LLC to (I) Proposed Assumption and Assignment of Lease and (II) Cure Obligations with Respect Thereto Pursuant to *Notice to*

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Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 970]

- i) Supplemental Objection of GE HFS, LLC to (I) Proposed Assumption and Assignment of Lease and (II) Cure Obligations with Respect Thereto Pursuant to *Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned* [Doc. No. 1043]
- o) Objection to (I) Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned and (II) Sale Motion [filed by Medtronic USA, Inc.] [Doc. No. 986]
 - i) Declaration of Bob Zbylicki in Support of Objection to (I) Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned and (II) Sale Motion [Doc. No. 1016]
- p) Oracle's Limited Objection to and Reservation of Rights Regarding Debtors' [Sale Motion and Cure Notice] [Doc. No. 1058]
- q) Objection to Cure Amount Set Forth in the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [filed by UnitedHealthcare Insurance Company] [Doc. No. 1062]
- r) Reservation of Rights of Premier, Inc. and its Subsidiaries with Respect to Debtors' Motion for Approval of Sale of O'Connor Hospital, Saint Louise Regional Hospital and Related Assets [Doc. No. 1068]
- s) Objection of Infor (US), Inc. to Debtors' Sale Motion and Supplemental Cure Notice [Doc. No. 1069]
- t) Reservation of Rights to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 1070]
- u) NTT Data Services Holding Corporation's Limited Objection to Supplement to Notice to Counterparties to Executory Contracts that May be Assumed and Assigned [Doc. No. 1089]
- v) Limited Objection and Reservation of Rights of Nantworks, LLC to Supplement to Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May be Assumed and Assigned [Doc. No. 1092]
- w) Objection of Premier, Inc. and its Subsidiaries to Proposed Assumption and Assignment of Contracts, and Cure Amounts [Doc. No. 1093]

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- i) Declaration of David H. Harriss in Support of Objection of Premier, Inc. [Doc. No. 1094]
- x) Limited Objection of Experian Health, Inc. to Cure Notice and to Proposed Assumption and Assignment of Executory Contracts [Doc. No. 1096]
- 3) Sale Objections:
 - a) Creditor California Department of Health Care Services' Objection to Department of Health Care Services's Objection to [Bidding Procedures and Sale Motion] [Doc. No. 906]
 - b) Limited Objection and Reservation of Rights of Verity MOB Financing LLC and Verity MOB Financing II LLC [Doc. No. 1060]
 - c) California Nurses Association Objection to [Sale Motion] [Doc. No. 1061]
 - d) Response to Debtors' Motion for Entry of [the Sale Order] [filed by the California Attorney General] [Doc. No. 1066]
 - e) Local 39's Objection and Reservation of Rights to [Sale Motion] [Doc. No. 1067]
 - f) Reservation of Rights of U.S. Bank, N.A. [Doc. No. 1082]
 - g) Response and Reservation of Rights to Motion to Sell Assets [filed by UMB Bank] [Doc. No. 1084]
- 4) Additional Papers Filed in Support of the Sale Motion:
 - a) Notice that No Auction Shall be Held Re [Bidding Procedures Motion] [Doc. No. 1005]
 - b) Debtors' Memorandum in Support of Entry of Order [Approving Sale] [Doc. No. 1041]
 - i) Declaration of Jeffrey Smith in Support of [Sale Motion] [Doc. No. 1044]
 - ii) Notice of Errata Re: [Sale Memorandum] [Doc. No. 1050]
 - c) Omnibus Reply to Objections to Motion for Entry of an Order Approving the [Sale Motion] [Doc. No. 1098]

I. Facts and Summary of Pleadings

On August 31, 2018 (the "Petition Date"), Verity Health Systems of California ("VHS") and certain of its subsidiaries (collectively, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. On August 31, 2018, the Court entered an order granting the Debtors' motion for joint administration of the Debtors' Chapter 11 cases. Doc. No. 17.

On October 31, 2018, the Court entered an *Order (I) Approving Form of Asset Purchase Agreement for Stalking Horse Bidder and for Prospective Overbidders to*

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Use, (2) Approving Auction Sale Format, Bidding Procedures and Stalking Horse Bid Protections, (3) Approving Form of Notice to Be Provided to Interested Parties, (4) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest Bidder and (5) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; and (II) an Order (A) Authorizing the Sale of Property Free and Clear of All Claims, Liens and Encumbrances [Doc. No. 724] (the "Bidding Procedures Order," and the motion for entry of the Bidding Procedures Order, the "Bidding Procedures Motion"). The Bidding Procedures Order established procedures governing the auction of Saint Louise Regional Hospital ("St. Louise"), O'Connor Hospital ("O'Connor"), and related assets (collectively, the "Assets"). Pursuant to an Asset Purchase Agreement (the "APA") dated October 1, 2018, the County of Santa Clara ("Santa Clara") was designated as the stalking horse bidder (the "Stalking Horse Bidder").

The Assets consist of:

all assets, businesses, real property, personal property, equipment, supplies, software, contracts, leases, licenses/permits, books, records, offices, facilities, and all other tangible and intangible property (a) whatsoever and wherever located that is owned, leased, or used primarily in connection with the Businesses by a Hospital Seller, (b) located in Santa Clara County, California that is owned, leased, or used primarily in connection with the Businesses by Verity Holdings, and (c) whatsoever and wherever located that is owned, leased, or used by Verity primarily in connection with the Businesses, in each case, except for the Excluded Assets.

APA at ¶1.8.

Certain liabilities are excluded from the sale. Most significant is the exclusion of all "Labor Obligations," defined in the APA to include all "collective bargaining agreements ... that are in place with any labor unions" APA at ¶8.13.

The Bidding Procedures Order established a deadline of November 30, 2018, at 4:00 p.m. (PST) for bidders to submit partial bids for the Assets and a deadline of December 5, 2018, at 4:00 p.m. (PST) to submit full bids for the Assets. The Partial Bid Auction [**Note 1**] was set for December 10, 2018, and the Full Bid Auction was set for December 11, 2018. Because no qualified bids were submitted, neither auction occurred. *See* Notice that No Auction Shall Be Held Re Debtors' Motion for the Entry of [the Bidding Procedures Order] [Doc. No. 1005]. Pursuant to the Bidding

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Procedures Order, this hearing has been set to consider the Debtors' motion for entry of an order approving the sale of the Assets (the "Sale Motion," and the hearing on the Sale Motion, the "Sale Hearing"). The Debtors expect that the sale will close no earlier than February 28, 2019.

The Debtors are in the process of negotiating with certain parties who object to certain aspects of the Sale Motion. The status of those negotiations is as follows:

Centers for Medicare and Medicare Services Objection

The United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services (collectively, "HHS") objects to the APA's characterization of Medicare Provider Agreements (the "Provider Agreements") held by St. Louise and O'Connor as licenses rather than as executory contracts. According to HHS, the Medicare Provider Agreements are executory contracts which may only be assumed and assigned in conformance with the requirements of §365.

The Debtors and CMS are negotiating for a consensual resolution of issues pertaining to the transfer of the Provider Agreements. The Debtors and CMS have agreed that, no later than 4:00 p.m. on January 18, 2019, either (a) the Debtors will file a notice that issues pertaining to the transfer of the Provider Agreements have been resolved, or (b) HHS will file an objection to the sale and the proposed transfer of the Provider Agreement. If a hearing is necessary, the Debtors request that it be held on January 30, 2019, at 10:00 a.m.

California Attorney General Objection

In July 2015, the California Attorney General (the "Attorney General") reviewed a transaction between the Debtors' predecessor, Daughters of Charity Ministry Services Corporation ("Daughters") and BlueMountain Capital Management, LLC ("Blue Mountain"). In connection with the July 2015 transaction, the Attorney General imposed various conditions governing the operation of the Debtors' hospitals (the "2015 Conditions"). Among other things, the 2015 Conditions require the hospitals to furnish specified amounts of charitable care, to continue to provide certain types of health care services, and to continue to operate emergency departments in accordance with minimum requirements. The Attorney General asserts that any purchaser of the Assets remains bound by the 2015 Conditions.

The Debtors and the Attorney General are negotiating for a consensual resolution of these issues. By January 18, 2019, the Debtors will file either (a) a notice that issues regarding the applicability of the 2015 Conditions have been resolved, or (b) a

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notice that no resolution was reached and that a hearing will be required on the applicability of the 2015 Conditions. If a hearing is necessary, the Debtors request that it be held on January 30, 2019, at 10:00 a.m.

Collective Bargaining Agreements

The Debtors and various unions whose Collective Bargaining Agreements (the "CBAs") are implicated by the Sale Motion have met to discuss the impact of the sale on the CBAs. The Debtors will shortly be filing motions, pursuant to §1113, to reject and/or modify those CBAs (the "CBA Motions"). The Debtors propose that a hearing on the CBA Motions occur no later than January 30, 2019.

Assumption of Certain Executory Contracts and Unexpired Leases

The Bidding Procedures Order established procedures governing the assumption and assignment of executory contracts and unexpired leases. Pursuant to those procedures, the Debtors filed and served a *Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtors that May Be Assumed and Assigned* [Doc. No. 810] (the "Cure Notice") on November 12, 2018. The Cure Notice identifies the amounts, if any, that the Debtors believe are owed to each counterparty on account of executory contracts and unexpired leases which the Debtors seek to assume pursuant to §365 (the "Assumed Executory Contracts"). The Cure Notice identified 1,166 executory contracts and unexpired leases subject to assumption by O'Connor, and 1,050 executory contracts and unexpired leases subject to assumption by St. Louise.

Numerous counterparties to Assumed Executory Contracts have filed objections to the Cure Notice (collectively, the "Assumption Objections"). Objections asserted by counterparties fall into several categories. First, counterparties assert that the Cure Amounts identified in the Cure Notice are inaccurate, or that the Cure Notice does not identify with sufficient particularity the executory contract or unexpired lease which the Debtors seek to assume, making it impossible for the counterparty to determine the accuracy of the Cure Amount.

Second, because the Debtors historically have operated their six hospitals as a unified system, many of the contracts at issue are between the counterparty and the entire hospital system—not just the two hospitals that are the subject of the Sale Motion. Counterparties to contracts of this type assert that any cure amount must be sufficient to cure all defaults under the contract—not just defaults related to the hospitals that are being sold.

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Third, certain of the contracts involve the licensing of software. Counterparties to contracts of this type assert that pursuant to *Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), the contracts may not be assumed absent the counterparties' consent.

Santa Clara has advised the Debtors that it wishes to assume additional executory contracts and/or unexpired leases that have not yet been designated. The Debtors intend to file a list of these additional contracts (the "Designated Contracts List") prior to the Sale Hearing. The Debtors request that the Court continue all matters related to Cure Amounts and Assumption and Assignment to a date prior to the closing of the sale.

CNA's Objection and the Debtors' Response

The California Nurses Association ("CNA") represents approximately 544 registered nurses at O'Connor and approximately 204 registered nurses at St. Louise. Nurses employed at O'Connor and St. Louise are covered by *Master Collective Bargaining Agreements* (the "CBAs") containing successorship clauses which purport to bind any purchaser of St. Louise or O'Connor.

Pursuant to §5.3.1 of the APA, Santa Clara will hire substantially all workers employed at O'Connor and St. Louise on a "provisional basis," with certain employees to be permanently hired on "terms and conditions of employment generally consistent with those offered to other Purchaser employees in the same or substantially similar Purchaser classification."

On December 6, 2018, representatives of CNA met with the Debtors' representatives and with Debtors' counsel to discuss the Debtors' proposal regarding the CBAs. Discussions were memorialized in a letter sent from Debtors' counsel to CNA's counsel on December 7, 2018 (the "Letter"). The Letter provides that the Debtors "will need to terminate" the CBAs pertaining to O'Connor and St. Louise "because they will no longer own or operate the Hospitals," and because Santa Clara "does not seek to be bound by the terms of, or obligations under, the CBAs." Letter at 1-2. The Letter further states that the Debtors will shortly file a §1113 motion to reject the CBAs.

CNA contends that any §1113 motion that the Debtors file cannot be granted as a result of the Debtors' alleged failure to timely negotiate with CNA in good faith. According to CNA:

- 1) The Debtors have already violated the CBA's successor clause by moving for

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the sale of St. Louise and O'Connor prior to filing a §1113 motion. Even if the Debtors could claim retroactive rejection of the CBAs based on a subsequent § 1113 motion (which is by itself doubtful), their conduct thus far has made rejection of the CBAs an impossibility. Specifically, the Debtors have bound themselves to the APA with Santa Clara prior to making any effort to modify the existing CBAs.

- 2) In *In re Lady H Coal Co., Inc.*, 193 B.R. 233, 242 (Bankr. S.D.W. Va. 1996), the court rejected the Debtor's attempt to reject a CBA where, as here, the Debtors did not seek rejection of the CBA until after they had entered into a sale agreement with a party not willing to assume the CBA. The *Lady H* court explained "that a debtor has a duty under § 1113 to not obligate itself prior to negotiations with its union employees, which would likely preclude reaching a compromise," and held that "the Debtors could not have bargained in good faith as the Debtors were, prior to any negotiations with the union, locked into at an agreement where the purchaser was not assuming the [CBA]." *Lady H*, 193 B.R. at 242. Similarly, in *In re Karykeion, Inc.*, 435 B.R. 663, 682 (Bankr. C.D. Cal. 2010), the court stated that the "[u]nions are correct that beginning negotiations when one party is already locked into a position does not constitute good faith."
- 3) Here, the Debtors did not engage with CNA prior to entering into the APA with Santa Clara or during initial negotiations with potential buyers, and therefore was unable to convey CNA's concerns to such buyers. This precluded the Debtors from seeking a more employee-friendly APA at the time the Debtors had the greatest bargaining leverage over Santa Clara.

The Debtors dispute the contention that they are required to obtain relief under §1113 before proceeding with the sale. In support of this position, Debtors rely upon *Local 211 v. Family Snacks, Inc., Official Unsecured Creditors' Comm. (In re Family Snacks, Inc.)*, 257 B.R. 884, 897 (B.A.P. 8th Cir. 2001):

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to

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plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

Local 39's Objection and the Debtors' Response

On November 14, 2018, the Court authorized the Debtors to enter into a post-petition CBA (the "Postpetition CBA") with the International Union of Operating Engineers, Stationary Engineers, Local 39 ("Local 39"). Local 39 objects to the sale of hospitals free and clear of the Postpetition CBA. Local 39's position is that a sale free and clear contravenes the requirements of §1113.

Debtors assert that the premise of Local 39's objection is misplaced, because § 1113 does not govern postpetition CBAs.

II. Findings and Conclusions

For the reasons set forth in greater detail below and subject to such oral argument as may be presented at the hearing, the Court tentatively GRANTS the Sale Motion. Before proceeding to the merits of the Sale Motion, the Court addresses the procedures that shall govern the adjudication of various outstanding issues.

A. Procedures Governing the Adjudication of Assumption Objections

Most of the Assumption Objections stem from relatively minor disagreements over Cure Amounts. Given the voluminous records involved in the operation of the hospitals, such discrepancies are not surprising. It is the Court's expectation that upon more thorough review, most Assumption Objections can be consensually resolved.

The Court will adjudicate only those Assumption Objections that cannot be resolved after good-faith negotiations between the parties. The following procedures shall govern the adjudication of such objections.

By no later than **Friday, January 18, 2019**, the Debtors shall file a notice containing a list of (a) the Assumption Objections that have been resolved and (b) the Assumption Objections as to which Court intervention is required. As to the Assumption Objections for which Court intervention is required, the following briefing schedule shall apply:

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- 1) A hearing on the Assumption Objection shall take place on **Wednesday, January 30, 2019, at 10:00 a.m.**
- 2) The Debtors' opposition to each outstanding Assumption Objection shall be submitted by no later than **Friday, January 18, 2019.**
- 3) The counterparties' reply in support of its Assumption Objection shall be submitted by no later than **Friday, January 25, 2019.**

The foregoing procedures apply to contracts subject to assumption that have already been designated. As to contracts that have not yet been designated, the deadlines set forth above shall also apply, but shall be supplemented by the following additional deadlines:

- 1) The Debtors shall file the Designated Contracts List by no later than **December 19, 2018.**
- 2) Counterparties subject to contracts set forth in the Designated Contracts List who object to assumption and/or the proposed Cure Amounts shall be subject to the procedures set forth in the Bidding Procedures Order pertaining to the assertion of an Assumption Objection, except that the applicable deadlines shall be extended to reflect the later filing of the Designated Contracts List. Any such counterparties who object to assumption and/or the proposed Cure Amount shall file an Assumption Objection by no later than **January 2, 2019.**
- 3) Upon the filing of the Assumption Objection, the parties shall negotiate in good faith to resolve objections to Cure Amounts. To the extent that a negotiated resolution cannot be achieved, Assumption Objections filed in connection with the Designated Contracts List shall be adjudicated in the same manner as all other Assumption Objections (that is, a hearing on such Assumption Objections shall take place on **January 30, 2019**, and the remainder of the briefing deadlines set forth above shall apply).

B. Procedures Governing the Adjudication of Objections Asserted by HHS and the California Attorney General

The Court is amenable to the Debtors' proposal regarding the adjudication of issues pertaining to (a) the transfer of the Debtors' Provider Agreements and (b) the applicability of the 2015 Conditions.

The following procedures shall govern the adjudication of HHS' objection regarding the transfer of the Provider Agreements:

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- 1) By no later than **Friday, January 18, 2019**, either (a) the Debtors shall file a notice that the issues have been resolved, or (b) HHS shall file an objection to the sale and the proposed transfer of the Provider Agreement.
- 2) If the issues are not resolved, a hearing on HHS' objection shall take place on **Wednesday, January 30, 2019, at 10:00 a.m.**
- 3) The Debtors' reply to HHS' objection shall be filed by no later than **Friday, January 25, 2019.**

The Court notes that the issues governing the transferability of the Medicare Provider Agreements largely overlap with the issues governing the transferability of the Medi-Cal Provider Agreements. Therefore, to the extent that the Debtors are unable to reach an agreement resolving the Attorney General's objection to the Sale Motion [Doc. No. 906], the same procedures and briefing schedule as set forth above shall apply.

The following procedures shall govern the adjudication of the applicability of the 2015 Conditions:

- 1) By no later than **Friday, January 18, 2019**, either (a) the Debtors shall file a notice that the issues have been resolved, or (b) a notice stating that no resolution was reached and that a hearing will be required.
- 2) If the issues are not resolved, a hearing shall take place on **Wednesday, January 30, 2019, at 10:00 a.m.** The Debtors shall file a reply to the Attorney General's objection to the Bidding Procedures Motion [Doc. No. 463] by no later than **Friday, January 25, 2019.**

C. CNA's Objection is Overruled

CNA asserts that the Debtors' alleged failure to negotiate in good faith with respect to its CBA forecloses any possibility that the Debtors could prevail on a §1113 motion. CNA's argument lacks merit.

CNA's position is that the Debtors should have initiated negotiations regarding the CBA before the conclusion of the auction. In the Court's view, such negotiations would have been a needless diversion of the Debtors' resources better devoted to marketing the Assets. Adopting CNA's position would mean that the Debtors would have been required to begin negotiating with CNA before it became known who

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would submit the highest bidder for the Assets, and whether such bidder would wish to assume the CBAs. Such shadow boxing would necessarily have been preliminary, speculative, and would have accomplished nothing.

Ultimately, although no additional bidders appeared, that does not mean that the Debtors were incorrect to concentrate their efforts on soliciting bidders rather than engaging in speculative negotiations with CNA.

CNA relies upon *Lady H* and *Karykeion* for the proposition that it is now impossible for the Debtors to conduct the good-faith negotiations that are a pre-requisite for obtaining relief under §1113, because the Debtors are now obligated to proceed under the APA which provides for the rejection of the CBAs. [Note 2]

The Court declines to follow *Lady H* or *Karykeion* for the propositions cited. In the Court's view, the better-reasoned approach is set forth in *Family Snacks*, which held that the debtor was not required to initiate the §1113 process (including the requirements of negotiating with the unions) prior to selling its assets. The *Family Snacks* court correctly observes that "there is nothing in the language of §1113 that dictates when an application to reject must be made." *Family Snacks*, 257 B.R. at 895. Further, the *Family Snacks* court reasoned that requiring the §1113 process to be completed prior to an asset sale would give unions undue power over the sale process to the detriment of other creditors:

When a debtor is selling on a going concern basis, the union urges, *Ionosphere* should not apply because the only meaningful time the court can make a decision on rejection is prior to the sale. We see no basis for such a distinction, unless it is to give the union veto power over a going concern sale which, as we know from experience, is often the best way to reap the greatest benefit for all creditors. Section 1113 was never intended to give unions such power. Its sole purpose is to keep a debtor from unilaterally rejecting a CBA and to plainly articulate the rules for going about rejection. If, as *Ionosphere* concluded, a debtor who is liquidating piecemeal should not be forced into Chapter 7 in order to preserve its assets for equitable distribution to all creditors, the same is true for a debtor who is selling its assets on a going concern basis.

Family Snacks, 257 B.R. at 897.

As set forth below, the Court's adjudication of §1113 issues—including whether the Debtor has met its obligation to negotiate with CNA in good faith—will take place

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at a later date. At this juncture, however, it is important for the Court to emphasize that CNA's position that it is now *impossible* for the Debtors to obtain relief under § 1113 is without merit.

D. Local 39's Objection is Overruled

Local 39 objects to the sale free and clear of its Postpetition CBA. Local 39's contention that such a sale contravenes §1113 is misdirected. Section 1113 does not apply to the Postpetition CBA because it was entered into subsequent to the date of the petition. As one court has held:

The Union's first contention is that section 1113 applies to all collective bargaining agreements, whether entered into before or after the commencement of the reorganization case. I do not agree. Nothing in the language of the statute or its legislative history indicates that section 1113 was intended to govern disputes with respect to postpetition collective bargaining agreements. Indeed, I have been directed to and have found no case law which is supportive of that notion.

In re Leslie Fay Companies, Inc., 168 B.R. 294, 300 (Bankr. S.D.N.Y. 1994).

E. Procedures Governing Adjudication of Section 1113 Motions

The hearing on the CBA Motions to be filed by the Debtors shall take place on **January 30, 2019, at 10:00 a.m.** The following briefing deadlines shall apply:

- 1) Debtors shall file the CBA Motions by no later than **January 2, 2019.**
- 2) Objections to the CBA Motions shall be filed by no later than **January 16, 2019.**
- 3) Replies in support of the CBA Motions shall be filed by no later than **January 23, 2019.**

All briefing filed in connection with the CBA Motions must contain citations to all evidence upon which the parties intend to rely. To the extent that parties seek to introduce live witness testimony to support their positions, such witnesses must be identified, and a summary of each witnesses' anticipated testimony must be provided. Upon review of the briefing, the Court will determine whether an evidentiary hearing is required. On **Friday, January 25, 2019**, the Court will advise the parties whether it

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intends to take live witness testimony at the **January 30, 2019** hearing.

F. The Sale Motion is Granted

Section 363(b) permits the debtor or trustee to sell estate property out of the ordinary course of business, subject to Court approval. The debtor or trustee must articulate a business justification for the sale of the property. *In re Walter*, 83 B.R. 14, 19–20 (9th Cir. BAP 1988) (citing *In re Continental Air Lines*, 780 F.2d 1223 (5th Cir. 1986)). Whether the articulated business justification is sufficient "depends on the case," in view of "all salient factors pertaining to the proceeding." *Id.* "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *Simantob v. Claims Prosecutor, LLC (In re Lahijani)*, 325 B.R. 282, 288–89 (B.A.P. 9th Cir. 2005).

The Debtors have demonstrated sufficient business justification for the sale. The Debtors incur significant operational losses at their hospitals, such that continued operations are not financially viable. A sale is the best means to preserve value for creditors.

Based upon its review of the Moloney Declaration filed in support of the Sale Motion, the Court finds that the Debtors have adequately marketed the Assets. Cain Brothers ("Cain"), the Debtors' financial advisors, have been marketing the Assets since June 2018. Twenty-five parties executed non-disclosure agreements and were provided access to a data room containing information about the Assets. Cain has remained in contact with potential purchasers and has been available to provide information.

Pursuant to §363(f)(2), the sale is free and clear of all liens asserted by secured claimants. All parties asserting secured claims have consented to the sale.

Having reviewed the *Declaration of Jeffrey Smith* [Doc. No. 1044], the Court finds that Santa Clara is a good-faith purchaser entitled to the protections of §363(m).

Notwithstanding Bankruptcy Rule 6004, the order approving the sale shall take effect immediately upon entry.

The Debtors shall submit a conforming order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the**

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tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Terms not defined herein have the meaning set forth in the Bidding Procedures Motion [Doc. No. 365] and/or the APA.

Note 2

The Service Employees International Union, United Healthcare Workers-West (“SEIU-UHW”) and the Engineers and Scientists of California Local 20, IFPTE, AFL-CIO/CLC (“IFPTE Local 20”) make the same arguments as CNA.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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#18.00 Hearing

RE: [400] Motion to Reject Lease or Executory Contract / Notice of Motion and Motion to Reject Pursuant to 11 U.S.C. § 365(a) Professional Services Agreement with Sports, Orthopedic and Rehabilitation Associates (SOAR) and Related Executory Contracts and Unexpired Leases Nunc Pro Tunc; Memorandum of Points and Authorities; Declaration (Moyron, Tania)

FR. 10-24-18; 11-7-18; 12-12-18

Docket 400

Tentative Ruling:

12/18/2018

This hearing is VACATED. The Debtors and SOAR have negotiated an agreement resolving SOAR's objection to the Debtors' motion to reject an executory contract with SOAR. See Doc. No. 1073. The Court will review the stipulation memorializing the agreement once it has been filed.

Party Information

Debtor(s):

Verity Health System of California,

Represented By

Samuel R Maizel

John A Moe II

Tania M Moyron

Claude D Montgomery

Sam J Alberts

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2:17-10155 Wendy Tejada

Chapter 7

Adv#: 2:17-01308 Velasquez v. Tejada

#100.00 HearingRE: [100] Application for Compensation Notice of Motion and Motion of Plaintiff Sorayda Velasquez for an Award of Attorney's fees Against Defendant Wendy Tejada; Memorandum of Points and Authorities in Support Thereof for Sorayda Velasquez, Creditor's Attorney, Period: to, Fee: \$34,575.00, Expenses: \$. (Estuar, Paul)

Docket 100

Tentative Ruling:

12/18/2018:

Tentative Ruling: For the reasons set forth below, counsel for Plaintiff Sorayda Velasquez is awarded attorneys' fees of \$34,575.00, and such fees are excepted from Defendant Wendy Tejada's discharge.

Pleadings Filed and Reviewed:

- 1) Notice of Motion and Motion of Plaintiff Sorayda Velasquez for an Award of Attorney's Fees Against Defendant Wendy Tejada [Doc. Nos. 99–100]
 - a) Order Directing Plaintiff to (1) Refile Amended Fee Motion Using Correct Docket Event Code and to (2) Renote Hearing on Amended Fee Motion [Doc. No. 96]

I. Facts and Summary of Pleadings

On August 7, 2018, the Court entered judgment in favor of Plaintiff Sorayda Velasquez, and against Defendant Wendy Tejada. *See* Memorandum of Decision Finding that Tejada's Indebtedness to Velasquez, in the Amount of \$28,000.00, is Excepted from Discharge [Doc. No. 63] (the "Memorandum of Decision") and Judgment in Favor of Plaintiff Sorayda Velasquez [Doc. No. 64] (the "Judgment"). The Court found that Defendant Tejada was indebted to Plaintiff Velasquez in the amount of \$28,000, and that such indebtedness was excepted from Tejada's discharge pursuant to §523(a)(6). The Court declined to award attorneys' fees:

Cal. Civ. Code §789.3(a) provides for an award of attorneys' fees. However, Velasquez's counsel did not present any evidence establishing the amount of

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Wendy Tejada

Chapter 7

fees incurred. Therefore, the Court will not award any attorneys' fees.

Memorandum of Decision at 14.

Tejada's appeal of the Judgment is currently pending before the Bankruptcy Appellate Panel. On October 19, 2018, the Court entered an *Order Taxing Costs of \$3,281.20 to Defendant* [Doc. No. 95].

On August 21, 2018, Plaintiff filed a motion seeking attorneys' fees, followed by an amended motion seeking attorneys' fees [Doc. No. 73] (the "Amended Fee Motion"), and set the motion for hearing on October 24, 2018. On October 19, 2018, the Court entered an *Order Directing Plaintiff to (1) Refile Amended Fee Motion Using Correct Docket Event Code and to (2) Renotice Hearing on Amended Fee Motion* [Doc. No. 96] (the "Renoticing Order"). As set forth in the Renoticing Order:

Plaintiff has filed a motion seeking an award of attorneys' fees [Doc. No. 72] (the "Fee Motion") and an amended motion seeking attorneys' fees [Doc. No. 73] (the "Amended Fee Motion"). Docket entries 73 and 82 indicate that the Clerk of the Court (the "Clerk") has advised Plaintiff to refile the Amended Fee Motion using the correct docket event code. The Clerk has further advised Plaintiff that the Amended Fee Motion is not on calendar for October 24, 2018, at 10:00 a.m. *See* Doc. Nos. 73 and 82. Plaintiff has not refiled the Amended Fee Motion using the correct docket event code. No opposition to the Amended Fee Motion is on file, possibly as a result of Defendant's reliance upon the docket entries stating that the Amended Fee Motion is not on calendar.

The Renoticing Order further provided that the October 24, 2018 hearing on the Amended Fee Motion would not go forward, and required Plaintiff to refile the Amended Fee Motion using the correct docket event code and renotice the Amended Fee Motion for hearing. Renoticing Order at ¶¶1–2.

Plaintiff renoticed the Amended Fee Motion as required by the Renoticing Order. Doc. Nos. 99–100. However, no Proof of Service is attached to the Amended Fee Motion.

Plaintiff seeks an award of attorneys' fees, in the amount of \$34,575.00, pursuant to Cal. Civ. Code §789.3. No opposition to the Amended Fee Motion has been filed.

II. Findings and Conclusions

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CONT... Wendy Tejada

Chapter 7

A. Notice of the Amended Fee Motion was Sufficient

Notwithstanding the absence of a Proof of Service, the Court finds that notice of the Amended Fee Motion was sufficient.

Attorneys who file documents electronically receive electronic notice of docket activity, by means of the Court's Notice of Electronic Filing ("NEF") system. Each docket entry contains an electronic receipt which indicates which parties received notice of that docket entry by means of the NEF system. Here, the electronic receipt associated with the Amended Fee Motion shows that Tejada's counsel, Donald E. Iwuchuki, received electronic notice of the Amended Fee Motion at the following e-mail addresses: <donalদিwuchuku@gmail.com> and <r60703@notify.bestcase.com>.

B. The Fee Motion is Granted

In the Memorandum of Decision, the Court found that Tejada intentionally disconnected the water service to Velasquez's apartment for the purpose of terminating Velasquez's tenancy, in violation of Cal. Civ. Code §789.3(a). Based upon this violation of Cal. Civ. Code §789.3(a), the Court found that Tejada was indebted to Velasquez in the amount of \$28,000, and that such indebtedness was excepted from Tejada's discharge. Although Cal. Civ. Code §789.3(a) provides that the prevailing party is entitled to an award of attorneys' fees, the Court decline to award Plaintiff Velasquez's counsel fees based on a lack of evidence.

Velasquez's counsel has now submitted detailed billing records regarding the work performed in this matter. Counsel seeks attorneys' fees of \$34,575.00 for spending 99.2 hours litigating this action. Counsel's billing rate is \$375.00 per hour.

Having reviewed counsel's billing records, and having observed firsthand counsel's litigation of this action, the Court finds that the fees requested are reasonable in view of the results obtained. Counsel's billing rate is comparable to the rates billed by attorneys of comparable skill, experience, and reputation. With respect to the number of hours billed, the Court notes that litigation of this action through trial required counsel to conduct discovery, conduct a deposition, engage in mediation, prepare a pretrial stipulation, litigate several motions *in limine*, prepare a trial brief, and prepare for and attend the trial, among other things. The accomplishment of all this in only 99.2 hours shows that counsel efficiently litigated this matter, spending time only on tasks that were strictly necessary.

"Established case law holds that a debtor's obligation for attorneys' fees and costs is excepted from discharge under section 523(a)(6) as a 'debt for' debtor's willful and malicious injury when awarded by the state court 'with respect to' or 'by reason of'

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CONT...

Wendy Tejada

Chapter 7

the same underlying conduct that precluded discharge of the underlying compensatory damages award." *Suarez v. Barrett (In re Suarez)*, 400 B.R. 732, 738–39 (B.A.P. 9th Cir. 2009), *aff'd*, 529 F. App'x 832 (9th Cir. 2013).

Here, the Court awarded Velasquez \$28,000 based upon Tejada's violation of Cal. Civ. Code §789.3(a). Although these damages were not fixed by the state court, *Suarez's* reasoning applies because the damages arise under California law.

In seeking attorneys' fees, counsel does not distinguish between fees incurred establishing Tejada's violation of Cal. Civ. Code §789.3(a), and fees incurred establishing that such violation was excepted from Tejada's discharge. In this case, the failure to make such a distinction is immaterial. To establish that Tejada violated Cal. Civ. Code §789.3(a), counsel introduced evidence showing that Tejada deliberately disconnected water service to Velasquez's apartment, for the purpose of inducing Velasquez to vacate the unit; that Velasquez could not afford to move because rents had risen; that the absence of water imposed a severe hardship upon Velasquez and her children; and that Tejada was aware that disconnecting the water would create hardship. Counsel relied upon this same evidence to establish that the indebtedness arising under Cal. Civ. Code §789.3(a) was excepted from Tejada's discharge.

Counsel has not sought reimbursement for a substantial number of hours spent litigating this matter. Riles Decl. at ¶7. In view of the substantial reduction in the number of hours billed, and the overlap between establishing liability under Cal. Civ. Code §789.3(a) and establishing the non-dischargeability of such liability, an award of \$34,575.00 will not result in counsel obtaining compensation for litigating dischargeability issues.

III. Conclusion

Based upon the foregoing, the Amended Fee Application is GRANTED. Counsel shall submit a judgment for the fees awarded herein within seven days of the hearing. [Note 1] The judgment shall incorporate this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Jessica Vogel or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic

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CONT... Wendy Tejada

Chapter 7

appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

Because "a claim for attorney's fees is not part of the merits of the action to which the fees pertain," *Ray Haluch Gravel Co. v. Cent. Pension Fund of Int'l Union of Operating Engineers & Participating Employers*, 571 U.S. 177, 183–84, 134 S. Ct. 773, 779, 187 L. Ed. 2d 669 (2014), the Court will enter a separate judgment pertaining only to the award of attorneys' fees.

Party Information

Debtor(s):

Wendy Tejada

Represented By
Speros P Maniates
Donald E Iwuchuku

Defendant(s):

Wendy Tejada

Represented By
Donald E Iwuchuku

Plaintiff(s):

Sorayda Velasquez

Represented By
Cassandra K. Riles
Paul J Estuar

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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11:00 AM

2:17-25439 Eduardo Madrigal

Chapter 7

#101.00 APPLICANT: Accountant for Trustee, Donald T Fife, CPA

Hearing Re [36] and [37] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/18/2018

On July 13, 2018, this Court entered an order approving the Trustee's request to employ Applicant as a tax preparer and to pay a \$1,000 flat fee [Doc. No. 26]. Those fees are approved on a final basis.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Eduardo Madrigal

Represented By
Nicholas W Gebelt

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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11:00 AM

2:17-25439 Eduardo Madrigal

Chapter 7

#102.00 APPLICANT: Trustee - Edward M Wolkowitz

Hearing Re [36] and [37] Applications for chapter 7 fees and administrative expenses

Docket 0

Tentative Ruling:

12/18/2018

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Fees: \$4,462.96

Total Expenses: \$24.45

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Eduardo Madrigal

Represented By
Nicholas W Gebelt

Trustee(s):

Edward M Wolkowitz (TR)

Pro Se

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Hearing Room 1568

11:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#103.00 HearingRE: [440] Application for Compensation Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses by Cox Wootton Lerner Griffin & Hansen, LLP; With Proof of Service for COX WOOTON LERNER GRIFFIN & HANSEN LLP, Special Counsel, Period: 7/6/2017 to 12/26/2018, Fee: \$487,712.00, Expenses: \$37,747.44. (Bogard, Lane)

Docket 440

Tentative Ruling:

12/18/2018

Having reviewed the fourth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$460,149.35

Expenses: \$37,747.44

Applicant's request for approval of an additional estimated \$20,000 in fees is conditionally approved, subject to applicant filing a declaration with billing statements that support that request. Applicant is directed to include the additional amounts sought in its proposed order.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#104.00 HearingRE: [441] Application for Compensation Final Fee Application for Compensation for Legal Services Rendered and Reimbursement of Expenses by Trojan and Company Accountancy Corporation; With Proof of Service for Trojan and Company Accountancy, Accountant, Period: 7/6/2017 to 12/26/2018, Fee: \$108,402.00, Expenses: \$0.00. (Bogard, Lane)

Docket 441

Tentative Ruling:

12/18/2018

Having reviewed the fourth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$108,402

Expenses: \$0.00

Applicant's request for approval of an additional estimated \$4,000 in fees is conditionally approved, subject to applicant filing a declaration with billing statements that support that request. Applicant is directed to include the additional amounts sought in its proposed order.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By
Vanessa M Haberbush
Lane K Bogard
David R Haberbush

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11:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#105.00 HearingRE: [442] Application for Compensation Application for Payment of Final Fees and/or Expenses; With Proof of Service for Haberbush & Associates, LLP, Debtor's Attorney, Period: 7/6/2017 to 12/26/2018, Fee: \$260,797.50, Expenses: \$14,921.39. (Haberbush, David)

Docket 442

Tentative Ruling:

12/18/2018

Having reviewed the fourth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$282,316.50

Expenses: \$15,992.39

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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11:00 AM

2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#106.00 HearingRE: [437] Application for Compensation Third and Final Application for Compensation and Reimbursement of Expenses by Armory Consulting Company as Financial Advisor to the Official Committee of Unsecured Creditors; Declaration of James Wong in Support Thereof (with Exhibits A, B, C, D and E) (with proof of service) for Armory Financial Consulting, Financial Advisor, Period: 9/1/2018 to 11/26/2018, Fee: \$5,301.00, Expenses: \$.

Docket 437

Tentative Ruling:

12/18/2018

Having reviewed the third and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$5,301

Expenses: \$0.00

All fees and expenses awarded pursuant to interim fee applications are approved on a final basis.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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2:17-18213 Pac Anchor Transportation Consisting of the Merger and

Chapter 11

#107.00 HearingRE: [436] Application for Compensation Fourth and Final Application of Levene, Neale, Bender, Yoo & Brill L.L.P., Counsel for Official Committee of Unsecured Creditors, for Approval of Fees and Reimbursement of Expenses; Declaration of Daniel H. Reiss In Support (with Exhibits A, B, C, D and E) (with proof of service) for Levene, Neale Bender Yoo & Brill, Creditor Comm. Atty, Period: 9/1/2018 to 12/18/2018, Fee: \$35,149.82, Expenses: \$519.50.

Docket 436

Tentative Ruling:

12/18/2018

Having reviewed the fourth and final application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below.

Fees: \$35,669.32

Expenses: \$519.50

All fees and expenses awarded pursuant to interim fee applications are approved on a final basis.

No appearance is required if submitting on the court's tentative ruling. To submit on the tentative ruling contact Daniel Koontz or Jessica Vogel, the Judge's law clerks, at 213-894-1522, by no later than one hour prior to the hearing.

Party Information

Debtor(s):

Pac Anchor Transportation Inc

Represented By

Vanessa M Haberbush

Lane K Bogard

David R Haberbush

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11:00 AM

2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#108.00 HearingRE: [84] Motion to Dismiss Debtor The United States' Notice of Motion And Motion to Dismiss; And Declaration of Leonard S. Brown Jr. In Support Thereof

Docket 84

Tentative Ruling:

12/18/2018

For the reasons set forth below, the Motions are GRANTED and the case is DISMISSED.

Pleadings Filed and Reviewed

UST Motion

1. Notice of Motion and Motion Under 11 U.S.C. § 1112(b)(1) to Convert, Dismiss or Appoint Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and Judgment Thereon [Doc. No. 76] (the "UST Motion")
2. Notice of UST's Motion [Doc. No. 78]
3. Order Continuing Hearing on UST's Motion [Doc. No. 91]
4. Debtor's Response to the Office of the United States Trustee's Notice of Motion and Motion Under § 1112(b) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 96] (the "Opposition")
5. United States Trustee's Reply to Debtor's Response to the Office of the United States Trustee's Notice of Motion and Motion Under § 1112(b) to Convert, Dismiss or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon [Doc. No. 97] (the "UST Reply")

IRS Motion

6. The United States' Notice of Motion and Motion to Dismiss [Doc. No. 84] (the "IRS Motion")
7. As of the preparation of this tentative ruling, the Debtor has not filed an opposition.

Miscellaneous Related Pleadings

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CONT... Henderson Mechanical Systems, Inc. Chapter 11

8. Order: (1) Directing Debtor to File Disclosure Statement and Chapter 11 Plan of Reorganization; and (2) Setting Disclosure Statement Hearing [Doc. No. 73]
9. Debtor's Ex Parte Motion for Order to Extend Deadline to File Disclosure Statement and Chapter 11 Plan of Reorganization [Doc. No. 90]
10. Order [Denying] Debtor's Ex Parte Motion for Order to Extend Deadline to File Disclosure Statement and Chapter 11 Plan of Reorganization [Doc. No. 93]

I. Facts and Summary of Pleadings

Debtor and debtor-in-possession, Henderson Mechanical Systems, Inc. (the "Debtor"), filed this voluntary chapter 11 case on April 9, 2018 (the "Petition Date"). The Debtor is a subcontractor that fabricates and installs heating, ventilating, and air-conditioning systems for general contractors.

UST Motion

On November 1, 2018, the Office of the United States Trustee (the "UST") filed a Motion under §1112(b) seeking to convert this case to a case under chapter 7 based upon the following:

- i. Debtor has not filed:
 - a. Sufficient evidence of current insurance including the declaration page for Debtor's commercial liability policy that purportedly expired 9/11/2018;
 - b. A September Monthly Operating Report ("MOR");
- ii. Paid quarterly UST fees for the third quarter of 2018 in the estimated amount of \$4,875.

Doc. No. 78, Declaration of Gary Baddin.

The UST asserts that, based upon its review of the Debtor's Schedules, conversion appears to be in the best interest of creditors because there may be assets that a trustee can evaluate and readily administer in a Chapter 7. If the case is converted, the UST also requests that the Court direct Debtor's chapter 11 counsel to file a fee application under § 330 within thirty days of conversion.

Alternatively, in the event the Court determines that dismissal is in the best interest of creditors, the UST requests that the Court enter an order prohibiting the

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Chapter 11

Debtor from filing another bankruptcy petition for a period of 180-days and order the Debtor to pay all outstanding UST fees and enter a judgment in favor of the UST for any unpaid amounts.

Finally, in the event the Court denies conversion and dismissal, the UST requests that the Court set a date certain for the Debtor to obtain confirmation of a chapter 11 plan of reorganization.

On December 3, 2018, this Court entered an Order continuing the hearing on the UST Motion from December 12, 2018 to December 19, 2018 to be heard concurrently with the IRS Motion (defined below).

On December 12, 2018, the Debtor filed an untimely Opposition to the UST Motion [Doc. No. 96]. The Debtor states that it has resolved all of the compliance issues raised by the UST as follows: (i) Debtor filed its delinquent September MOR on November 20, 2018 [Doc. No. 82]; (ii) Debtor will pay the UST's third quarter fees in the amount of \$4,875 on or before December 14, 2018; and (iii) Debtor is adequately insured with commercial liability insurance with coverage through September 14, 2019 and has provided the policy declaration to the UST.

On December 14, 2018, the UST filed a Reply to the arguments set forth in the Opposition [Doc. No. 97]. First, the UST highlights that the Debtor filed its Opposition an entire week late, despite the fact that the hearing was originally scheduled for December 12, 2018 and the Debtor had an additional weeks' notice to prepare and file its opposition. Second, the UST maintains its position that conversion is in the best interest of creditors because the Debtor still has not cured the outstanding compliances issues. Specifically, the UST states that the Debtor has not cured outstanding UST fees in the amount of \$4,881.01 and has not submitted proof of commercial liability insurance. The UST also highlights that the Opposition is not supported by declaration of the Debtor or Debtor's counsel and has no evidentiary support.

The UST also asserts that despite the Debtor having been in bankruptcy for almost six months, the Debtor's October 2018 MOR reveals that the Debtor has little money in its debtor-in-possession bank accounts. *See* Exhibit 1.

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IRS Motion

Chapter 11

On November 28, 2018, the United States of America, acting on behalf of its agency, the Internal Revenue Service (the "IRS") filed a motion to dismiss this case under § 1112(b) [Doc. No. 84]. The IRS states that pursuant to its Second Amended Proof of Claim No. 1-2 (the "IRS Claim"), it holds a claim against the Debtor's estate in the total amount of \$1,102,516.74, which is comprised of (i) a secured claim of \$96,886.97 for unpaid payroll tax, corporate tax, and penalties pursuant to 26 U.S.C. § 6721(e) for various tax periods between September 30, 2010 through December 31, 2012; (ii) a priority tax claim for \$754,131.29 for unpaid estimated payroll taxes for various tax periods between June 30, 2012 through December 31, 2018 because the Debtor failed to file and/or pay tax returns for these same periods; and (iii) a general unsecured claim for \$295,703.93 arising from tax penalties.

The IRS argues that cause exists to dismiss this case under § 1112(b)(4)(I) on the grounds that the Debtor has failed to timely pay payroll taxes and failed to timely file payroll tax returns. The IRS states that the Debtor has failed to file its Form 941 for the second and third quarters of 2018 and to timely pay any payroll taxes for those quarters. The IRS estimates the amounts owing for each quarter is \$50,000 in additional tax liability.

Additionally, the IRS argues that cause exists to dismiss this case under § 1112(b)(4)(A), because of the substantial or continuing loss to or diminution of the estate, without a reasonable likelihood of rehabilitation. The IRS asserts that there is not a reasonable likelihood that the Debtor will be able to confirm a plan of reorganization because the Debtor's continued failure to pay post-petition payroll tax obligations entitles the IRS to an administrative expense claim in the approximate amount of \$100,000 under § 503(b) and (c), which must be paid in full on the effective date of any confirmed plan. Further, the IRS asserts that the Debtor's failure to pay post-petition payroll taxes results in a continuing loss and diminution to the estate because of the daily accrual of interest and penalties imposed on the delinquent taxes.

As of the preparation of this tentative ruling, the Debtor has not filed an opposition to the IRS Motion.

II. Findings of Fact and Conclusions of Law

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Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." Section 1112(b)(4) provides a nonexclusive list of factors that constitute "cause," including, in relevant part: "(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;" "(B) gross mismanagement of the estate;" "(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;" "(E) failure to comply with an order of the court;" "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" "(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);" "(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;" and "(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court." 11 U.S.C. § 1112(b)(4).

The Court finds sufficient "cause" exists to dismiss or convert the Debtor's case pursuant to 11 U.S.C. § 1112(b). The Debtor has, among other things, (i) failed to provide evidence demonstrating that its insurance policy is current [§1112(b)(4)(C) & (H)], (ii) failed to timely file Monthly Operating Reports for July, September and October 2018 or pay UST 3rd quarter fees for 2018 [§1112(b)(4)(F)], (iii) failed to pay postpetition tax obligations and to file tax returns [§ 1112(b)(4)(I)]; (iv) failed to comply with the deadline set by this Court to file a disclosure statement [§ 1112(b)(4) (E) and (J)].

Additionally, as the IRS highlights, "cause" exists under § 1112(b)(4)(A) based upon the continued diminution of the estate resulting from the daily accrual of interest and penalties and because the ever-growing tax obligations indicate the absence of a reasonable likelihood that the Debtor will be able to confirm a plan of reorganization.

The Court further notes that, despite the Debtor's substitution of counsel on November 15, 2018 [Doc. No. 81], Debtor's new counsel has not demonstrated that it can competently represent the Debtor. Mr. Giron failed to file a disclosure statement by the November 30, 2018 deadline set by this Court or timely seek an extension of that deadline. *See* Doc. Nos. 73, 90 & 93. Further, Mr. Giron filed an untimely opposition to the UST Motion, has not opposed the IRS Motion, and has not obtained

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authorization to be employed.

Chapter 11

All of the foregoing reasons lead this Court to conclude that the Debtor has grossly mismanaged the estate [§ 1112(b)(4)(B)] and should no longer remain a debtor-in-possession.

Having determined that cause exists, the Court must next determine whether dismissal or conversion serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of all of the creditors." *Shulkin Hutton, Inc. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

The Court finds that conversion to chapter 7 would not be in the best interest of creditors because, given the sizeable pre- and post-petition tax liabilities owing to the IRS, it is unlikely that there will be any distribution to creditors other than the IRS. Also, if a trustee was unable to immediately terminate any on-going projects there would be no funds (or insufficient funds) to obtain requisite insurance. Moreover, the IRS, the major creditor in the case, has requested that this case be dismissed.

Therefore, the Court finds it appropriate to dismiss this case with a 180-day bar to re-filing a bankruptcy petition under any chapter.

III. Conclusion

For the reasons set forth above, the Motions are GRANTED. The case is dismissed with a 180-day bar to being a debtor in bankruptcy. The Debtor is ordered to pay any outstanding UST quarterly fees. The UST's request for entry of a judgment in its favor for any unpaid quarterly fees is granted.

The IRS and UST are directed to each lodge proposed orders, incorporating this tentative ruling, within 7 days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you

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intend to submit on the tentative ruling, please contact Daniel Koontz or Jessica Vogel at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang
Lionel E Giron

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2:18-13960 Henderson Mechanical Systems, Inc.

Chapter 11

#109.00 Hearing
RE: [76] U.S. Trustee Motion to dismiss or convert or Appoint a Chapter 11 Trustee with an Order Directing Payment of Quarterly Fees and for Judgment Thereon . (united states trustee (hy))

fr. 12-11-18

Docket 76

Tentative Ruling:

12/18/2018

See Calendar No. 108, incorporated herein by reference.

Party Information

Debtor(s):

Henderson Mechanical Systems, Inc.

Represented By
Kevin Tang